interest, then it would also be wrong for any other process to do so. Therefore the democratic process ought not to be displaced by a nondemocratic process unless (at the very least) a convincing showing is made that over the long run the nondemocratic process will be superior to the democratic process.

It is misleading to suggest that there is one universally best solution to the problem of how best to protect fundamental rights and interests in a polarchy. Although American lawyers typically assume that the solution must include a supreme court with the authority to strike down national legislation that violates fundamental rights and interests, such a system of quasi guardianship is neither necessary nor, on American experience, sufficient. In the absence of a universally best solution, specific solutions need to be adapted to the historical conditions and experiences, political culture, and concrete political institutions of a particular country. Quasi guardianship in the form of a supreme court with the power of judicial review is a solution that Americans have accepted as desirable. It cannot be shown to be generally desirable in polycharcs. Obviously, then, to make a reasonable decision about the trade-offs requires not only an empirical assessment of the probable consequences of alternative processes in the concrete setting of a particular country, but also a judgment about the relative weight to assign to the democratic process in comparison with other values.

A heavy burden of proof should therefore be required before the democratic process is displaced by quasi guardianship. It should be necessary to demonstrate that the democratic process fails to give equal consideration to the interests of some who are subject to its laws; that the quasi guardians will do so; and that the injury inflicted on the right to equal consideration outweighs the injury done to the right of a people to govern itself.

This judgment should depend partly on one's view of the potentialities for collective moral responsibility and growth in a good political order. If a good political order requires that the demos must in no circumstances have the opportunity to do wrong, at least with respect to fundamental rights and interests, then one may be tempted to suppose that the demos and its representatives ought to be restrained by quasi guardians who, like true guardians, possess superior knowledge and virtue. If however the best political order is one in which the members individually and collectively gain maturity and responsibility by confronting moral choices, then they must have the opportunity to act autonomously. Just as individual autonomy necessarily includes the opportunity to err as well as to act rightly, so too with a people. To the extent that a people is deprived of the opportunity to act autonomously and is governed by guardians, it is less likely to develop a sense of responsibility for its collective actions. To the extent that it is autonomous, then it may sometimes err and act unjustly.

The democratic process is a gamble on the possibilities that a people, in acting autonomously, will learn how to act rightly.

Chapter 14

ROBERT OAHU, DEMOCRACY
AND ITS CRITICS

When Is a People Entitled to the Democratic Process?

To say that all people—all adults, anyway—are entitled to the democratic process begs a prior question. When does a collection of persons constitute an entity—"a people"—entitled to govern itself democratically?

To the extent that the persons composing a political system are combined together in an unjustifiable way, the value of democracy for that system is reduced. If Costa Rica were forcibly annexed by the United States and compelled to become the fifty-first state, why should the people of Costa Rica—or we as external judges—value their new federal democracy as highly as their previously independent democratic system? And the principle of majority rule, as I remarked earlier, presupposes that the unit itself is appropriate for majority rule. To the extent that the unit within which majority rule operates is unjustifiable, then majority rule is unjustifiable in that unit. Would a majority of citizens of the United States be entitled to decide policies for the Costa Ricans if they were coerced into becoming citizens of a fifty-first state?

In the main, democratic theorists have either ignored these puzzling and difficult questions or provided facile answers. Can it be that there are no satisfactory answers?

THE PROBLEM OF THE UNIT

What is it about a particular collection of people that entitles it to a democratic government? The question poses the problem of the appropriateness of democracy for various aggregations of persons—units, so to speak—with different boundaries. However, what looks at first blush to be one question breaks down on examination into several different questions:

1. What type (or types) of associations should be governed democratically by the members of the association? Democrats have usually assumed that at the very least the government of a territorial state should be subject to democratic control.
However, many modern democrats argue that other types of associations should also be internally democratic: trade unions, political parties, economic enterprises, and so on. Some advocates of "participatory democracy" appear to believe that virtually all associations should be democratic. I am going to assume, however, that the type of association we have in mind is a territorial state.

2. Even if we limit ourselves to states, given the long history of democratic ideas and practices one might reasonably wonder whether the type of state might have a bearing on the suitability of the democratic process. To the Greeks, as we have seen, it was self-evident that if democracy were desirable, it would have to exist in a city-state, since a good state could exist only in a city. As late as the eighteenth century Rousseau and Montesquieu agreed that the best state for a self-governing people could not be larger than a city. Since their day, democratic orthodoxy has claimed the national state or country as the proper unit even if the country in question is no more than a fragile aggregate of regions or tribes. But, like its predecessors, the national state is a moment in history. In the year 2100 it will still seem to be the natural site and limit of the democratic process.

In chapter 22 I am going to discuss the consequences for democracy of the shift in scale from city to national state—and beyond. Here I shall begin by assuming that what we have in mind is a world of national states, though I want to relax that restriction as the argument unfolds.

Even national states may vary in form. Federal systems generate some questions for democratic theory and practice that unitary systems do not. Since the difference between federal and unitary systems is directly related to the central problem of this chapter, I shall return to it in a moment.

3. Having put these questions to one side for the time being, we can now more easily home in on the problem of the democratic unit and its boundaries. When advocates of democracy describe or recommend a democratic system, they take for granted that democracy would exist in certain concrete political units: city-states, national states, or whatever. They can point to historical or existing examples of these units, certain specific aggregations of person living within more or less clearly bounded territories: Athens, Geneva, France, Sweden... But they rarely ask why we ought to accept these particular aggregations as appropriate for democracy rather than different aggregations with different boundaries. Why should ancient Athenians have been entitled to democracy but not ancient Greece as a whole? Or why modern Greeks rather than Athenians, or Norwegians rather than Scandinavians? Alaska and Hawaii have gained statehood in the United States. Why not Puerto Rico—or Costa Rica? Is it simply a matter of consent rather than coercion?

Consider, for a moment, claims like these:

Claim 1: The people living in Quebec are entitled to their own democratic government, independent of Canada. (For Quebec and Canada you may substitute the southern states and the United States of America; Norway and Sweden; Ireland and the United Kingdom; North Ireland and the Irish Republic; Brittany and France; Turkish Cypriots and Greek Cypriots...)

Claim 2: The people living in Quebec ought to be citizens of the democratic government of Canada. (This is merely the mirror image of the first claim, which it replaces, and the same substitutions may be made.)

Claim 3: With respect to matters involving birth control the people of Connecticut are entitled to employ the democratic process among themselves, independent of the federal government of the United States. (For the United States you may substitute any democratic country; for Connecticut any locality within that country for birth control an indefinite list of matters that might be subject to determination by units smaller than the national state. For a democratic country you might substitute a transnational political system, such as the European Community, and for the locality, the constituent countries; the range of matters subject to country control might be very broad.)

Claims 4, 5...: Claims to local autonomy like those just mentioned could be met by counterclaims asserting that control over the particular matters in dispute should be exercised by the larger and more inclusive unit. These counterclaims are of course merely mirror images of claims to local autonomy.

When we inspect claims and counterclaims like these we see that they are unfolded: They are simultaneously claims to control, or to autonomy, with respect to a certain matters—police, health, housing, foreign affairs, and so on—and claims to control over these matters by a certain aggregate of persons, who necessarily occupy a common territory but conceivably might not. We might call the first a claim as to the proper scope of control, the second a claim as to the proper domain of persons entitled to exercise control with respect to matters falling within the proper scope. The scope might range all the way from a single narrow question—parking, for example—to complete autonomy, total sovereignty, full independence. Likewise the domain might be as tiny as the people of a village or a neighborhood or as vast as the inhabitants of a giant country or an association of countries like the European Union. Scope and domain are usually interdependent: The claim to the one is explicitly linked to the claim to the other.

Although claims about the domain and scope of authority clearly rest on value judgments of some kind, what immediately strikes the eye when we examine specific claims is how much a reasonable solution will necessarily depend on concrete circumstances. Like the claims themselves, feasible solutions are strongly conditioned by the particular beliefs, traditions, myths, historical experiences, and more by the complex tapestry of empirical reality existing among a concrete aggregate of human beings. Often, too—perhaps more often than not—disputes about scope and domain are settled not by the force of reasoned appeals to justice, freedom, democracy, self-determination, efficiency, and other abstract ideas but by the force of violence and coercion. The abstract values then serve only as convenient rationalizations for the legitimacy of the winning outcome.

Once again one might well wonder whether the problem admits of a general solution or indeed whether general principles can have any bearing at all on feasible solutions. When one begins to search for general solutions, one's doubts about their utility are likely to grow stronger.
TWO NONSOLUTIONS

Let me mention two illusory solutions, both of which we encountered in a different context when we considered the problem of inclusion.

Every People Defines Itself

One nonsolution is analogous to Schumpeter's answer to the problem of what ought to be included in the demos, except that in this case every people defines itself. Thus Athenians defined themselves as a distinct group of Greeks living together in an autonomous and democratic polis. Two millennia later modern Greeks have defined themselves as a people and Athenians are now citizens of greater Greece. At the time of the American Revolution, Virginians defined themselves more as Virginians than as Americans; in 1861 they saw themselves as citizens of the Confederacy rather than of the Union; today they regard themselves as unquestionably citizens of the United States. So ancient Athenians, modern Greeks, eighteenth-century Virginians, the people of the Confederate States in the Civil War period, Americans today—all have defined themselves and their fellow citizens in historically unique ways. After describing these historical changes, what more can be said?

Just as with membership in the demos, however, here too the aphorism that every people defines itself may succinctly summarize historical experience, but it provides no grounds for judging whether one claim is better than another or whether the historical outcome should be preserved or overthrown. To remain content with the aphorism we should have to allow every claim and its counterclaim to stand on an equal footing. But then the only means for reaching solutions would be propaganda and coercion. In that sense, the aphorism fails as a solution; it merely declares that there is none.

Political Autonomy as an Absolute Right

What about the venerable notion of consent? Is not one of the crucial differences between bringing Alaska and Costa Rica into the United States simply that Alaskans gave their consent, whereas (I assume) Costa Ricans would not give theirs?

From the seventeenth century onward, the notion of consent was used to provide a moral foundation for the idea of a democratic state. How can we ensure consent? To do so, why not regard political autonomy as an absolute right? By absolute I mean that autonomy would always be granted to any group wishing it, provided only that the group made a convincing showing that its new unit, whether partly or fully independent, would be governed by the democratic process.

Imagine that a democratic country were actually to declare political autonomy to be an absolute right. Granting such a right would make a state, or any coercive organization, impossible (or at any rate illegitimate), since any group facing coercion on any matter could demand and through secession gain autonomy. In effect anarchism would be legitimized. While this conclusion will delight philo-
control over the agenda of political life. A national majority may, if it chooses, overrule the decisions of local units, for example, by removing the matters in question from the agenda of local governments.

Yet democratic ideas and practices also flourished in federal systems—earlier, in fact, than in unitary systems. Indeed in both Switzerland and the United States, where federalism antedates many of the institutions necessary to the democratic process, the federal system was widely thought to be specially favorable to democracy. So Tocqueville argued in his famous analysis of democracy in the United States. In the twentieth century, however, with the growth of the welfare state and the expansion of national controls over economic life it was sometimes said that federalism had become obsolete (Laski 1939). Yet this view proved to be premature, among other reasons because of the emergence of federal institutions on a transnational scale in the European Community.

Transnational federalism is the mirror image of federalism within a country. When a nation with a unitary constitution, such as France or Britain, enters into a transnational federal system, such as the European Community, then its national demos no longer has final control over the political agenda. Yet the agenda of the transnational unit is also strictly limited. Consequently, even if the larger community were to operate according to the majority principle, on many questions a majority of citizens in that community could not overrule a minority if the minority of the community happened to be a majority in a local unit, that is, a country. If we assume that over the next century transnational federalism will grow stronger, then the questions that federalism generates for democratic theory and practice are far from transitory or obsolete.

To explore these questions it may be helpful to imagine a conversation between two contemporary democrats, one an exponent of democratic federalism and the other a critic of federalism. Let me call the federalist James and his monistic critic Jean-Jacques.

**The Agenda Problem**

**Jean-Jacques:** I know you to be something of an admirer of federal systems, James, isn’t that so?

**James:** Yes, I think they have some special virtues, if that’s what you mean.

**Jean-Jacques:** But, as I know well, you are also a strong believer in democracy, are you not?

**James:** Yes, that is so.

**Jean-Jacques:** Well, I don’t quite see how the two fit together.

**James:** You’ll have to explain.

**Jean-Jacques:** I’ll try. I know that many Americans seem to believe that the United States is the embodiment of democracy, and so whatever the U.S. Constitution specifies must necessarily be essential to democracy. I suppose some Americans might believe that, because the United States is federal, therefore federalism is necessary to democracy. You wouldn’t go so far as to argue that, would you?

**James:** That would be absurd. Even the most convinced federalist can hardly contend that the political system of Norway, being unitary, is inherently less democratic than the political system of Switzerland. If federalism is necessary to democracy, then unitary constitutional systems are necessarily undemocratic. To show that unitary constitutional systems are necessarily undemocratic, I would have to show that a small, autonomous city-state with no need for decentralization in even smaller units would necessarily be undemocratic. That would be downright silly.

**Jean-Jacques:** Might not the converse be true: that federal systems are necessarily undemocratic?

**James:** I find that just as absurd as the other.

**Jean-Jacques:** But you do agree, James, that one requirement of a fully democratic process is that the demos exercise final control over the agenda?

**James:** I can hardly deny that.

**Jean-Jacques:** Yet in a federal system no single body of citizens can exercise final control over the agenda. Don’t you agree, then, that in federal systems the processes by which people govern themselves can’t even in principle ever be fully democratic?

**James:** I don’t quite grasp your reasoning, Jean-Jacques.

**Jean-Jacques:** Ah, the Anglo-American political mind: Naturally you mistrust my appeal to reason rather than experience. So let me try to make the problem more concrete with a hypothetical example. Let’s invent a so-called democracy with a very limited agenda, say, the schooling of children. Let’s call it Sylvania, for no particular reason. Now if our Sylvanians want to act on other things than schools, but have no opportunity to put those matters on the Sylvanian agenda or on the agenda of any other government they control, then even if they are active and vigorous participants in decisions about education, wouldn’t you regard them as oppressed?

**James:** Yes, of course. But why can’t the Sylvanians put other matters on the agenda?

**Jean-Jacques:** Well, suppose that Sylvania is controlled by a foreign nation. Let’s just call it the Union. The Union excludes the hapless Sylvanians from citizenship but lets them do what they want with their schools. No matter if the Union is the very perfection of the democratic process: Sylvanians are colonials and their thin little “democracy” is a pretty piece of window-dressing staged by their rulers. The Sylvanians may admire the democracy of their rulers, but they can never emulate it.

**James:** That’s not only a rather far-fetched example, but it has nothing to do with federalism. Let’s suppose that the Sylvanians aren’t excluded from citizenship in the Union, which is more likely than your assumption. They are now citizens of both Sylvania and the more inclusive unit, which I’ll now call the Federal Union. If, as Sylvanians, they govern themselves democratically on school matters, and, as citizens of the Federal Union, they govern themselves democratically on other questions, and if the Federal agenda is completely open, so that Sylvanians...
may place matters of interest to them on the Federal agenda, then I don't see any objections from a democratic point of view. I don't say there may not be other problems, but the opportunities the Sylvians have to govern themselves satisfy all the requirements of the democratic process. Taking their two governments together, the Sylvians control a completely open agenda. If we assume, as we have, that all the other criteria are met, then must we not also conclude that the Sylvians enjoy a fully democratic process?

JEAN-JACQUES: But haven't you just turned your Federal Union into a unitary rather than a federal system? If so, you've shown how the Sylvians might be citizens of a democratic system, but you haven't shown how federalism can be reconciled with democracy. In particular, you haven't shown that a federal system can satisfy the requirement of final control over the agenda by the demos. Hasn't the demos of the Federal Union merely delegated control over school questions to Sylvania and other local governments? But if that is the case, then your reconciliation of federalism with democracy is spurious. You've demonstrated what we knew all along: that the problem of final control need not arise in unitary systems. But you still haven't shown how the demos can exercise final control over the agenda in federal systems. In fact, I think your solution may imply something extremely interesting: that the problem can't be solved except by turning federal systems into unitary ones!

JAMES: I compliment you on your dazzling logic, but I'm afraid you've missed the target. Let's suppose that, under the constitutional arrangements reached when Sylvania joined the Federal Union, Sylvania's control over schools is permanent and inalienable. Wouldn't you concede that under these conditions the system is definitely federal? And definitely not unitary?

JEAN-JACQUES: Yes, I'd have to agree that the system is not unitary but federal. A definition is a definition is a definition. . . . But I'm not sure what conclusions you are trying to draw. I still don't see that your Federal Union is fully democratic.

JAMES: Well, looked at from one perspective, you could say that the demos of the Federal Union has alienated control over schools to Sylvania and other local governments. Just as the agenda of Sylvania is completely closed on everything except schools, so the agenda of the Federal Union is permanently closed on matters involving schools. Nonetheless, even though the government is for these reasons clearly federal, the solution looks very much like that provided by a unitary system with local governments! Yes, the agenda of the Federal Union is closed with respect to the schools. But on everything else it's completely open. Let's call the federal agenda quasi open.

JEAN-JACQUES: I suppose I must tolerate a slight pollution of the language so that you may get on with your argument.

JAMES: Thank you. Now, exactly as in a unitary system, if we take the two governments together then Sylvians control a completely open agenda. Whatever they can't put on the Sylvanian agenda they can put on the Federal agenda. If every citizen of the Federal Union has a local equivalent of Sylvania, then there is nothing in the federal system that prevents its citizens from exercising final control over the agenda of public affairs. In deference to your preference for abstract argument, I'll now sum up my argument in a general proposition. Provided that in one of their units all citizens have access to a quasi-open agenda, federalism is not inherently less capable of meeting the criteria of the democratic process than a unitary system.

JEAN-JACQUES: Not inherently, perhaps. In some circumstances, though your solution won't be satisfactory. And it is more likely to be unsatisfactory the more robust the federal system.

JAMES: What do you mean, "robust"?

JEAN-JACQUES: I mean that the local units exercise exclusive control over some really important questions. I don't mean the anemic federalism of the United States today, for example, where constitutionally the federal government can directly or indirectly regulate or control most of the activities of the states and municipalities. In fact, the United States is pretty close to being a unitary system. So let's imagine that in the Federal Union, Sylvania and the other thirty provinces possess final authority over policies that the citizens of the Union think are very important. Pollution, let's say, or conservation of natural resources. Now suppose that while a majority of Sylvians and other Union citizens want strong controls over pollution, strip mining, and the like, in one province, Carbonia, the citizens are opposed to all such controls. In these circumstances, there is no agenda on which the people in Sylvania and the other provinces can place the question of pollution by Carbonia. In these circumstances, a unitary system--or an anemic federal one--satisfies the criteria of the democratic process better than a robust federal system.

JAMES: Yes, that is so. But your argument seems to imply that a larger and more inclusive group always has a right to impose its will on a smaller group, simply because it is larger. Do you really believe that? Doesn't the larger group have to be in some sense legitimate as a democratic entity?

JEAN-JACQUES: I believe so. But we seem to have come full circle back to the problem with which we began. So far neither of us has provided a satisfactory answer. And we still haven't talked about the problem of majority rule.

Federalism and the Majority Principle

JAMES: It's not obvious to me what the problem is.

JEAN-JACQUES: All right, suppose a political system were to give a specially privileged minority the power to override the majority on questions of policy. You would hardly regard that system as democratic, would you?

JAMES: Putting aside the debatable matter of a supreme court with authority over constitutional issues, no. If a specially privileged minority could enforce its preferences as to policies over against those the majority wanted to adopt, I'd say the system was not only a flat violation of majority rule but plain undemocratic.

JEAN-JACQUES: I was sure you would. Let's assume, then, that we're now talking about policies, not basic constitutional issues: A majority wants policy X, a minority wants policy Y. The essence of the majority principle, we agree, is that, if a majority prefers policy X to policy Y, then policy X should be adopted. Yet isn't
it true that in federal systems a national majority can’t always prevail over a minority even on straightforward policy questions?

JAMES: I think I see where you’re heading. This is simply another way of looking at the question of control over the agenda, isn’t it?

JEAN-JACQUES: Yes, but from the perspective of majority rule. Suppose that matters like X and Y are a constitutional prerogative of the local units—states, provinces, cantons, regions, or whatever. Suppose the people in the minority who want Y happen to be concentrated in a constitutionally protected local unit where they make up a majority. If we assume for purposes of discussion that a majority in the national parliament more or less accurately reflects the policies of a national majority of citizens, then in a unitary system the national parliament could, by perfectly legal processes, override a local government. If a majority of all citizens prefer policy X to policy Y, the national parliament can adopt policy X and enforce it in a local unit even if a majority in that particular local unit happens to prefer Y. In a federal system, in some cases the minority would prevail, and the national majority could do nothing about it, constitutionally speaking.

JAMES: In some cases, yes. But I wonder whether nowadays in federal systems the national government couldn’t find a way to prevail if the matter were really important.

JEAN-JACQUES: Thank you. You make my case. What you’re saying is that in some countries like the United States federalism has become pretty anemic. In anemic federal systems, the authority of the national government over local policies has increased so greatly that they hardly differ in that respect from unitary systems. So it seems that, in order to cope with the problems of modern society, federal systems have had to turn themselves de facto into unitary systems. Can I rest my case?

JAMES: Not quite yet. In the United States, for example, public education is still pretty much within the exclusive jurisdiction of the states, which in turn delegate authority to municipal governments. In fact, the biggest item of expenditure in state budgets is education.

JEAN-JACQUES: Because education is important, your example helps me to complete my argument. Consider our hypothetical polities, Sylvania and the Federal Union. You’ll remember that the agenda of Sylvania is closed to everything except schools, while the agenda of the Federal Union is closed only to school matters but to nothing else. Now let’s suppose that a majority of citizens of the Federal Union were to come to the conclusion that their schools are in such a deplorable state that more uniform educational standards must be imposed on the country. If the Union were unitary, I doubt whether either of us would think it tyrannical or even undemocratic if national policies were imposed in order to bring local school systems up to scratch. Many democratic countries do exactly that. But, because the Federal Union is not unitary but federal, the majority of the country is barred from acting to improve the schools. Yet the Sylvania might well be a small minority of all citizens; and even in Sylvania those who oppose federal control might be no more than a bare majority.

I can imagine lots of instances in which justice would support the claims of Sylvania for autonomy on some particular matter. But, in this particular instance, wouldn’t it be both unjust and undemocratic if the minority—possibly a very tiny minority—were permitted to have its way about standards for the schools? If, in fact, the federal government were helpless to act? If the majority principle is ever justified, isn’t it justified in this instance? And, if it can’t be justified in this instance, how can it ever be justified?

JAMES: Answers to your questions may be more elusive than you think. To show why, I want to put Sylvania and the Federal Union to one side and discuss a highly abstract political system. This abstract system may also force us to reconsider the agenda question.

JEAN-JACQUES: A highly abstract political system? Are you now shifting your allegiance to the goddess of Reason, after all?

JAMES: I’ve always admired her. Anyway, here’s my abstract system: Imagine two squares, one within the other. S is a smaller system in B, the bigger and more inclusive system. S for smaller, B for bigger. Get it? Nothing could be simpler.

I ought to warn you not to think that I’ve reproduced Sylvania and the Federal Union all over again. Now let’s assume that both B and S are governed democratically within the limits of their agendas and that the primary political rights of all citizens are fully respected. Should the majority of B always be entitled to prevail against the local majority in S—on, say, schools? Or, to put it the other way round, should the local majority in S be constitutionally entitled to prevail on some matters—say, schools—against the larger majority in B?

JEAN-JACQUES: I suppose that depends on what you mean by ‘entitled.’

JAMES: By ‘entitled’ I mean to exclude mere convenience, efficiency, or utility. It might be convenient or efficient for people in B to allow the people in S to govern themselves on certain matters, such as schools. This is simply to say that B is a unitary system and the majority in B finds it useful to delegate authority to S. Obviously that’s not the problem we’re concerned with here. To say that the majority in S is sometimes entitled to prevail over the majority in B is to say, in effect, that the people in S have a right to govern themselves on certain matters and that B ought not to infringe on that right. At the same time, however, by assumption all citizens in B, including those in S, are fully protected in exercising their primary political rights.

JEAN-JACQUES: But if the entitlement isn’t merely convenience or efficiency, and if it’s not a primary political right—a right necessary to the democratic process—then what sort of a “right” is it? Do people have a fundamental moral “right” to a “local” government, like the “right” to free speech—a moral right so
basic that it should be constitutionally guaranteed? I'm not sure I can see how such a "right" could be justified.

JAMES: Nor do I. Yet I believe both of us believe in such a right nonetheless. Let me explain why. I imagine that, in spite of my warning a moment ago, you've really been thinking of S as a local unit and B as a national unit. As a result, from your earlier argument I'd suppose that you feel rather sympathetic to the claim of the people of B to exercise some control over the schools in S.

JEAN-JACQUES: Yes, I do, rather. I confess I was thinking of B as, say, France, or even the United States, and S as a municipality or maybe a state or département.

JAMES: But suppose instead that S is a country like France or Britain, and B is a transnational system like the European Community. Where do your sympathies lie now? Do you want the French educational system to be controlled by the European Community? Now, I suspect, you are more sympathetic to the claims of the people in S to exercise control over the education of their children than you are with the claims of B to govern over the people of S on these matters.

JEAN-JACQUES: As I just said, that is so.

JAMES: So: are we to say that B merely delegates authority over education to S? But in what sense does B possess this authority to begin with? Certainly not legally or constitutionally. Morally? Ought any larger unit always to have authority over any smaller unit? Even as severe a critic of federalism as I take you to be will dig in and resist somewhere.

JEAN-JACQUES: I now realize that it was not the goddess of Reason you paid homage to but the goddess of Muddle. I can't see that we've gotten anywhere on this question of federalism and majority rule.

JAMES: No, I think we have. Whether through reason or muddle we've arrived at a very important conclusion. The majority principle itself depends on prior assumptions about the unit: that the unit within which it is to operate is itself legitimate and that the matters on which it is employed properly fall within the jurisdiction of that unit. In other words, whether the scope and domain of majority rule are appropriate in a particular unit depends on assumptions that the majority principle itself can do nothing to justify. The justification for the unit lies beyond the reach of the majority principle and, for that matter, mostly beyond the reach of democratic theory itself.

THE BIGGER THE BETTER?

JEAN-JACQUES: I think our muddle may be the result of failing to distinguish between two different questions: Is one unit of a given domain and scope in some reasonable sense more democratic than another? And is one unit in some reasonable sense more desirable? As to the first, I see two possibilities. One is sheer numbers. As Rousseau suggested long ago, it is necessary the case that the greater the number of citizens, the smaller the weight of each citizen in determining the outcome. If we accept the view that the greater the weight of each citizen, the more democratic a system is, then other things being equal a larger system is bound to be less democratic than a smaller system. So, given a choice, a democrat should always prefer the smaller unit.

JAMES: My dear Jean-Jacques, I fear your goddess has abandoned you. If it were true that a smaller system must always be more democratic than a larger, then the most democratic system would consist of one person, which is absurd.

JEAN-JACQUES: You might have noticed that my conclusion was strictly contingent: "If we accept the view," I said. And we don't. So that leaves us only with the second of the two possibilities I mentioned a moment ago. Let us say that a system is more democratic to the extent that it permits citizens to govern themselves on matters that are important to them. Then in some circumstances a larger system would be more democratic than a smaller one, since its capacity to cope with certain matters—pollution, fiscal and monetary policy, unemployment, social security, defense, and so on—would be greater. On this view, a unit large enough to deal with matters of importance to the people concerned will always be more democratic than any smaller unit.

JAMES: I think you're still making a case with tongue in cheek. Isn't it obvious that just as numbers alone lead to absurdity, taken by itself the criterion of system capacity compels us to say that an absurdly large system is the most democratic—quite possibly one consisting of the entire human population of the globe?

JEAN-JACQUES: To avoid the absurdities of each criterion taken alone, suppose we take the two criteria together and search for an optimum balance between system size and capacity.

JAMES: A splendid idea! I think you may have discovered the direction in which to look for a solution, if there is one. But notice two things. First, I don't see any way in which theoretical reasoning will take us very far in our search for an optimum. We'll need a lot more help than your goddess alone can provide. We'll have to make complex and debatable empirical and utilitarian judgments. What's more, since empirical conditions will vary, there is every reason to suppose that even if an optimum can be found it will not be the same in different circumstances and historical periods. Finally, we can't assume that a single aggregate of persons would be best served by only one system. Garbage removal, water supply, schools, pollution, defense—each of these might produce a different optimum. The result might well be a complex system with several or many layers of democratic government, each operating with a somewhat different agenda.

JEAN-JACQUES: Certainly a system more complex than the rather inflexible boundaries of a federal system would provide, don't you agree?

JAMES: I'm afraid I must. However, I now want to bring up the second point your proposal suggests to me. Notice how the two questions you urged us to distinguish—what unit is more democratic? and what unit is more desirable?—become confused in our search for an optimum. Suppose that on balance one solution might be more desirable than another but less democratic. How are we to decide which is better?

JEAN-JACQUES: So far we haven't even discussed what we might mean by saying that a more desirable system might sometimes be less democratic. Evi-
ently we have assumed that we can judge the desirability of a political system by other standards than the democratic process. Presumably we can also judge it by its results. We have also assumed that in some circumstances it would be justifiable to trade off a bit of democracy to obtain more of certain other desirable ends: a little less democracy in the process, a little more achievement of good results.

JAMES: Yes, we surely do seem to be making those assumptions. But trade-offs aren’t always required. Surely you’re agree that it would be desirable if we could enhance democracy, self-determination, and freedom all at once?

JEAN-JACQUES: How could I disagree?

JAMES: And if federal arrangements could make that possible, you would have to agree that they would be desirable, wouldn’t you?

JEAN-JACQUES: If only federal arrangements could make it possible, I’d have to agree. But please tell me what you have in mind.

JAMES: I’ve already implied it. Let’s suppose the Sylvians are members of a unitary state. Call it Union. But suppose they happen to believe far more passionately than other Union citizens in the importance of education and unlike other Unionists they’re prepared to pay high taxes to achieve the best possible schooling for their children. They also believe strongly in certain educational methods and subjects that other Unionists don’t share. Unfortunately for the Sylvians, they’re a minority in the Union and they can’t ever get their policies adopted. Finally, however, because of these and other disagreements the Unionists decide they want their unitary Union to become a Federal Union, which, among other things, will allow the Sylvians control over their educational system and the taxes needed to support it. Federalism makes everyone better off. The Sylvians get what they want, but so do the other citizens of the Federal Union. Now Jean-Jacques, you agree, do you not, that the federal solution is a clear gain for democracy, self-determination, and freedom?

JEAN-JACQUES: I am of course compelled to agree. But I don’t agree that these same results could be achieved only by federalism, as you seem to imply. Couldn’t the Unionists have achieved exactly the same thing by granting the Sylvians authority over schools and adequate powers of taxation? But they wouldn’t need to alienate that control. If beliefs changed, or the Sylvians bankrupted themselves and thereby damaged the national economy, then the Union could try something else.

JAMES: I suppose it’s a question of how secure the Sylvians would feel about their future, if a national majority could take back their authority whenever they chose to. What you call “robust” federalism would prevent that, and even anemic federalism would inhibit it.

JEAN-JACQUES: I think we’re now retracing our steps.

JAMES: You will also notice that we’ve pushed solutions still further from the domain of purely theoretical reasoning. Applying standards of performance in judging the relative value of alternative arrangements will require empirical knowledge—or plain guesswork—that we can’t possibly discover in any abstract description of the alternatives. So it seems impossible to arrive at a defensible conclusion about the proper unit of democracy by strictly theoretical reasoning. I realize this conclusion may distress you, Jean-Jacques, but theoretical reason can’t provide our answers: We shall have to rely on practical judgment. Yet even practical judgment, it seems, can’t yield a general answer that will hold for all times and places. A satisfactory answer depends too much on particularities.

JEAN-JACQUES: Before we desert general principles altogether, I want to insist that, while an answer can’t be derived theoretically, this doesn’t mean that judgments need be arbitrary. If that were so, then almost all political judgments would be arbitrary. Certain assumptions on which the validity of the democratic process itself depends can be brought into play. In particular, a reasonable judgment would require us to appraise alternative solutions in the light of two prior principles: that the interests of each person are entitled to equal consideration and that in the absence of a compelling showing to the contrary an adult is assumed to understand his or her own interests better than any other person. These principles are too general to lead to conclusive answers, particularly in the face of great empirical complexity. But I think they may help us to find reasonable answers.

**CRITERIA FOR A DEMOCRATIC UNIT**

As Jean-Jacques and James have concluded, we cannot solve the problem of the proper scope and domain of democratic units from within democratic theory. Like the majority principle, the democratic process presupposes a proper unit. The criteria of the democratic process presuppose the rightfulness of the unit itself. If the unit itself is not proper or rightful—if its scope or domain is not justifiable—then it cannot be made rightful simply by democratic procedures. And as James and Jean-Jacques also conclude, to make a reasonable judgment about the scope and domain of democratic units requires us to move well beyond the realm of theoretical reason and deep into the realm of practical judgment.

Yet as Jean-Jacques has hinted, it would be a mistake to conclude that nothing more can be said. It seems to me reasonable to say that a claim as to the proper domain and scope of a democratic unit is justified to the extent that it satisfies seven criteria. Conversely, the less well it satisfies the criteria, the less justifiable is the claim.

However, none of these criteria standing by itself is adequate. The hidden clause of each is the famous “all other things being equal,” and in particular “the other six criteria being equally well satisfied.”

1. The domain and scope can be clearly identified. It is particularly important that the domain—the persons who comprise the unit—be clearly bounded. This is a fact. If the boundaries of the unit—whether political, administrative, or economic—are not clear, then the unit is not clearly defined.
2. The people in the proposed domain strongly desire political autonomy with
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six criteria, still others are relevant: costs and gains for communication, negotiation, administration, economic efficiency, and so on. For the most part the criteria will require qualitative judgments. Quantitative estimates will be illusory, since they will usually omit, fudge, or obfuscate most of the crucial judgments. Thus it will rarely if ever be possible to demonstrate conclusively that one solution is definitely the best. Because a clearly best solution cannot be determined, the advocates of a particular solution will exaggerate the gains and ignore the costs; meanwhile their opponents will exaggerate the costs and minimize the gains.

In the real world, then, answers to the question, what constitutes "a people" for democratic purposes? are far more likely to come from political action and conflict, which will often be accompanied by violence and coercion, than from reasoned inferences from democratic principles and practices. For as we have seen, in solving this particular problem democratic theory cannot take us very far. Democratic ideas, as I have said, do not yield a definitive answer. They presuppose that one has somehow been supplied, or will be supplied, by history and politics.

To say that adult persons have a right to participate in a democratic process for arriving at the collective decisions they may be compelled to obey is not to say that every person has a right to citizenship in a political unit that is best designed to protect and advance his or her interests. Because a world of perfectly consensual democratic systems is impossible to attain, the political units that citizens of a democratic polity can construct for themselves will never perfectly correspond to the interests of every citizen. Every specific, concrete, and feasible alternative solution to the problem of the best unit will, almost certainly, on balance benefit the interests of some citizens more than others. Here again, despite the perfectionist promises of democratic ideas, the best attainable unit will be for some citizens the second best.

Yet within the historical limits of time and place, judged according to reasonable criteria, some alternative units are better than others. The difficulty is not that reasonable judgments as to better and worse are impossible. It is only that they are very likely to be inconclusive and highly disputable.

respect to the matters falling within the proposed scope, whether the scope is to be as limited as local control over a school board or as broad as complete sovereignty. To impose political autonomy on a group whose members do not want it (because, for example, they want to retain or acquire membership in a more inclusive or less inclusive unit) can be as coercive as refusing autonomy to a group that does. Moreover, to the extent that the members of the proposed unit disagree—some persons want political autonomy, while others do not—then any solution will be coercive.

3. The people in the proposed domain strongly desire to govern themselves according to the democratic process. Conversely, the claim of a group to political autonomy is less justifiable the more likely it is that their new government will not respect the democratic process. The right to self-government entails no right to form an oppressive government.

4. The proposed scope is within justifiable limits, in the sense that it does not violate primary political rights (a restatement of the third criterion) or other fundamental rights and values. Conversely, a group's claim to autonomy is less justifiable the stronger the reasons for believing that if it gains autonomy the group will inflict serious harm, whether to its own members or to persons outside its boundaries.

5. Within the proposed scope, the interests of the persons in the proposed unit are strongly affected by decisions over which they have no significant control. As we have seen, claims to the right to participate in important decisions might best be satisfied in some cases by including those who are now excluded from an existing unit. In other cases a better solution might be to allow persons who are already included in an existing unit to form a relatively (or even fully) autonomous unit with respect to matters within a given scope. Conversely, a claim—whether to inclusion or independence—cannot be justified if it is advanced by persons whose interests are not significantly affected by the decisions of that unit.

6. Consensus among the persons whose interests are significantly affected will be higher than it would be with any other feasible boundaries. By this criterion, all other things being equal (the other criteria being equally well met), one set of boundaries is better than another to the extent that it permits more persons to do what they want to do: in this sense, the criterion reasserts the value of personal freedom. And, as James pointed out, the best solution may sometimes simultaneously enhance freedom, self-determination, and democracy. Conversely, of course, a proposed unit is less desirable the more that it will increase conflict over goals and thereby increase the number of persons who cannot achieve theirs.

7. Measured by all relevant criteria, the gains must outweigh the costs. This is of course no more than a general criterion of rational choice, and as such it is all but empty: It is a catchall that has already been largely fleshed out by the previous criteria. But it does serve to remind us that any solution to the problem of the scope and domain of a democratic unit will almost certainly produce costs as well as gains. To estimate costs and gains, as we have just seen, requires us to use a number of different criteria. In addition to net benefits as measured by the previous
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