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The Institutional Configuration of Deweyan Democracy

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After more than two decades of effort to recover and adapt John Dewey's thought for a reformed liberal politics, the institutional implications of his ideas remain elusive. This essay argues that a distinctive set of modern business practices and an incipient public policy architecture embody key precepts of Dewey's political theory. The practices and architecture have developed independently of Dewey's ideas, but they elaborate the ideas implicitly, and they are illuminated by them.

1. Introduction

For much of the past century, Americans of all political persuasions have been happy to call themselves pragmatists. Yet, the pre-eminent pragmatist philosopher in the realm of political thought – John Dewey – considered pragmatism inimical to what have remained the two dominant political ideologies in America – free-market conservatism and welfare-state liberalism. Dewey's voluminous writings and tireless political activism did little to curb the promiscuous waving of the pragmatist banner. He showed important connections between the core ideas of pragmatism and the concerns of political theory, but his arguments remained vague about policies and institutions.

After several decades of neglect, Dewey re-emerged as a major focus of attention among liberals in the 1990s. His rejection of both the bureaucratic welfare state and the rights-deducing judiciary seemed to have been vindicated by the difficulties of many liberal programs of the preceding years. His critique of both technocratic efficiency maximization and constitutional reasoning from first principles in favor of participatory democracy and deliberative consensus suggested to some a promising re-orientation of liberal thought. Yet, even after an outpouring of admiring re-examinations of Dewey's liberalism, the institutional implications of his work remain elusive.[1]

In fact, Dewey's version of pragmatism does have distinctive implications for government, but until recently these implications have been difficult to explain because there were few operating institutions that embodied them. This is no longer the case. Institutions have developed in a variety of spheres that seem to exemplify concretely the key aims and insights of Dewey's vision. Some of the clearest and most developed examples have originated in business practice and then been applied in the public sphere. These practical developments have occurred independently of the revival of pragmatist political thought, but

they complement it. Putting the revived theory together with the innovative practices gives plausibility to the theory and helps explain what's politically significant about the practices.

In section 2, I rehearse some prominent general themes of his work and then suggest that they raise three key issues about Pragmatist-inspired political institutions: First, how can social norms be open to continuous re-assessment and yet provide the stability needed for social order? Second, how do we empower diverse local groups while maintaining the ability to coordinate activity across a large nation? Third, how do we organize deliberative engagement to produce productive collaboration among people with diverse interests?

In section 3, I argue that late 20th century organizational innovations suggest responses to these issues. I point in particular to three features of contemporary business organization – lean production manufacturing, standardized work and performance assessment, and team-based decision-making. The institutional forms associated with these practices have become increasingly salient in recent public policy development. They can be seen in many areas of regulation, social welfare, and civil rights. The central common feature of private and public organizational innovation is a focus on continuous learning and adaptation. In the private sphere, this focus entails rejection of the traditional distinction between conception of tasks and their execution. In the public sphere, it entails rejection of the traditional distinction between enactment of laws or policies and their implementation.

Outside the business sector, there is no standard vocabulary for these reforms. Public-sphere practitioners sometimes use the terms "management-based" regulation and "evidence-based" social service practice to refer to them. Academics have applied the names "responsive regulation" or "new governance." Deweyan rhetoric is less common, but a few have suggested that the term "Democratic Experimentalism" better expresses the deepest aspirations and greatest potential of these developments.[2]

2. Pragmatism and Democracy

Dewey built his idea of democracy on the key starting points of Pragmatism – instrumentalism and contextualism.

The instrumentalist point was that our beliefs are, as William James put it, “rules for action”.[3] In deciding whether to maintain them, we should focus on the kinds of action that follow from them. More provocatively, James suggested that "truth" was simply a name for a belief that had good consequences. The measure of truth is, not the extent to which a belief corresponds to some ultimate reality, but rather the extent to which the belief does valuable work for the believer.

Of course, the consequences James had in mind were not simply material ones, but also cognitive and emotional ones. We have an interest in making sense of our experience, and a belief that helps us do that has good consequences. We have an interest in giving meaning to our lives, and a belief that helps us do that also has good consequences.

So the consequential test does not turn us into materialists or relativists. It does, however, discourage us from worrying about some issues. Does a tree fall in the woods if no one is there to see it? Today this question is a joke used to characterize a kind of academic cluelessness. When we treat it as joke, we are taking for granted the consequential test. Some questions once hotly debated among philosophers seem pointless when we realize that they are unlikely to have answers that would help us enjoy, understand, or control the world.[4]

After the instrumental principle, the next distinctive tenet of Pragmatism is that knowledge is experiential. This term connoted something more contextual and/or more active than the vision of knowledge in the philosophers that preceded him. Some philosophers had emphasized the role of innate universal mental processes in enabling people to make sense of the world. Still others had portrayed knowledge as the accumulation of more or less discrete sensations or impressions from experience in the world. The Pragmatists emphasized that people use rules to

interpret their experience, but they thought that to an important extent these rules were invented socially and individually. Individuals absorbed a stock of interpretive rules with membership in society; they formulated others out of their own experience; and the revised all such rules in the light of further experience.

Pragmatists have been especially interested in the confrontation between the inherited stock of rules and new dissonant experience that doesn't square with them. A stargazer notes a movement of planets that doesn't correspond to the accepted laws of planetary motion. A soldier who has never questioned his duty of obedience to superior officers finds that following a particular order would require him to inflict harm on civilians that he senses would be unjustifiable. To take some more mundane but pervasive example: Someone who has always liked a particular kind of food, say pork chops, is served a dish of this kind that she dislikes.

Situations such as these produced what the Pragmatists sometimes called an "irritation",[5] a sense of unease that led to a desire to reconcile rule and experience. In order to do so, a person would be inclined to reconsider and perhaps revise her rule. Knowledge was a perpetual learning process consisting of a series of such encounters. Modern science works self-consciously in this manner. The pragmatists thought that everyday life worked this way unconsciously.

This picture of endless confrontation between rule and experience has characteristics that have often been attributed to American culture in general. On the one hand, it connotes a restless striving. Pragmatism denies us the comforts promised by some perspectives that a set of beliefs describes definitively an ultimate reality and thus settles some questions once and for all. Our theories, James said, "are instruments, not answers to enigmas, in which we can rest. We don't lie back on them, we move forward…."[6] On the other hand, the ceaseless revision Pragmatism exhorts is incremental, not revolutionary. Unlike Rousseau or Marx, the Pragmatists do not see progress as depending on the

abrupt uprooting and replacement of whole systems of thought and practice.

James described Pragmatism as "primarily a method for settling metaphysical disputes that otherwise might be interminable."[7] Dewey, however, envisioned a broader role. To James's principles of instrumentalism and contextualism, Dewey added a distinctive conception of sociability. People are creatures of social context; their wants, beliefs, dispositions are influenced by their surroundings. Yet, at the same time, they have the capacity to alter their surroundings in accordance with their desires. And a person's well-being, in both emotional and material senses, is a function of social interaction. Thus, collaboration comes naturally, and at its best, it takes the form of problem-solving – efforts prompted by commonly felt "irritations" to adjust surroundings in some beneficial way.[8] Dewey's was not a family conception of sociability, attributing solidarity to shared background and culture, but a lifeboat conception that associates solidarity with the possibility and experience of beneficial collaboration. In a lifeboat, people collaborate because their welfare depends on it. Diverse values and perspectives are rarely disabling obstacles, and they are often beneficial to the extent that they give the group access to a broader range of relevant knowledge.

Dewey was sympathetic to many arguments for democracy, but he made one that was distinctively grounded in his Pragmatism. Democracy, he argued, was the politics best suited to effective problem-solving. This was so for at least two reasons. First, democracy was least tolerant of the kind of ossification of belief that he saw as the most basic problem of social order. At the core of Dewey's social vision is a radical interpretation of the Pragmatist idea of thinking as the continual collision of acquired belief and new experience. Dewey taught that we depend on habit – actions based on acquired belief – because we cannot rethink every issue every time we make a decision. Yet, habit becomes a disability when it congeals into what he called "routine" – a mental rigidity that numbs the actor to new experience. Social practices

and institutions are stabilized by inertia, but the circumstances to which they initially responded inevitably change. The inertia of routine causes practices and institutions to lag behind. The mental rigidity that inhibits adaptation to new experience, which James had portrayed as a psychological malady of individuals, was for Dewey the most central social and political problem. A key part of Dewey's case for democracy was that it made public convention vulnerable to re-examination and challenge.[9]

The second reason why Dewey considered democracy a better mode of social problem solving was its capacity to elicit and take account of a broader range of evidence and views than other forms of government. In his conception, democracy maximizes participation in public matters, and this brings to bear the greatest range of perspectives. This means that the group can consider more alternatives in formulating its goals and more information in choosing ways of attaining them.[10]

During his time at the University of Chicago from 1894 to 1904, he founded and helped run the "laboratory school" which became a famous model for a distinctive form of pedagogy that remains the most developed model of Pragmatist practice. Since Dewey conceived of the school as a microcosm of the surrounding society, his educational practice expresses a general social vision. Dewey's laboratory school and its myriad successors disfavor the kind of educational experience in which teachers present information to an entire class assembled as a whole, and students either listen and take notes or respond individually to questions put to them by the teacher. In its most characteristic moments, the Deweyan classroom divides students into small groups and gives them tasks that call for collaboration and creativity, often calling for a tangible product.

The groups design and build pencil boxes for their own use, or they prepare meals for the class. When they are studying colonial history, they may plant crops or design a colonial town. Or they may act out a town meeting or a trial. When studying Indian tribes, one group might study and design shelter of the sort used by the tribe, while others might plan a hunt. The teachers

frame the tasks and provide information about how to proceed. But learning comes most importantly from the experience of devising and trying out different responses. Abstract learning builds on such experiences. Thus, many practical building tasks that involve measurement and calculation introduce mathematical skills and concepts that are later elaborated more formally. Artistic education is conceived in a similar fashion. The students perform or create or respond to artistic works in groups, and this concrete activity, is seen as a way to develop their general capacities for imaginative identification and elaboration.[11]

This pedagogy modeled education as problem-solving. The learning codified and formalized in the traditional curriculum was the cumulative product of centuries of efforts to deal with myriad practical problems. Pragmatist pedagogy strove to reconnect this knowledge with the excitement of practical experimenting that had originally generated it. The goal was to take the abstract systematized knowledge of mathematics, history, literature and other fields and to "reinstate [it] into experience"[12] by presenting it to students in the form of practical challenges. When the teacher sought to teach measurement and computation by challenging the students to make a pencil box, she was generating the kind of "irritation" – a gulf between inherited knowledge and practical circumstances – that inspires inquiry and experiment. Part of the idea was motivational. Students are more readily engaged when knowledge is presented through problem-solving challenges than in a more abstract form. Another even more important part was methodological. Regardless of the substantive field in which they were engaged, the pragmatist teacher is always seeking to developing capacities for collaborative problem-solving. These are the most fundamental learning skills, and in Dewey's view, they are also the most fundamental skills of democratic citizenship.

The themes Dewey emphasized in his general writings on society and politics were salient in the laboratory school. One of these themes was the notion that people find fulfillment in collaboration. Students engage more with collaborative learning

because they enjoy it more. So, on a larger scale, Dewey considered collaboration over social projects to provide basic fulfillment. He criticized libertarian and laissez-faire theories for exalting the satisfactions of isolation and individual independence and neglecting the social dimension of personality. The most plausible individualism, he insisted – the kind that exalts and facilitates the greatest development of each person's capacities and interests – can only flourish in relations of social collaboration. He took the success of pragmatist pedagogy at the laboratory school as evidence of this. Students seemed to find collaboration intrinsically satisfying, and collaboration seemed to encourage more than restrict individual development.

Dewey saw American politics as failing to engage the solidaristic impulses of American citizens in a way analogous to the way traditional education had failed to engage the collaborative impulses of students. He diagnosed the problem as both cultural and institutional. American public culture was preoccupied with individual satisfactions and autonomy and failed to provide any sense of common purpose or value. And political institutions failed to provide meaningful opportunities for participation in political decision-making. Dewey considered that latter failing more fundamental. He rejected the ideas of critics who thought that a moral reformation away from individualism toward a communitarian ethic was the place to begin. In response, he insisted that cultural change without institutional change would be ineffective. And he suggested that if institutional change induced effective public participation, a strengthened sense of solidarity and shared values would follow spontaneously. The laboratory school seemed to have demonstrated as much, at least in the social microcosm of the classroom.

Another key theme that Dewey extrapolated from the educational to the political realm was experimental inquiry. Properly structured, politics, like education, was a form of problem-solving. Again, political institutions failed to facilitate this type of politics in a democratic fashion. Dewey especially emphasized the problem of access to information. Citizens had

trouble making use of their political opportunities because they lacked information needed to assess both problems and solutions. Information was monopolized by elites and made public in forms designed to advance their own interests, rather than public interests. Political reform depended on the democratization of information, which means, not just more access to information, but to information in a form that enables public identification of problems and assessment of solutions. "An inchoate public is capable of organization only when indirect consequences are perceived, and when it is possible to project agencies which order their occurrence."[13] Democratic participation requires new "instruments, appliances and apparatuses designed for the purposes of disclosing relations not otherwise apparent" and developing "a much greater range of variations" in policy responses.[14]

The closest Dewey had to a large-scale model for political organization was science. He repeatedly suggested that politics should emulate key features of the institutions of science – the commitment to testing belief against experience, freedom to criticize established views, transparency and free access to information, and a sense of collaboration among peers. In science, as Dewey envisioned it, anyone is free to challenge accepted beliefs. People respond to such challenges, not by attempting to resolve them abstractly, but by agreeing on procedures for testing the relative merits of competing propositions. A test typically involves controlled variation -- the setting up of different but comparable circumstances in which the effect of different interventions on a common material or a common intervention on different materials can be compared. We measure the results in terms of agreed criteria. And then we assess the significance of the results for the challenged belief. The resulting conclusion is not established by bureaucratic fiat or by majority vote, but by an informal consensus among members of a loosely defined community of practitioners.

The idea of science as a model for government seems radical because it denies the distinction between facts about the way the world is and values that suggest what it should be. There's

a tendency (still strong though less so than in Dewey's day) to think of science as about fact and government as about value. Many and perhaps all social and political issues are value-laden. Methods designed to discover the structure of the physical world do not seem well designed to resolve competing notions of value.

Technocrats respond to this objection by insisting that government is not really about values. They assume that to a large extent people want and believe more or less the same thing, so that government is largely about technical questions of how to implement these desires and beliefs. These implementation decisions depend on factual knowledge that could be enhanced by scientific inquiry. On the assumption that values are not in issue, this inquiry might be left to a specially trained elite. This, however, was not Dewey's idea. Dewey's admiration for science did not lead him to contemplate putting scientists in charge of society as a technocratic elite, but to suggest that scientific norms and practices be diffused as the democratic practice of ordinary citizens.

Against the technocrats, Dewey insisted that political questions were value-laden. Yet, he further denied that there was any strong separation between facts (the province of science) and values (the province of government). If political questions were value-laden, they were also fact-laden in a way that made them susceptible to the kind of expanded, popularized scientific inquiry he envisioned.[15] Political questions are fact-laden in at least two senses. In the first place, many commitments people think of as values depends on empirical assumptions. People's views on abortion often depend on assumptions on such matters as the nature of the fetus at various stages in the course of pregnancy or what child-bearing will mean to the mother. People's views on the death penalty often depend on assumptions on such matters as whether we can reliably distinguish guilty from innocent defendants in capital cases or whether the penalty deters crime. These issues are susceptible to investigation in accordance with traditional scientific methods.

Dewey also had a more radical notion about the extent to which political controversy lent itself to scientific inquiry. People's desires and commitments about values are in important senses, not just reports of their own interior states at the moment, but beliefs about the world -- beliefs about what will make them or their fellows happy or virtuous or fulfilled. People revise these beliefs in the light of their own experience and what they learn of the experience of others. Moreover, these beliefs can benefit from imaginative or empathic elaboration in conversation with others. Thus, Dewey assimilated political conflict -- the competing assertion of goals or values -- to the "irritation" of new experience in tension with inherited knowledge that the Pragmatists saw as the basic fuel of progress in understanding. For Dewey, conflict is a learning opportunity. A person who encounters another pursuing competing public goals has a reason to re-assess her own and an opportunity to deepen her understanding through engagement with the other. It was the job of democratic institutions to facilitate this engagement in peaceful and productive ways.

The most appropriate test of Dewey's ideas would be a practical one. How do Deweyan institutions work in practice? The problem is that Dewey's ideas usually peter out at the point of specific design. Nevertheless, among Dewey's general themes, we find three important clues about institutional design. Dewyyan democracy is provisional, local, and deliberative.

Norms are <u>provisional</u> in a Deweyan democracy because government is a learning process. "[P]olicies and proposals for social action [should] be treated as working hypotheses, not as programs to be rigidly adhered to and executed. They will be experimental in the sense that they will be entertained subject to constant and well-equipped observation of the consequences they entail when acted upon, and subject to read and flexible revision in the light of observed consequences."[16]

Provisionality implies a forward-looking perspective that is in tension with traditional legal culture. Legal culture tends to see the legitimacy of public action in terms of its "pedigree" – its connection to previously enacted or announced authority. Dewey

was not contemptuous of authority. On an instrumentalist view, deference to authority serves various social purposes. It gives weight to the views of institutions that are relatively likely to have insight into or responsibility for the matter. It facilitates planning and coordination by enabling citizens to anticipate how officials will act. However, these values are not, for Dewey, as they are for traditional lawyers, fundamental and categorical. They merely represent consequences to be weighed against the consequences of revising or departing from established norms.[17]

A Deweyan cannot deny that in theory there could be too much re-examination. Stability is a value. Without settled dispositions – habits – individuals would be schizophrenic and society would be anarchic. But the Deweyan perspective fears the centripetal social forces more than the centrifugal ones.

Second, Deweyan democracy is also fundamentally local. "The local is the ultimate universal, as near an absolute as exists," he wrote.[18] The "final actuality" – the key sort of problem-solving resolution – "is accomplished in face-to-face relationships by means of direct give-and-take."[19] In such interaction, motivation to share effort and information is strongest. The larger society "will do its final work in ordering the relations and enriching the experience of local associations."[20]

The emphasis on proximity also follows from the definition of issues. Groups are problem-focused and problems tend to be local in the sense that their effects and probable solutions vary by context. One of Dewey's complaints about the electoral politics of his (and our) day was that it was too organized around abstract propositions. Such propositions are less likely to engage the interests and knowledge of citizens than problems they perceive as close to home. Moreover, general abstract propositions are likely to be framed in terms of ideologies, and ideologies are needlessly divisive because they are subject to the same tendency to congealment as institutions. Theories crafted in response to a practical situation persist unchanged long after the circumstances that inspired them have disappeared.

Large corporations served the interests of a small elite. They created an internal culture of regimentation and conformity among their employees, and fostered an external consumer culture of materialism. Along with other leftists of the day, Dewey emphasized the irony that an ideology of laissez-faire individualism had produced a society of large institutions that stifled individual expression and development.

Dewey saw the liberalism of the day as infected by the same overcentralization as the corporate economy. He criticized the New Deal for its reliance on top-down bureaucratic organization and the dominance by elite experts. He predicted they would do little to mitigate the dispiriting alienation of ordinary citizens from public life. And he was skeptical about the problem-solving capacity of technocracy. Expert-run bureaucracy would lack access to the kind of dispersed street-level information that was key to effective policy formulation. "The man who wears the shoe knows best where it pinches, even if the expert shoemaker is the best judge of how the trouble is to be remedied."[21]

Yet, Dewey also thought that American government was in some respects under-centralized. The effectiveness of the local problem-solving efforts he considered fundamental depended on the support of more encompassing institutions that had yet to develop. "We have inherited …local town meeting practices and ideas. But we live and have our being in a continental nation state," he lamented.[22] For him, the most important deficiencies of traditional decentralization were not the limited capacity to deal with spillovers (like pollution) or public goods (like defenses) that contemporary theorists emphasize. Rather they concerned the process of mutual learning or "emulation".[23] The role he most emphasized for central government was in organizing knowledge and protecting the conditions of inquiry.

Third, Deweyan government is <u>deliberative</u> because deliberation enhances the chances for the participants to learn from each other, and because deliberative agreement is the most basic test of the legitimacy of public action. Sound resolution requires the informed agreement of stakeholders.[24]

In deliberation, people advance their positions through reasons, and they have a duty to reconsider their claims in the light of the reasons advanced by others. Thus, not only do people have an opportunity to learn from their peers about different ways of attaining their goals, but they have an opportunity to consider and reconsider what their goals are.

Deliberation tends to favor consensus over majority rule, but not dogmatically. Literal consensus is often impossible either because views never converge or because "hold outs" behave opportunistically. But simple majority rule is objectionable where it obviates the need of an initial majority to listen seriously to and try to persuade minority. As Dewey said, quoting Samuel Tilden, "The means by which a majority comes to be a majority is the more important thing." "Counting heads" is most important, not because it weighs preferences, but because it "compels prior recourse to methods of discussion, consultation, and persuasion."[25]

These general characteristics – provisional, local and deliberative -- hardly add up to a concrete or coherent institutional vision. Indeed, in some respects, they exacerbate the ambiguity. Three questions remain salient.

First, what does a structure of laws or norms look like that isn't prone to congeal? How can precepts be open to continuous re-assessment and yet provide the stability needed for effective social order?

Second, how do we empower diverse local groups while maintaining the ability to coordinate activity across a large nation? What kind of institutions can coordinate across local communities without excessively centralizing and homogenizing?

Third, there are a set of questions about the construction of "face-to-face" problem-solving deliberations. How do we achieve effective participation without excluding people who want to participate or conscripting people who don't want to? How do we avoid the problems of unreflective intransigence (e.g., group polarization) on the one hand and unreflective conformity (e.g., herd behavior) on the other? When agreement is reached, how can

we be sure that it reflects convergent, reflective views, rather than background social pressures?

Dewey's failure to answer these questions has left the field to those who recognized the same problems as he but thought that the market was the only non-Utopian answer. Notably, Friedrich Hayek defended the market as responsive to more or less these three questions.[26] Hayek shared Dewey's belief in learning as the key engine of social progress, and in the need to subject settled practices to destabilizing challenges. Like Dewey, he disdained bureaucracy. But unlike Dewey he was skeptical about the possibility or desirability of collectively regulating the aggregate consequences of individual interaction. And again in contrast to Dewey, he disdained reliance on social solidarity and saw little promise in face-to-face citizen engagement.

For Hayek, the impersonal operation of the market played the key role in social learning and development. Markets generate productive destabilization within constraints. The ability of entrepreneurs to offer new products or better prices subjects producers to continual pressure to improve and induce the submission and testing of new ideas in the market. The market fosters both diversity and coordination through the price mechanism. Prices coordinate by directing resources toward their most productive uses, but since the price system demands of economic activity only that it pay its costs, it leaves economic actors free to produce an infinite array of products in response to the preferences of consumers. The price system does not, of course, induce public deliberation, but in the Hayekian vision, it virtually eliminates the need for it.

Dewey, of course, rejected this answer. While he respected the capitalist market as an engine of innovation for private goods, he complained that its destabilizing tendencies were too reckless in some respects and too timid in others (for example, in its respect for concentrated property). Moreover, he thought that even within the range of choices the market permits people to make, people don't know enough to choose intelligently and that the market doesn't help them learn. He thought that innovation would require

institutions modeled on science -- those that facilitated cooperative investigation and sharing of information -- as well as those fostering competition.

Dewey and Hayek are probably the thinkers who have most influenced American social thought in recent years. Yet, Hayek's influence on public policy appears to have been greater than Dewey's in part because Hayek's followers have had an easier time deriving specific cues for practical reform from his work.

3. Institutional Design

What would Deweyan institutions look like?

While Dewey's views have salient affinity with some prominent contemporary political perspectives, these perspectives tend not to incorporate the full range of Deweyan commitments.

There have been many recent defenses of deliberative democracy, but they tend to prescribe deliberation primarily for broad sectors of civil society or for generalist electoral and legislative processes. Unlike Dewey's program, they do not extend deliberation to the processes by which general norms get elaborated and applied at the ground level. Some proposals – notably, Jurgen Habermas's – explicitly contemplate that the decisions of generalist political institutions be implemented in a conventionally bureaucratic fashion. Moreover, for many proponents, deliberation ideally takes the form of disinterested discussion by actors broadly representative of the entire polity.[27] By contrast, for Dewey, both the efficacy and the legitimacy of political participation correlate with interest. Deweyan deliberation is most characteristically stakeholder deliberation.

Another recent perspective, particularly salient in the "alternative dispute resolution" literature, promotes deliberative problem-solving by people recruited because of their interest in the matter or by local communities where nearly all members are likely to be interested.[28] But in much of this work, the core values are harmony and stability. Deliberation is an ad hoc response to disruption, and its key purpose is to re-establish equilibrium.

Dewey's emphasis on the dangers that consensus will ossify and on the need for institutionalized diversity as a spur to re-assessment and discovery are absent. Moreover, some of this work adopts the Deweyan theme of decentralization without paying heed to Dewey's sense of the inadequacy of "New England town meeting" style organization to the conditions of modernity.

The ideas and practices that most resonate with Dewey's political views combine local deliberative problem-solving by stakeholders with encompassing institutions that pool the knowledge gained from these deliberations in ways that support and discipline them. There have recently been some general accounts of such a framework.[29] I focus here on three sets of practices that promise to play an important role in their elaboration. In each case, the practices first became salient in business organization and have more recently influenced practice in the public sphere, for example, in the form of "management-based" regulation and "evidence-based" social service practice. Although they have been developed for the most part without reference to Dewey, they seem to align quite closely with his concerns.

The practices are responsive to the three questions posed above about Deweyan institutionalization. Lean production illustrates how a system can combine routine destabilization of settled practices with productive order. Standardization illustrates the potential to foster diversity without sacrificing the ability to coordinate. And team-based decision-making shows how the benefits of deliberation can be obtained without definite solutions to fundamental issues about participation and decisionmaking.

Each of these practices is potentially useful in elaborating Dewey's repeated claim that democracy depends on "a kind of knowledge and insight that does not yet exist."[30] This knowledge involves "conceptions which are used as tools of inquiry and which are tested, rectified, and caused to grow in use."[31] Each practice facilitates a type of learning that is potentially democratically empowering.

A. Lean Production – Implementation as a Learning Process

A distinctive approach to manufacturing emerged in the decades following World War II. The approach is associated with terms such as "lean production" and "total quality management." Because Toyota, the Japanese car maker, has pioneered in its development, it is also known as the Toyota Production System (TPS). TPS, as described in a vast engineering literature, may be the most developed example of Dewey's idea of a social order that continuously re-assesses and reforms by destabilizing itself.[32]

TPS involves a variety of ideas and processes, but the most critical one for our purposes can be summarized in terms of the Deweyan maxim: Problems are learning opportunities. In manufacturing, a problem is an occasion when following the usual procedure will not produce the intended effect. A car entering the paint station of an assembly plant has dirt on a fender; if painted over, it will be unsightly. Or a part to be inserted in the engine does not fit properly.

Pre-Toyota, there were two traditional responses to problems in mass manufacturing processes, both designed to minimize disruption. Problems could be ignored by workers in the main production lines and saved for specialized re-work departments. Thus, the line worker could paint over the dirt and leave the unsightly fender for inspectors to identify at the end of the line and send to a remedial department to sand, clean, and repaint. Alternatively, the line workers might be permitted to make quick ad hoc adjustments that would mitigate the effects of the problem without impeding production flow. For example, workers might be given a stock of "buffer" inventory -- extra spare parts to use in case one turns out to be defective. When the worker finds a defective part, she puts it aside and reaches into her buffer stock.

End-of-the-pipe correction and ad hoc adjustment allow the system to proceed according to rule. At some point, a centralized

engineering department will learn of the problem, work out a revision of basic procedures, and write new rules. Until then, it's business as usual.

From a Toyota perspective, these approaches are wasteful and slow. It takes too long for information about problems to accumulate at the top of the management ladder, and too long for the elite corps of engineers to re-write the rules and transmit them to the workers. In the meantime, waste accumulates. Wasted parts continue to arrive with defects because the flaw that produces the defects goes uncorrected; labor is wasted in re-working things that did not get put together correctly the first time.

The innovation of Toyota approach is to treat every problem as an occasion for re-assessing and reforming the system. In a classic Toyota-style plant, there are no re-work departments, and workers are told not to make ad hoc adjustments in response to the problems. Instead, workers should stop the production process and trigger a group effort to diagnose and remedy the problem. When the dirty fender or the defective part appears, the worker pulls the "andon" (lantern) cord that hangs from an overhead fixture. The line stops and a light display shows everyone in the plant where the problem is. A team of workers and supervisors who are likely to have relevant knowledge is quickly assembled, diagnoses the problem, and formulates a remedy. The rules get re-written immediately.

Problems are learning opportunities because they signal that the system is not as well designed as it could be. Waiting to let some specialized department figure out and remedy the problem means delay and risks loss of information. It also means that rank-and-file workers will not have the learning experience of participating in the solutions.

A learning opportunity is at least potentially a good thing. Thus, the Toyota system is designed in some respects to increase and enlarge problems. One way the system increases problems is through just-in-time parts and materials practices. Parts are delivered in small batches as needed for short periods. This means no buffer inventories. If a part is defective, there is no alternative

but to wait for a new one, and there's an opportunity to fix the problem before more defects accumulate.

One way the system enlarges problems is through “root-cause analysis”. Problem-solving does not rest content with superficial fixes but looks back through the system for opportunities for improvement. The rule-of-thumb is to go back five stages. Hence the "5 Whys". For example:

> Why is machine A broken? Because no preventive maintenance was performed.
>
> Why was the maintenance crew derelict? Because it is always repairing machine B.
>
> Why is machine B always broken? Because the part it machines always jams.
>
> Why does the jam recur? Because the part is warped by heat stress.
>
> Why does the part overheat? A design flaw.

The system thus embodies the Deweyan ideal of allowing, even encouraging, participants to question its norms and premises in an organized fashion. Of course, as long as the questioning is limited to means for producing a given product, it is limited by the specifications of the product. But the Toyota process of continuous production improvement lends itself to processes of continuous product improvement. As the firm receives information from customers, competitors, and its own engineers that suggest ways to improve its products, it can introduce product improvements quickly in the same way in which it makes improvements to the production process. Design engineers sometimes work in teams with rank-and-file workers so that small design improvements can be quickly added. More ambitious changes require more preparation, but they can be more quickly assimilated by a workforce skilled in the practices of continuous reform.

To get an idea of how Toyota-style production practices might be relevant to democracy, consider that fundamental features

of our traditional government structures resemble pre-Toyota manufacturing. We have hierarchical rule-bound bureaucracies that engage in routine production of, say, education, health-and-safety regulation, or crime control. Then, we deal with problems either by giving officials ad hoc discretion or by allowing aggrieved citizens to go to a parallel system of error-correction and re-work -- courts. And the Toyota complaints about traditional organization -- loss of information and sluggish response to problems -- are quite familiar in the public sector as well.

As examples of public sector analogies to TPS, consider the recent proliferation in health and safety regulation of reporting and analysis requirements with respect to harmless mistakes. In industries like airlines or nuclear power, where accidents are rare but enormously costly when they happen, there is a long-standing practice of reporting and analyzing "near misses" -- performance failures that do not cause injury but are symptoms of problems that could. The requirements typically include a "trace-back" or "root cause analysis" that constructs a causal chain back into the system potentially to stages remote from the immediate cause. Analogous procedures have recently been extended to areas such as hospital medicine and food safety. These regimes typically treat discrete violations of an exacting standard as an occasion for a diagnostic inquiry into the possibility of potentially remediable systemic defects.[33]

Below is a page from a sample food safety plan under a regime known as Hazard Analysis and Critical Control Points (HAACP) widely used in the European Union, and more recently, the U.S. In HAACP-type regulation, the regulator declares general goals but requires the regulated actors to formulate their own plans for achieving the goals. The regulator then assesses the adequacy of the plans and audits the actors' compliance with their own plans. Note how the plan mandates that non-compliance be treated diagnostically. When specified standards are not met, the firm has to engage in "corrective/preventive action", which means not just an immediate fix but an evaluation of the "cause of deficiency", as

well as a "verification process," which involves a continual re-assessment of the adequacy of the standards and control measures.

HACCP PLAN

PRODUCT: Canned Beef Stew

PROCESS STEP	BIOLOGICAL - B CHEMICAL - C PHYSICAL - P HAZARD DESCRIPTION	CCP	CRITICAL LIMITS	MONITORING PROCEDURES/FREQUENCY/ PERSON RESPONSIBLE	CORRECTIVE/PREVENTIVE ACTION/PERSON RESPONSIBLE	HACCP RECORDS	VERIFICATION PROCEDURES/PERSON RESPONSIBLE
Formulation	B - Microbial Growth (C. botulinum)	6B	Product formulated using quantities of ingredients specified in the formula	Monitor formulation of product as each component is added. Record all findings in HACCP record log and sign record/ Formulation supervisor	Identify and control affected product; correct procedure; evaluate operation for cause of deficiency; take corrective action; document action in HACCP records log and sign/ Formulation supervisor	Record all results and corrective actions in specific record and sign	Audit to verify accuracy of records; Check if Critical Limit is correct and adequate for hazard; assure corrective actions are adequate; document findings. QC manager
Filling	B- Microbial Growth	7B	Container filled to required fill weight as specified in recommended process schedule	Monitor operational filling procedures. Recorded all findings in HACCP records log and sign./ Filling Machine operator	Identify and control affected product; empty all rejected containers and rework contents; correct or adjust procedure; evaluate operator for cause of deficiency; take corrective actions; document actions in HACCP records log and sign/ Filling Machine Operator	Record all results and corrective actions in HACCP records log and sign.	Audit to verify calibration of metering devices and accuracy of records; review records to assure accuracy; check to see if Critical Limit is adequate for hazard and comparable to plant records; assure corrective actions are adequate; document findings/ QC manager

DATE: August 5, 1996 **APPROVED BY:** A. S. Winston-Jones

[Note: This page represents only two steps in this establishment's process for canned beef stew]

Source: U.S. Department of Agriculture, "Pathogen Reduction: Hazard Analysis and Critical Control Point (HACCP) Systems – Final Rule," Federal Register (July 28, 1996), at 38902.

Toyota analogues in the social services area can be found in monitoring systems in programs for mental health patients, developmentally disabled people, and abused and neglected children. An especially sophisticated example is the "Service Testing" model developed by the Child Welfare Policy Group in Alabama, which is being used in the child protective services of twelve states. The model involves intensive reviews of individual cases by teams of inside and outside reviewers, with the participation of the case worker, and with interviews of the clients and service providers. The review is intended in part as a form of training for the workers and often the reviewers. (Often the team will include an experienced and a new reviewer. The workers themselves may become reviewers of other workers cases.) The review involves both detailed qualitative discussion of all aspects of the case that the participants consider relevant. It also generates numerical scores of the system's performance and the child's well-being and progress. The scores are aggregated to generate diagnostic indicators of performance of different, regions, offices and workers, or of the system as a whole with respect to different types of cases or problems. "The fundamental assumption of the Service Testing model," according to the Group's literature, "is that each case is a unique and valid test of the system."[34]

B. Standardization: Diversity-increasing Coordination

Dewey often associated "standardization and uniformity" with the stultification of bureaucracy, but more than once he suggested that the connection is not an inevitable one. In The Public and Its Problems, he wrote "Uniformity and standardization may provide an underlying basis for differentiation and liberation of individual potentialities".[35] He did not elaborate this idea there, but we get some idea of his meaning from his discussion of abstraction in science.

Standardized measurement, which abstracts from the rich particularity of objects, is critical to science. It is "a paradox" that by "turn[ing] our backs on the immediately qualities of things," we

can increase our understanding of their "relations" to other things. "The possibility of control of the occurrence of individual objects is thereby increased. At the same time, the latter gain added meaning for the import of the scheme of continuity of relationships with other things is incorporated within them."[36]

In science, we test hypotheses by designing interventions and measuring their consequences. Science works best within a broad and diverse community, but it can be a community only if it has standards for describing interventions and assessing consequences. If we want investigate whether aspirin abates fever, we need uniform ways of describing interventions (composition and dosage of aspirin) and consequences (change in patient condition). The same point applies to experimentalist business enterprises. Lean production proponents advise, "Continuous improvement methods depend on identifying, improving standards. Standards form the baseline for all improvement methods and they define the breakthrough goals you strive to meet as your continuous improvement activities gain momentum."[37]

Standardization constitutes communities of practice. It increases both the number and the diversity of users and developers of a practice or product. Any lamp that you buy in an American furniture store will plug into the sockets in almost any American residence. This is because both lamp plugs and home sockets are made to a single compatibility standard. The resulting market of numerous and diverse consumers supports the creation of a vast array of products. With any of the internet search engines you find on your personal computer, you access any of the millions of sites on the World Wide Web. This is because both engines and sites use the program http (hyper-text transfer protocol). People who learned to type on a QWERTY keyboard are able to operate the keyboards of thousands of other machines that use this format. In each case, a standard that harmonizes one dimension of a product or practice facilitates the creation of networks that can produce products or practices that vary along many others.

Standards can be mandatory or voluntary. The plug size in my apartment is mandated by building codes, but no law requires

manufacturers of thermometers to use the Fahrenheit scale. Yet the example of the thermometer shows that practical pressures behind some voluntary standards can be as powerful as the legal ones behind mandatory ones. Once a critical mass of other patients and doctors are using the Fahrenheit standard, it becomes prohibitively costly for me not to. Using a different scale would mean that the vast literature on diagnosis and treatment of medical conditions comparable to mine that uses that standard would be of relatively little use to me.

Standards can be relatively beneficial or relatively harmful. Relatively poor standards may incorporate inferior technology. (The QWERTY keyboard and the Windows operating system are both inferior to alternative technologies.) They may not be sufficiently detailed. (The U.S. Department of Agriculture's standards for labeling "organic" food have only a single classification, so that a variety of important distinctions among products that meet the criteria are ignored.) They may be unnecessarily restrictive. (AT and T used to standardize its system so that only equipment made by its manufacturing affiliate could connect to its network.)

Standards can be developed by government agencies, like the Department of Agriculture, or by non-governmental organizations, like Underwriters' Laboratories. Governmental agencies sometimes give privately formulated standards the force of law by adopting them as or incorporating them into regulations. Many cities and states have taken their housing and building codes from the standard codes of the International Conference of Building Officials, a non-governmental organization. Even when standards remain private, they are often backed by strong economic pressures. This creates a potential for abuse. Firms and groups have incentives to try to influence standards to their private advantage, as AT & T's practice indicates. Thus, when private standards acquire strong economic power, the anti-trust laws are supposed to constrain the ability of people to manipulate them for private advantage. The charge that A T & T's standard for interconnecting phone equipment was not socially efficient and

was designed to give monopoly power to its manufacturing affiliate was an important part of the case that led to the break of telephone giant. It's also possible that too many private standards will catch on, fragmenting the market in ways that are inefficient. Last time I had to replace the battery for my watch, I found 30 different sizes at my local drug store, but not one that fit.

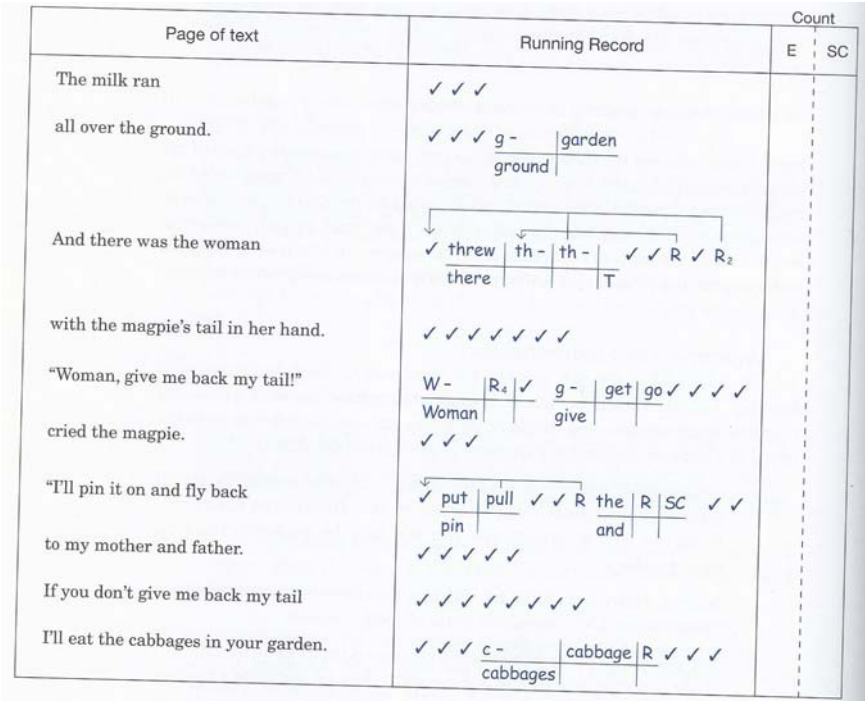
During the same period that has seen the emergence of Toyota-style production practice, standards have proliferated and standard-setting organizations have multiplied and grown. This trend has reflected and facilitated the decentralization and dispersion of economic activity in the increasingly global economy. In electronics industry, for example, the small-company economy that has flourished in Silicon Valley and recently spread to places that include Taiwan, Israel, and India depends on technical standards. Standards enable small companies to design portions of semiconductor chips knowing that they will fit into the larger chip, or whole chips knowing they will fit with an array of different central processing units. Software designers can write programs in their living rooms for PCs, knowing that, if they adhere to PC technical standards, the programs will run on any PC. Standardizing the PCs reduces their diversity, but it vastly increases the diversity of available applications. Without standardization, every type of chip would need specific hardware and software configured for it. It would be much harder to disperse tasks among small enterprises and much more likely that a smaller number of large companies would internalize the making of all the components.[38]

We can distinguish two diversity-promoting effects of standardization. Standards make local practice more self-conscious and transparent. In doing so, they undermine the homogenizing tendency of tacit, unreflective generalization. Standards also increase or capacity to coordinate and compare across localities, and hence the range of available particularized adaptations. Both effects can be seen in a range of standard-based innovations in the public sector.

Traditional professionalism resists standardization on the ground that it rigidifies judgment and limits its capacity to respond to particularity. But professions have recognized increasingly in recent years that the kind of informal tacit judgment traditionally treated as paradigmatic has rigidities of its own. It is vulnerable to unconscious and inarticulate stereotypes developed from prior experience. These stereotypes can be more dangerous than standards because they are less readily subject to critical examination and testing. By forcing people to articulate their presuppositions, standardization exposes them to interrogation and investigation. Standardization has the disentrenching potential Dewey saw when he asserted, "Ability to frame hypotheses is the means by which man is liberated from the existences that…play on him physically and sensibly."[39]

In medicine, diagnostic protocols dictate interventions in the presence of a prescribed set of observations, many of which themselves involve standardized measurements like temperature and blood pressure. Standardized protocols have been shown to out-perform all-things-considered professional judgment for the treatment of cardiac emergencies, and computerized administration of medication seems to out-perform non-mechanical judgment. Where informal judgment remains important, standards are often used to structure decision-making to insure that some considerations are not ignored either because of cognitive failures or failures of coordination (for example, where each participant mistakenly assumes that one of the others is taking care of a critical task).[40]

Marie Clay has developed an approach to teaching reading that prescribes standardized recording that produces records like this:



Page of text	Running Record	Count E	Count SC
The milk ran	✓ ✓ ✓		
all over the ground.	✓ ✓ ✓ g - / ground | garden		
And there was the woman	✓ threw / there | th - | th - | T ✓ ✓ R ✓ R_2		
with the magpie's tail in her hand.	✓ ✓ ✓ ✓ ✓ ✓ ✓		
"Woman, give me back my tail!"	W - / Woman | R_4 | ✓ g - / give | get | go ✓ ✓ ✓ ✓		
cried the magpie.	✓ ✓ ✓		
"I'll pin it on and fly back	✓ put / pin | pull ✓ ✓ R the / and | R | SC ✓ ✓		
to my mother and father.	✓ ✓ ✓ ✓ ✓		
If you don't give me back my tail	✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓		
I'll eat the cabbages in your garden.	✓ ✓ ✓ c - / cabbages | cabbage | R ✓ ✓ ✓		

Source: Marie Clay, An Observation Survey of Early Literacy Achievement 62 (2d ed. 2005)

She argues for this practice as a corrective to the tendency of informal observation to reflect unconscious influences. Without standardization, "[y]ou bring to the observation what you already believe," Clay warns.[41]

Officials in the juvenile justice systems of some localities, including Portland, Oregon, and Santa Cruz, California, found that when they introduced standardized "risk assessment instruments" at the expense of traditional informal judgment in decisions about arrest, pretrial detention, and sentencing, both the aggregate amount of incarceration and its disproportionate incidence on minorities abated. When examined, informal judgments turned out to rest on tacit criteria that disadvantaged minorities, such as associating youth from two-parent families with lower risk. When examined empirically, some of these criteria proved to be no better

predictors of non-appearance or recidivism than less discriminatory standards.[42]

When we ask the professionals to articulate their premises so that we can turn them into standards, or to compare their intuitive judgments to established standards, we are engaging in pragmatist learning process. We are subjecting preconceptions of past experience to the potential "irritations" of new experience. This occurs both when we confront the gap between our intuitive conceptions and established standards, and when we re-assess established standards by comparing their ability to explain new cases with both intuition and alternative standards. The pragmatist treats intuitive judgment and formal standards as potentially mutually corrective irritants. Each can be questioned and revised in the light of the other in a process of continuous re-assessment.[43]

The second diversity-increasing effect of standardization arises from our enhanced capacity to coordinate across localities. The public practice, the key domain of coordination is investigation and learning. Standardization increases the ability appraise and learn from comparisons. Comparisons across localities can enhance political accountability within each one. And rich standards applied to a large and diverse population increase the likelihood of finding solutions that fit particular needs.

In Democracy by Disclosure, Mary Graham suggests that recent health and safety regulation works to induce a kind of local activism she calls "technopopulism."[44] An example is the Toxics Release Inventory, a federal system that mandates reporting in terms of a standard metric of discharges of specified toxic substances. The metric is crude, and there are serious problems of design and implementation in the program. Nevertheless, the regime seems to have had a substantial effect in reducing discharges. The federal data has been widely disseminated by the media. Nongovernmental organizations and state and local governments have pushed for improved performance from nearby facilities, and industry has undertaken a variety of efforts in

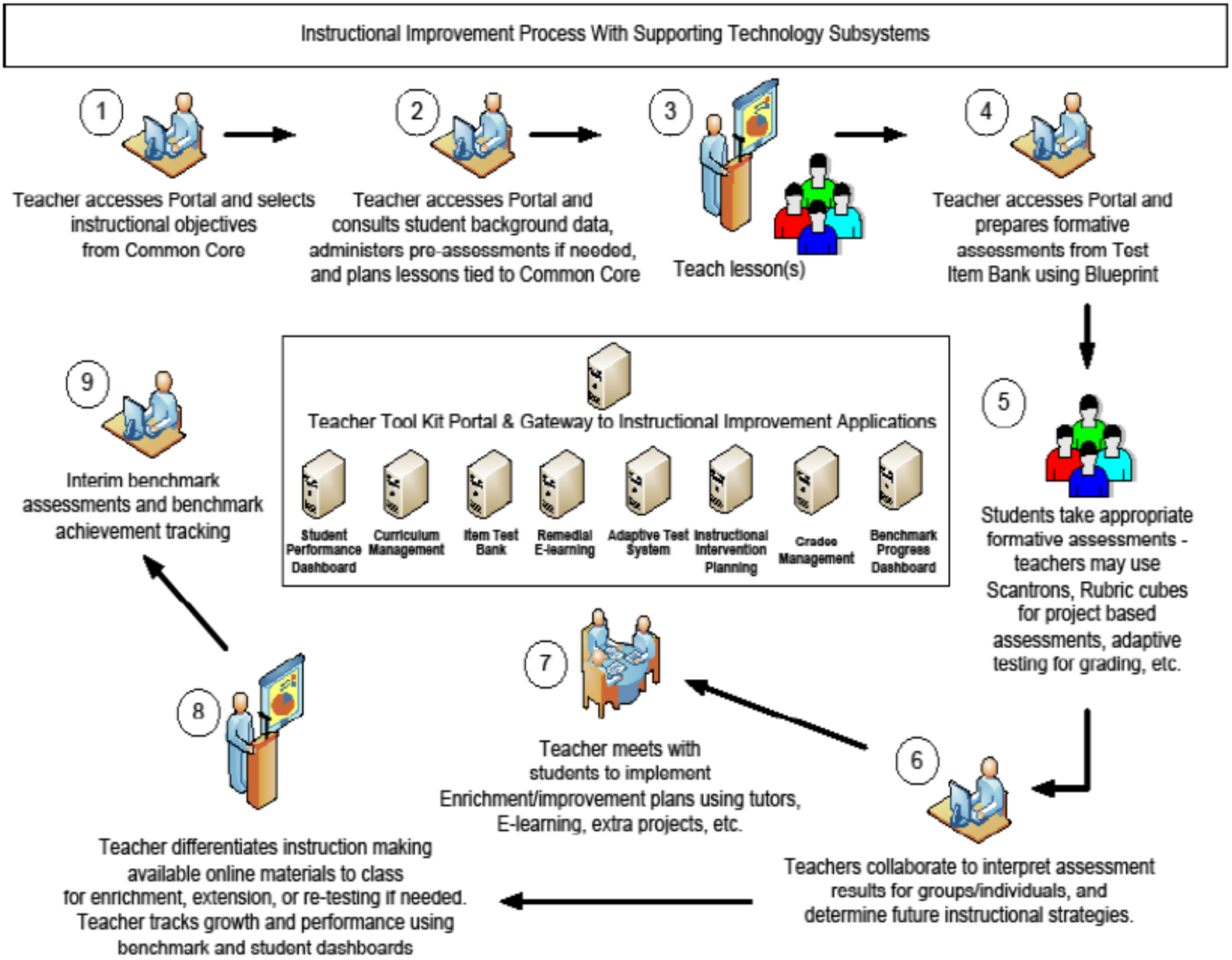
response to or in anticipation of such pressures, or simply in the interest of good public relations.

The TRI metrics do not themselves attempt to facilitate comparisons along dimensions other than volume of discharges, but other systems are more ambitious. In a few states, mortality rates for certain kinds of surgery are reported by hospital (and even by surgeon). After reports that surgeons had responded by avoiding high-risk patients, the reports were enhanced with an algorithm designed to adjust for several factors bearing on the riskiness of the patients. Regulators assess the performance of banks under the mandate of the Community Reinvestment Act that they lend to low and moderate-income residents of their service areas by constructing peer groups of banks in similar economic and demographic circumstances and comparing their performances. The New York City schools system reports the performances of individual schools on several dimensions both on a general scale and in comparison to a 16-member peer group of schools with student bodies of comparable prior achievement levels and demographics.[45]

The course of “standards-based” educational reform has been rocky, but some of its key initiatives aspire to develop standardization in ways that produce individuation both by enhancing the local transparency of practice and facilitating the identification of effective tailored strategies across sites. The federal No Child Left Behind Act required that states set their own standards of educational progress and than measure and report to their citizens. It prescribed a standardized national test (the National Assessment of Education Progress) to facilitate comparison of progress across states. Local school performance must be reported to parents on "report cards". The Act had many defects, but some of them have been addressed with promising developments. Forty states have agreed to develop a set of “common core” educational standards that will provide richer and more uniform benchmarks than the NCLB proficiency thresholds. A consortium of non-governmental organizations has organized a “Data Quality Campaign” to generate political pressure and

provide tools to improve testing. The Obama administration organized a competitive grant program called “Race to the Top” to support the improvement of student achievement data and to develop accompanying “Instructional Improvement Systems” that connect diagnosed achievement deficits with remedial interventions that are both standardized and individualized.

The idea of Instructional Improvement System is illustrated by this image from the Maryland’s Race to the Top application:


Instructional Improvement Process With Supporting Technology Subsystems
1
Teacher accesses Portal and selects instructional objectives from Common Core
2
Teacher accesses Portal and consults student background data, administers pre-assessments if needed, and plans lessons tied to Common Core
3
Teach lesson(s)
4
Teacher accesses Portal and prepares formative assessments from Test Item Bank using Blueprint
5
Students take appropriate formative assessments - teachers may use Scantrons, Rubric cubes for project based assessments, adaptive testing for grading, etc.
Teacher Tool Kit Portal & Gateway to Instructional Improvement Applications
Student Performance Dashboard
Curriculum Management
Item Test Bank
Remedial E-learning
Adaptive Test System
Instructional Intervention Planning
Cradoo Management
Benchmark Progress Dashboard
6
Teachers collaborate to interpret assessment results for groups/individuals, and determine future instructional strategies.
7
Teacher meets with students to implement Enrichment/improvement plans using tutors, E-learning, extra projects, etc.
8
Teacher differentiates instruction making available online materials to class for enrichment, extension, or re-testing if needed. Teacher tracks growth and performance using benchmark and student dashboards
9
Interim benchmark assessments and benchmark achievement tracking

Source: Race to the Top Application for Initial Funding, State of Maryland Race to the Top Application (2010), available at http://www2.ed.gov/programs/racetothetop/phase1-applications/maryland.pdf.

The system contemplates that the teacher start with a subject defined by the multi-state "common core" curricular standards. She then plans and executes a lesson tailored to the abilities of her class; tests the efficacy of the lesson; follows up with remedial interventions targeted on the weaknesses revealed in the assessments, if necessary differentiated for different groups or individuals. Then she re-assesses. In doing so, she draws on standardized guidance for the lessons, standardized assessments, and remedial instruction standardized to particular weaknesses (as portrayed in the "toolkit gateway and portal"). No doubt many subjects do not lend themselves to this type of instruction. But for those that do, the system potentially captures the individualizing capacities of standardization. With rich standards and assessments, diagnosis can identify local and individual weaknesses. With a sufficiently extensive repertory of remedial interventions, responses can be customized. Of course, no single class or school could develop a large repertory. The system depends on the ability to identify effective interventions across localities through standards that connect the interventions to the diagnoses.

Dewey's work on education was focused on the individual classroom or school. He did not consider specifically the larger architecture of a democratic school system. But Race to the Top seems responsive to his general suggestion that we take inspiration from the organizational structure of science in designing public programs.

To say that standards can promote decentralization and diversity is not to say that they will do so, or even that they have a general tendency to do so. Whether they do so or not depends on the nature of the standards and the surrounding institutions. Since standards are public goods, governments may have to intervene to subsidize or produce them. Where private groups produce them, government will have to monitor both the standards-making process and the industry structure that results from standards.

Thus, standards have become a central preoccupation of antitrust and intellectual property law.[46] The challenge of a democratic politics of standards is to craft public subsidies, antitrust penalties, and intellectual property rights so as to enhance diversity. The key point is that such a politics has precisely the superficially paradoxical qualities Dewey asserted: it must be carried out through national institutions and practices, but if successful, it will promote local autonomy and diversity.

C. Team-based Decision-making: Bracketed Consensus

Business practice has also produced suggestive answers to the questions of democratic participation: How do we induce the participation that's needed while keeping numbers within manageable bounds? How do we deal with opportunism and unreflective conformity?

The answer we find in the theory and practice of recent business organization might be called bracketed consensus. There are really two ideas. The first is that proceedings oriented toward consensus can, in some situations, achieve productive learning and coordination. The second is that consensus processes can be nested in structures with different kinds of institutions in order to limit them to the situations in which they are most likely to be effective.[47]

Consensus implies deliberation among stakeholders aimed at producing general agreement. A stakeholder is anyone affected by the problem under consideration. Deliberation means discussion in which people are expected to give reasons for their views and be open-minded toward the views of others.

"Agreement" is a little harder to define. Literally, consensus means unanimity. Every participant has to sign on for a decision to emerge. In practice, however, people recognize that complete agreement is often impossible to achieve (and that even when it is achieved some people may agree only because they feel pressured to do so). Moreover, a procedure that gives everyone a

veto permits hold-outs acting in bad faith to block decisions they know are generally beneficial unless they are given some private benefit. So consensus-based decision-making treats unanimous agreement as a goal, not an absolute requirement. The group hopes for consensus but it will settle for less if that proves impossible. How much less is unspecified, but a decision supported by a mere majority would not be viewed as a success.

Process norms require participation through persuasion rather than threats. Deliberators must try to justify their positions in terms of broadly shared interests or norms of sufficient generality to be plausibly expected to command general assent.

The meaning of consensus also depends heavily on the bounds of the group within which consensus is sought. Eligibility for participation is typically described in inclusive but vague terms. The processes aspire to recruit representatives of all affected interests. But convenors or other actors often have discretion to screen or limit participation.

The goal of consensus-based decision-making is to induce people most likely to have relevant information and ideas about a problem to provide it and to engender commitment to the ultimate decision from the people who will have to implement it. Of course, it is more difficult to reach consensus than to make a decision by majority-rule. That's part of the point. With majority rule, once a view becomes dominant, there's no strong pressure to listen to or consider others. Thus, there's a strong risk that views that are initially widely but unreflectively shared won't be fully examined. By contrast, consensus-based decision making requires the group to confront the views of everyone who speaks. And consensus-based decision-making increases the chances that any given participant, even one with unusual views, will have an influence.

Consider how such a process mitigates the concerns with which we began. Pressures toward unreflective conformity are reduced by the fact that the participants have individual interests and stakes in the matter that they will be motivated to defend. If affected interests are broadly represented, the dispersion of

interests should impede premature closure. Problems of opportunism or bad faith are likely to be more severe, but there are well-known counter-pressures in the deliberative setting. As Dewey emphasized, the process of respectful engagement seems to have a tendency to induce solidarity. People forced to assume the guise of collaborative, public-regarding citizens sometimes come unconsciously to identify with their roles. Or they may come to feel trapped by their own rhetoric into altruistic measures in order to save face. Perhaps most important is the basic Deweyan hope that they will discover new insight about themselves (that is, they will reconsider their initial understanding of their private interests) or about the practical possibilities of reciprocal gain.[48]

This structure also creates at least modest pressures toward both inducing and limiting participation appropriately. As opposed to majority rule or a dictatorship, a consensus process gives each participant a greater chance of influencing the outcome. This greater chance of influence may induce people who would not choose to participate in other processes to join a consensus-based one. At the same time, the commitment to consensus may cause others not to participate. Where decision is by majority vote (and admission is open), people may feel inclined to show up just to add the weight of their vote to positions that are already well represented. But where decision is by consensus, such people may feel that, as long as their views are adequately represented, they do not need to show up. The consensus goal thus has some tendency both to induce participation by those likely to make important contributions and to reduce it by those whose participation would be duplicative.

At the same time, Dewey inspires hope that the focus of deliberation on concrete problems shared by the deliberators will facilitate agreement. Here Dewey's ideas resonate with two prescriptions of recent negotiation theory. The first, in language associated with Roger Fisher and William Ury, is "focus on interests, not positions."[49] Interests are relatively concrete needs or desires divorced from strong presumptions about causes or solutions. "Improving the capacities of lagging students" is an

interest; “charter schools” is a position. The pragmatist idea is that ideological abstractions tend to evolve away from the concrete interests that they originally responded to. The remedy to re-focus on the concrete and the practical.

The second prescription is to treat proposals as hypotheses for investigation. To treat a proposal as a hypothesis requires that means of testing it be specified and that the tests be built into the reform. Specifying tests is a form of intellectual discipline that may lead to productive clarity; running the tests facilitates learning.[50]

Of course, these points suggest no more than that the disadvantages of deliberation might sometimes be neutralized, not that there is any tendency for them to be. The most convincing reason for optimism about deliberative processes is that there are many examples of its successful operation. Consider two in areas we have just touched on -- the Toyota production system and standard-setting.

In Toyota-style manufacturing plants, when a worker pulls the andon cord, a problem-solving deliberation ensues. "Anyone with relevant knowledge of a problem is included, regardless of rank."[51] The group strives for a consensus solution and often achieves one.

Standard setting processes are similar, though they draw on an array of stakeholders that extends across firms, and often, national boundaries. People and organizations with an interest in the matter are invited and sometimes actively encouraged to participate. They deliberate in person or by exchanges of correspondence. A wholly successful deliberation produces consensus, though sometimes, the group has to settle for less.

An example is the Engineering Issues Task Force (EITF), which plays a central role in writing the protocol for transmission of information over the internet -- hypertext transfer protocol, or http. The EITF is responsible for drafting revisions to the standard. The task force has virtually no formal membership. Anyone can attend its meetings, and anyone who attends is eligible to participate in the working groups that develop standard

revisions. The groups strive for, and generally achieve, "rough consensus" -- "something less than full unanimity but something more than a majority of those present."[52]

Clearly the deliberative pressures toward information-sharing, re-assessment, and solidarity play a role in the success of these processes. They are not the whole story, however, and this brings us to a second response to the limitations of deliberation -- bracketing. Deliberative processes are not free-standing; they are nested in larger structures that may take a different form.

At Toyota, for example, problem-solving deliberations take place against a background of more conventional relations in which the corporation as employer has broad hierarchical control rights subject to the employment and collective bargaining rights of the unionized employees. In the internet protocol process, a standard that emerges from the consensus process only becomes effective when it receives the approval of the Internet Architecture Board and the Internet Engineering Standards Group, more exclusive, hierarchical organizations than the IETF.

These surrounding institutions stand as checks on the capture by private interests or the stalemate of the deliberative processes. They can also channel issues to these processes that are most likely to be effectively resolved there.[53]

Dewey remains a helpful guide on the question of what types of issues are best suited for consensual deliberation. It's common to suggest that deliberation works best with instrumental issues rather than "questions of value." But Dewey famously rejected this distinction. Values, he argued, are predictions that the world will be satisfying if certain conditions obtain. We inevitably test and revise these predictions in the light of experience, and we can and should do so more systematically.

In Dewey's view, the key conditions of deliberation are uncertainty and interdependence. Uncertainty means that that the solution to the problem is not fully known; addressing it must involve investigation. Interdependence means that no subset of the stakeholders can act alone. So together the conditions entail that no actor or coalition capable of imposing a solution is confident

what the right solution is, and no one who feels certain about a solution is able to impose it without engaging the others.

The interdependence condition is not exogenous to institutions. What people can do on their own is a function of their legal and social endowments. Encompassing institutions can alter these endowments in order to generate productive local collaboration. This practice is exemplified by what economists call the "penalty default" and some Deweyans have called the "destabilization right."[54]

The penalty-default idea comes from business law, but it has notable applications in public policy. For example, the Endangered Species Act provides that land development that would impair ("take") certain listed species cannot proceed unless the developer produces a Habitat Conservation Plan acceptable to the Secretary of the Interior. A plan acceptable to the Secretary generally requires the developer to engage and, ideally, win the agreement of stakeholders, including environmental groups. In effect, this scheme changes the applicable property rule for covered land from free development to no development. But the new rule is a default rule because it governs only in the absence of an acceptable alternative agreement. But it is not a conventional default rule. A conventional default reflects the legislator's or regulator's judgment about what the best outcome would be in the absence of agreement. But that is not what is going on with the Endangered Species Act. Very few people think that no development at all is likely to be optimal. But the legislator or regulator could not herself specify adequate conservation plans for all affected property. A penalty default is designed to induce the better informed or more powerful party – in this case, the developer -- to engage with others to produce a more satisfactory response.

"Destabilization right" refers to a more ambitious form of this type of intervention. In recent decades, federal courts have proved willing to intervene to induce the restructuring of public institutions, such as schools, prisons, housing authorities, and child welfare systems, that have chronically failed to meet basic

obligations. Over time, the mode of intervention has shifted from "command and control" efforts in which the court dictates performance in detail to experimentalist efforts in which the court induces the defendant institution to engage stakeholders, produce a reform plan collaboratively, and open itself to transparent monitoring and performance assessment. The court's intervention takes a penalty-default form, since it typically involves a threat of an action that no one wants, such as shutting the facility or jailing the administrators but that the defendant can escape by productively engaging the stakeholders.

Bracketing assumes that extensive reform can take place incrementally. It thus rejects the suspicion that background inequalities will necessarily determine the outcome of deliberation or at least undermine the possibility of mutually beneficial progress. The Deweyan response is that, as long as the interdependence condition is satisfied, the uncertainty condition means that progress cannot be ruled out.

On the other hand, the Deweyan perspective has to concede that the brackets will tend to be porous and tentative. Porousness suggests the possibility that background inequalities will constrain deliberation. But there is also the possibility that productive deliberation will spill back over the boundaries initially set for it and affect background social structures. In the Toyota Production System, "production" issues have a tendency to spill over into "design" issues, as team members decide that the most effective way to solve some problem is to change the production specifications.[55] And integrators often encourage their suppliers to question and improve on the specifications for their components.[56] Similarly, reform efforts in structural injunction cases often start with a narrow focus – say the racial incidence of the process by which pupils are assigned to schools – and broaden to such matters as curriculum, facilities, and personnel, as the participants re-assess both their goals and methods.

4. Conclusion

The social and technological changes that drive new organizational practices undermine traditional forms of democracy built around the nation-state, the public bureaucracy, and tacit professional judgment. They are thus threatening, and they undoubtedly have the potential to exacerbate authoritarian, technocratic, and plutocratic tendencies. But Dewey's political thought suggests they also represent opportunity. Dewey articulated criticisms of traditional democratic institutions before they came under their current pressures. And he called for new forms of organization that have some resemblance to forms that are currently emerging. His ideas are thus likely to be valuable aids to discerning and appraising their democratic potential.

NOTES

[1] Each of the two best known studies of Dewey's political thought complains about its institutional vagueness. Robert Westbrook, John Dewey and American Democracy (Ithaca, N.Y.: Cornell University Press, 1991), pp. 315-18; Alan Ryan, John Dewey and the High Tide of American Liberalism (New York: Norton, 1995), pp. 367-69. This programmatic vagueness leads some to disparage Dewey's approach as sentimental or Utopian. For example, Richard Posner, Law, Pragmatism, and Democracy (Cambridge, Mass.: Harvard University Press, 2003), pp. 30-65.

[2] My argument draws heavily on the ideas of Charles Sabel and various collaborators. See Joshua Cohen and Charles Sabel, "Directly-Deliberative Polyarchy," European Law Journal 3 (1997), pp. 313-342; Michael Dorf and Charles Sabel, "A Constitution of Democratic Experimentalism," Columbia Law Review 98 (1998), pp. 267-473; Charles Sabel and Jonathan Zeitlin, "Learning from Difference: The New Architecture of Experimentalist Governance in the EU," European Law Journal 12 (2008), pp. 271-327; and Charles Sabel and William Simon, "Minimalism and Experimentalism in the Administrative State," Georgetown Law Journal 100 (2011), pp. . The argument shares much with Christopher K. Ansell, Pragmatist Democracy: Evolutionary Learning as Public Philosophy (New York: Oxford University Press, 2011), which appeared after the essay was in draft but which was useful on many points.

[3] William James, Pragmatism 43 (New York: Meridian books, 1955), p. 43.

[4] Since the only test of what is useful is the individual's well-considered belief, there is no guarantee that the consequentialist test will moot any controversy. One debate that James hoped Pragmatism would put to rest – the contest between spiritualist and materialist understandings of nature – is virulently alive today in the disputes between creationists and Darwinists.

[5] See John Dewey, Human Nature and Conduct (New York: Henry Holt, 1921), pp. 58-75.

[6] James, cited in note 3, p. 32.

[7] Ibid., p. 28.

[8] See John Dewey, Liberalism and Social Action (New York: G.P. Putnam, 1963).

[9] See John Dewey, The Public and Its Problems (New York: Henry Holt, 1927), pp. 75-109, 143-84.

[10] Ibid., pp. 205-08.

[11] Katherine Camp Mayhew and Anna Camp Edwards, The Dewey School (Piscataway, N.J.: Atheron Press, 1936).

[12] John Dewey, The Child and the Curriculum (Chicago: University of Chicago Press, 1902) 29.

[13] Public and Its Problems., p. 131.

[14] John Dewey, The Quest for Certainty (New York: G.P. Putnam's Sons, 1960), p. 87.

[15] Ibid., pp. 74-107, 254-86..

[16] Public and Its Problems., pp. 202-03.

[17] See John Dewey, "Logical Method and the Law," 10 Cornell Law Quarterly 10 (1924), pp. 17-27.

[18] The Public and Its Problems, p. 215.

[19] Ibid., at 215.

[20] Ibid., at 218.

[21] Ibid., at 209.

[22] Ibid., at 113.

[23] Ibid., at 217.

[24] "The opinion which is fated to be ultimately agreed to by all who investigate, is what we mean by the truth…." Charles Saunders Peirce, "How To Make Our Ideas Clear," in Philosphical Writings of Charles Saunders Peirce, ed. Justus Buchler (1955), p. 28. Dewey did not have Peirce's vision in the steady convergence of scientific opinions, but he too saw agreement as the touchstone of scientific validity.

[25] The Public and Its Problems, pp. 207-08.

[26] See, for example, Friedrich Hayek, Individualism and the Economic Order (Chicago: University of Chicago Press, 1948).

[27] For example, Dennis Thompson and Amy Gutmann, Democracy and Disagreement (Cambridge, Mass.: Harvard University Press, 1996); Jurgen

Habermas, Between Fact and Law, William Rehg trans. (Cambridge, Mass.: MIT Press, 1998); James Fishkin, When the People Speak: Deliberative Democracy and Public Consultation (New York: Oxford University Press, 2009)

[28] For example, The Consensus Building Handbook, Lawrence Susskind, Sarah McKearnan, and Jennifer Thompson-Larmer, ed.s (Thousand Oaks, California, 1999).

[29] See the works cited in note 2.

[30] The Public and Its Problems, p. 207.

[31] Ibid, p. 168.

[32] James Womack, Daniel Jones, and Daniel Roos, The Machine that Changed theWorld: The Story of Lean Production (New York: Harper, 1991). For discussion of the potential relevance of lean production to law, with further references to the industrial engineering literature, see William H. Simon, "Toyota Jurisprudence: Legal Theory and Rolling Rule Regimes" in Law and New Governance in the EU and US, Grainne de Burca and Joanne Scott, ed.s (Oxford, U.K.: Hart, 2006) pp. 37-64; Charles Sabel drew attention to the potential political significance of lean production in "Learning by Monitoring: The Institutions of Economic Development," in Handbook of Economic Sociology, Neil Smelser and Richard Swedberg, eds. (Princeton, N.J.: Princeton University Press, 1995).

[33] See. e.g, Joseph Rees, Hostages to Each Other: The Transformation of Nuclear Safety After Three-Mile Island (Princeton, N.J.: Princeton University Press, 1994); Council of Medicine, Committee on the Review of the Use of Scientific Criteria and Performance Standards for Safe Food, Scientific Critera to Ensure Safe Food (Washington, D.C.: National Academies Press, 2003).

[34] Kathleen Noonan, Charles Sabel, and William Simon, "Legal Accountability in the Service-Based Welfare System: Lessons from Child Welfare Reform," Law & Social Inquiry 34 (2009), pp. 523-68, 542.

[35] The Public and Its Problems, p. 215.

[36] The Quest for Certainty, pp. 259, 241.

[37] Productivity Press Development Team, Standard Work for the Shopfloor (2002), p. 11.

[38] John Dedrick and Kenneth Kraemer, "The Impact of IT on Firm and Industry Structure: The Personal Computer Industry," California Management Review 47(Spring 2005), pp. 122-42.

[39] The Quest for Certainty , p. 216.

[40] Brendan Reilly et al., "Impact of a Clinical Decision Rule on Hospital Triage of Patients With Suspected Acute Cardiac Ischemia in the Emergency Department," Journal of the American Medical Association 288 (2002) pp. 342-51; Atul Gawande, The Checklist Manifesto (New York: Metropolitan Books, 2009).

[41] Marie Clay, An Observation Survey of Early Literacy Achievement , 2d ed., (Portsmouth, N.H.: Heinemann, 2005), p. 12.

[42] Annie E. Casey Foundation Juvenile Detention Alternatives Initiative, Juvenile Detention Risk Assessment: A Practice Guide to Juvenile Detention Reform (2006), available at www.jdaihelpdesk.com.

[43] Since the standardization regimes described here bear an unflattering resemblance to two types of regulation widely held in low esteem, we should note some distinctions. First, there is New Public Management, a literature that prescribes performance measures and competitive contracting for public services. It shares with the Deweyan perspective an aspiration to combine operational decentralization with accountability, but it contemplates hierarchical rather than democratic formulation of standards, and it has a more punitive and less diagnostic attitude toward standards enforcement. See Simon Head, "The Grim Threat to British Universities," New York Review of Books (January 13, 2011). Second, there are the regimes of social control described by Michel Foucault in Discipline and Punish: The Birth of the Prison, Alan Sheridan trans. (New York: Pantheon, 1977). These unattractive regimes share with current "evidence-based" social service practice an inclination to make observation as precise, pervasive, and articulate as possible. However, practice in the old regimes seems to have been more rigid and static (though their greater flexibility and adaptability might have led Foucault to view the new practices as even more insidious), as well as less democratically accountable. Aside from differences in the regimes themselves, there is a clear difference in the way Dewey and Foucault assess social practice. Foucault's account is animated by a repressed and inarticulate moralism, while Dewey is open and experimentalist about his normative premises.

[44] Mary Graham, Democracy by Disclosure: The Rise Technopopulism (Washington, D.C.: Brookings Institution, 2002).

[45] Caroline Fung et al., "Systematic Review: The Evidence that Publishing Patient Care Performance Data Improves Quality of Care," Annals of Internal Medicine 148 (2008), pp. 111-23; Kenneth Thomas, The CRA Handbook (New York: McGraw-Hill, 1998).

[46] See Mark Lemley, "Intellectual Property Rights and Standard-Setting Organizations," California Law Review 90 (2002), pp. 1889- .

[47] See generally Philip Senge, The Fifth Discipline: The Art and Science of the Learning Organization (New York: Doubleday, 1994); Lawrence Susskind, "An Alternative to Robert's Rules of Order for Groups, Organizations, and Ad Hoc Assemblies that Want to Operate by Consensus," in The Consensus-Building Handbook, pp. 3-60.

[48] Experimental psychology provides support for some of Dewey's intuitions, though it also emphasizes qualifications. See Tali Mendelberg, "The Deliberative Citizen," Political Decision Making, Deliberation, and Participation

6 (2002), pp. 151-93. Note that many discussions of the limits of deliberation do not involve the circumstances Dewey had in mind – people deliberating about practical solutions to problems in which each has a personal stake and there are potential gains from collaboration. Pathologies observed in some deliberative processes, such as group polarization, rational apathy, and information cascades, seem less likely in the Deweyan context where people have strong practical incentives to inform themselves and try to enlist the collaboration of those with whom they disagree.

[49] Roger Fisher and William Ury, Getting to Yes: Negotiating Agreement Without Giving In (Boston: Houghton Mifflin, 1981).

[50] This Deweyan point is reflected in the contemporary negotiation practice called "put-up-or-shut-up." A negotiator who asserts a fact can be asked to assume the risk the assertion is incorrect. For example, the seller of a business who asserts that it has a higher earning potential than the buyer believes should be willing to accept an "earn-out" that conditions part of the purchase price on profits after the sale. See William Klein, "The Put-Up-Or-Shut-Up Strategy in Business Negotiations", UC Davis Law Review 17 (1983), pp. 341-58.

[51] John Paul MacDuffie, "The Road to Root Cause: Problem-Solving at Three Auto-Assembly Plants," 43 Management Science 43 (1997), pp. 479-502, 495.

[52] Michael Froomkin, "Habermas@discourse.net: Toward a Critical Theory of Cyberspace", 116 Harvard Law Review 116 (2003), pp. 749-873, 794.

[53] I don't mean to suggest that the background institutions that structure deliberation are normally hierarchical in the senses of these two examples. They need not be, and to the extent that they are, that simply raises the question of what disciplines hierarchy. I am not offering a full-blown theory of democratic institutions here. The point is simply that Deweyan deliberation can be valuable even where it cannot do all the work.

[54] See Charles Sabel and William Simon, "Destabilization Rights: How Public Law Litigation Succeeds," Harvard Law Review, 100 (2004), pp. 1015-1101.

[55] MacDuffie, pp.

[56] See Charles Sabel and Jonathan Zeitlin, "Neither Modularity Nor Relational Contracting: Interfirm Collaboration in the New Economy," 5 Enterprise and Society 5 (2004), pp. 388-403.