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Some Indicators of the Democratic Performance of the European Union and How They Might Relate to the RECON Models

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Abstract

This paper argues that indicators of democratic performance should in the first instance be selected for their normative defensibility, rather than their empirical measurability. Yet democratic theory is a hard task-master in setting conditions for the normative derivation of indicators. It at once requires minimum conditions that any polity must meet in order to be classified as democratic and implies that those minimum conditions can only tell us a part of what we need to know if we are to make a satisfactory assessment of democratic rule. The paper argues that the dilemma is best solved through the following steps. First by understanding that both the main types of justification for democracy - intrinsic and consequential - imply the same necessary condition: namely, public control with political equality. Second by identifying corollaries of 'public control with political equality' and then using them to specify minimum standards of democracy. Third by clarifying what room democratic theory itself leaves for differences of value preferences in how 'public control with political equality' should be realised in practice. The paper argues that this approach is both richly suggestive of minimum standards (it proposes nine) and accommodative of reasonable and recursive disagreement in how those minimum standards ought to be specified in a particular time or place. The value of the approach - its ability to produce contrasting but comparable indicators of democratic performance that speak both to a common core of normative standards and to reasonable difference in their final specification - is illustrated using the RECON models.

Keywords

Accountability - Civil Society - Deliberative Democracy - Democracy - European Parliament, EP - Institutions - Majority Voting - National Parliaments

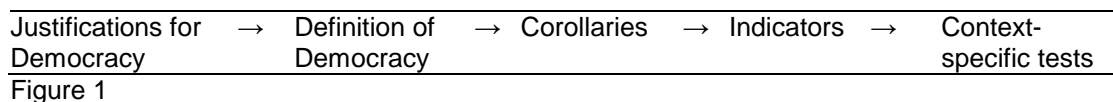
1. Introduction

Many attempts have been made to develop indicators of democratic performance. In proposing its own indicators for the democratic performance of the EU, this paper will draw comparisons with indicators developed by the Bertelsmann Foundation (www.bertelsmann-transformation-index.de), the Democratic Audit (www.democraticaudit.com), the Economist (www.economist.com), and Freedom House (www.freedomhouse.org).

It was Robert Dahl (1971) who probably made the first attempt to frame indicators of democracy. Since then many disagreements have surfaced in the academic literature, including the following: should indicators of democracy be few or many? Should they treat democracy as a matter of kind or degree (Elkins 2000)? Should they be aggregated into some overall measure of democracy performance? Should they, indeed, be used to measure democracy at all, or should we accept, either more modestly or more ambitiously depending on our point of view, that all we can hope to do is use indicators to make qualitative judgements (Lord 2004: 14-5)? Should indicators be used as a diagnostic as well as an analytic tool (Beetham et al 2002)? Should they even have a role in helping us decide what we mean by good democratic rule in the first place? Should indicators in other words stand to some degree in a circular relationship to their own object of enquiry such that they may be open to some revision in the light of what they themselves tell us about the possibilities and pitfalls of democratic rule both generally and in context (Lord 2007)?

This paper has two goals: first, to propose a means of anchoring indicators more clearly in normative democratic theory and, second, to ask how indicators which follow from such an approach might be adapted to the special case of the European Union. As it happens the two goals fit together well. The question of whether and how democracy should be transposed to the European Union raises normative issues of its own which highlight the arbitrariness of specifying indicators of democratic performance on any other basis (such as ease of empirical measurement) than the values served by democratic rule.

Figure 1 is an intentionally simplistic summary of the steps used here to improve the selection, structuring and application of indicators of democratic performance, but, in a nutshell, the paper proceeds as follows. Section 2 uses democratic theory to identify indicators which can be defended as minimum requirements for a definition (public control with political equality) that satisfies both main justifications for democracy (intrinsic and consequential). Section 3 then shows how context-specific models of democracy – which take account of variations in local value preferences and conditions of realisation – are none the less needed to avoid indeterminacy in the testing of indicators based on a normatively defended view of the democratic minimum. Section 4 demonstrates the value of this approach – and illustrates how it might be made to work – with the help of three models of European Union democracy developed as part of the RECON project of which this research is a part. Section 5 concludes.



Along the way the paper aims to slay a handful of dragons. As a by-product of revisiting core justifications for democracy, section 2 offers what, I believe, is a novel counterargument to the view that democracy is a standard that cannot coherently be expected of the Union at all. Between them sections 2 and 3 take on the view that democracy can be considered an essentially contested concept, suggesting, instead, that it is only a boundedly contested one. Section 5 argues that the choice of indicators of democratic performance should indeed be normative first and empirical second, and their selection should not, therefore, be constrained in the first instance by considerations of measurability.

2. Deriving core indicators

For many it is important that democracy should do what the people want. Thus democratic institutions are expected to be 'responsive' or to 'aggregate' the preferences of those they represent. Significantly this view often surfaces in discussions of democracy and the European Union (Crombez 2003).

I do not want altogether to disparage the view that democracy has something to do with the efficient satisfaction of the public's wants. But I do want to suggest that 'utilitarian' concepts of democracy stand in a more complex and contingent relationship than their advocates suppose to democratic performance.

If, as I will argue in a moment, democracy is a right to join together with others as equals to exercise public control over a polity before it is system of rule likely to produce particular kinds of policy outputs, indicators of democratic performance should reflect that priority. They should follow a 'logic of appropriateness' before they follow a 'logic of consequence' (March and Olsen 1995). They should aim to identify what *procedures* are needed to deliver public control with political equality; and, only then, test for whatever relationship between public policy outcomes and popular preferences the governed happen in any one time or place to value as part of their commitment to democracy. Amongst the many attempts to define indicators of democratic performance, I know of none that makes explicit this need to give priority to norms and procedures, and several that mix input and output standards, as well as measures of public satisfaction, without clarifying the contingency of the latter two and the necessity of the first.

The fundamental difficulty with taking 'policy outputs that do what the people want' as a core test of democratic performance is that it is by no means clear that such a state of affairs is either necessary or sufficient for democracy (Plamenatz 1973: 181). It is insufficient, since, as is often remarked, even a technocracy or a benign dictatorship, might succeed in aligning policy outputs with citizens' preferences. It is unnecessary, since, as John Plamenatz remarks, a political system may 'refuse to meet widespread popular demands [...] without ceasing to be democratic' (ibid, p, 210). Representatives may owe the represented their 'judgement' and not their 'obedience' (Burke 1975 [1774]). Yet as long as the governed have regular opportunities to recall or renew that trust, we may be quite justified in classifying as democratic a political

system that for much of the time does not do what the people want. From this point of view the most encompassing definition of democracy is 'responsible government' - i.e. publicly controlled government - rather than 'responsive government' (Plamenatz 1973: 210; See also Mansbridge 2003).

One way of arriving at 'public control with political equality' (Weale 1999: 14) as a definition of democracy is essentially inductive and historical. As David Beetham puts it, it is the absence of public control with political equality that people have historically complained about where democracy has, in their view, been missing (Beetham 1994: 27-8). Yet, even if historical experience had been otherwise, a moment's reflection reveals the two conditions to be necessary to any notion of rule by the people. Whereas democracy is conceivable where citizens do not rule in person, it is inconceivable where they do not control those who take decisions in their name. If, though, some of the people were to count for more for than others in exercising that public control, there would be an element of rule of some of the people by others of the people, rather than a straightforward rule by the people. Hence, political equality must also be added to the definition.

The need for 'public control with political equality' emerges even more clearly if we take the discussion back to its philosophical roots in the question 'why should we value democracy in the first place?' Justifications for democracy are usually considered to be of two kinds. Intrinsic justifications hold democracy to be desirable in and of itself on the grounds that individuals should have as much control as possible over decisions affecting their own lives. As James Bohman summarises this view, 'democracy is an ideal of self-determination'.

In contrast, consequentialists argue that democracy is best justified as a means towards other values, such as peace, prosperity and the securing of all kinds of rights (not just democratic ones) against arbitrary rule (Ryan 1998: 392). For consequentialists, the notion that democracy can be justified as a means of reconciling collective choice with personal autonomy - to the point at which each collective choice can in some sense be seen as each individual's choice - is implausible at best, incoherent at worst (Weale 1999). Democracy, in their view, cannot be justified as a means of reconciling personal autonomy with collective choice, since it is not individuals - but majorities - who choose in modern democracy. Whereas, the role of the individual as a decider in modern democracies is vanishing small - equivalent to just one vote in many millions cast on a single day out of many - the role of the individual as an objective of obedience remains very much in the evidence. Majority decisions require individuals to do many things they would sooner not do; and, even if democracies are usually less cruel than other political systems in their means of coercion, the very fact of majority endorsement is often used to justify systems of collective choice - such as welfare states and publicly chosen economic priorities - that are remarkably encompassing in their effects on individual lives and limited in the exit options they allow those same individuals. John Dunn puts the point thus:

Like every modern state, the democracies of today demand obedience and insist on a very large measure of compulsory alienation of judgement on the part of their citizens. When they make that demand in their citizens' own name, however, they do not merely add insult to injury, or perpetuate an evident absurdity. They also acknowledge their own permanent potential for

effrontery in levying such demands, and offer a slim measure of apology for the offence inherent in levying them.

(Dunn 2005: 19)

Yet, even taking these objections into account, there are important connections between democracy and individual autonomy. Democracy at least requires that the autonomously formed judgements of all individuals should be considered of equal worth in the formation of majorities. Indeed, there are certain rights to autonomous will formation – freedom of speech and of association – that democracy cannot deny without negating itself (Habermas 1996). Moreover, important though they are, there are good reasons for considering consequential justifications for democracy to be secondary to intrinsic justifications ones. The claim that democracy is justified by certain of its consequences, begs the question ‘who is to decide which of those consequences are desirable, when and why?’ Any answer to this question that did not already assume that the only justifiable form of collective choice is one that all citizens can control as autonomous equals would, arguably, be arbitrary.

Regardless, though, of whether we are more convinced by the intrinsic or consequential arguments, the two justifications for democracy over-lap in requiring ‘public control with political equality’. On the one hand, only publics who can control their representatives can see themselves as authoring their own laws through the latter. On the other, it is usually public control by equally empowered individuals, which consequentialists assume when they predict that democracies will be somewhat more likely than other forms of government to be non-arbitrary and equally respecting of the rights of all.

Since, however, the concern of this paper is with identifying means of assessing the democratic performance of the EU, it is useful to note another feature of intrinsic and consequential justifications for democracy: namely, the counter-arguments they offer to the claim that it is an absurdity approaching a category error even to apply democratic standards to a polity such as the European Union which is, after all, neither a state nor a nation. If, the intrinsic justification for democracy is, in Habermas’ terms (1996) that individuals should be able to see themselves as authoring their own laws through representatives, it must surely apply to the EU? Not only does the Union make laws but those laws affect life chances and the allocation of political values. In spite of some brave attempts at portraying the Union as a kind of pareto-improving paradise, it is hard to ignore ways in which it redistributes values and resources between the states, regions, sectors, generations, sexes, adherents of different social and economic models, and, of course, holders of cherished identities (Lord and Beetham 2001).

Indeed, it seems to me that both intrinsic and consequential justifications rule out *a prioristic* assumptions about the proper locus of democracy. Unless it can be shown that democracy is impossible beyond the state - which, of course, is no more than a defeasible empirical claim and not an absolute normative prohibition - then intrinsic justifications require that publics should themselves choose how much or how little democracy beyond the state they wish to attempt. For their part, consequentialists are required by their own assumptions to support moving democracy up and down between frameworks beyond and within the state depending on whatever arrangements that are most likely to produce those

consequences - peace, prosperity, rights protections and so on - that are thought to justify democracy in the first place.

3. Indicators based on a Democratic Minimum

If, as argued so far, 'public control with political equality' is a necessary condition for either intrinsic or consequential justifications for democracy, its corollaries can be treated as a minimum set of requirements any political system must meet if it is to be classified as democratic. With a view to proposing indicators that correspond to what Bohman (2007) calls a 'democratic minimum', this section accordingly asks what further conditions are either directly entailed by 'public control with political equality' or follow from it on assumptions that would be hard to dispute. Although the indicators are necessarily stated in somewhat summary terms for the sake of brevity, each is accompanied by a table which sets out similar tests used in other surveys. This gives the reader an idea of the more detailed questions that can be asked to investigate the indicator in question.

Rights

As Habermas has convincingly argued, political philosophers have struggled to grasp the full force of the mutual entailment - or, as he puts it, of the 'internal relationship' - between popular sovereignty and individual rights. Thus Kant's view of rights as more or less 'imposing themselves on our moral insight as something given' and Rousseau's view of rights as only emerging within 'a consciously appropriated tradition' respectively end up by 'setting the autonomy of individuals above' and making it 'subordinate to their political community'. In contrast to both these positions, Habermas argues that it makes no sense to see either democracy or rights as limiting the other. Rather, the only possibility is that we commit ourselves to both 'rights' and 'democracy' through the very act of committing ourselves to the other. Why is this? A right is a demand for the greatest possible measure of some freedom compatible with others enjoying the same freedom. Rights thus imply 'coercible laws' to render rights compatible' (1996: 129). That implies 'legitimate law-making' (ibid.: 111); and that, in turn, implies laws that citizens can see themselves as authoring as equals, i.e. democratically. Likewise, viewing the 'circuit' the other way round, 'the principle of democracy can only emerge at the heart of a system of rights'. A majority cannot be validly formed without the discourse principle which Habermas describes as follows:

According to the discourse principle, just those norms deserve to be valid that could meet with the approval of the potentially affected through rational discourses. Hence political rights must guarantee participation in all deliberative and decisional processes relevant to legislation and must do so in a way that provides each person with equal chances to communicate and take a position on validity claims.

(Habermas 1996: 127)

Taking those rights individuals would need to form majorities as free and equal citizens, the following is proposed as our first indicator of democratic performance:

Indicator 1. How far, how equally and how securely do citizens enjoy rights of free speech, association and assembly?

Table 1 Rights/democratic freedom. RECON indicator compared with some of those used in other surveys.

RECON Democratic Audit	Democratic Audit	Bertelsmann	Economist	Freedom House
<i>How far, how equally and how securely do citizens enjoy rights of free speech, association and assembly?</i>	<p><i>Main question:</i></p> <p>Are civil and political rights equally guaranteed for all?</p> <p><i>Follow-up questions:</i></p> <p>How free are all people from physical violation of the person and from fear of it?</p> <p>How effective and how equal is the protection of the freedoms of movement expression, association and assembly?</p>	<p>To what extent are civil liberties guaranteed and to what extent can citizens seek redress for violations of these liberties?</p> <p>To what extent can independent political and/or civic groups associate and assemble freely?</p> <p>To what extent can citizens, organisations and the mass media express opinions freely?</p>	<p>Is there freedom of expression and protest (bar only generally accepted exceptions such as bans on the advocacy of violence)?</p> <p>Are citizens free to form political and civic organisations free of state interference and surveillance?</p>	Civil liberties including freedoms of expression, assembly and association.

Free and fair voting

Voting may not, as Dewey put it, be enough for democracy. But it is also difficult to imagine democracy without it. Most forms of direct and representative democracy end up by needing to make at least some provision for voting; and even deliberative democracy may require systems of voting for *pro tem* decisions pending the emergence of discursively ideal conditions (Habermas 1996: 177). Moreover, for whatever reason democracy needs some means of voting, the principle of 'public control with political equality' puts limits on which systems for aggregating votes can be classified as democratic. Public control requires that those who are to be rewarded or sanctioned should not be in a position to administer systems of voting to their own advantage. Political equality requires that all citizens should have the same number of votes and each vote should count equally. Thus the following indicator is proposed here.

Indicator 2. How far and how equally can citizens exercise public control through free and fair voting?

Table 2. Free and Fair Elections. Recon indicator compared with some of those used in other surveys.

RECON Democratic Audit	Democratic Audit	Bertelsmann	Economist	Freedom House
<i>How far and how equally can citizens exercise public control through free and fair voting?</i>	<p><i>Main question:</i></p> <p>Do elections give the people control over governments and their policies?</p> <p><i>Further questions:</i></p> <p>How far is appointment to government and legislative office determined by popular competitive elections?</p> <p>How inclusive and accessible to all citizens are the registration and voting procedures, how independent are they of governmental and party control, and how free from abuse?</p> <p>How equally do votes count, and how closely does the composition of the legislature and the selection of the executive reflect the choices the voters make?</p> <p>What proportion of the electorate votes, and how far are the results of elections accepted by all political forces within the country and outside?</p>	To what extent are political leaders determined by general, free and fair elections?	<p>Is there universal suffrage for all adults?</p> <p>Are elections for the legislature and the head of government free and fair? Are elections competitive? Are electors free to vote and offered a range of choice?</p> <p>Can citizens cast their votes free of significant threats to their security from state and non-state organisations?</p> <p>Do laws provide for broadly equal campaigning opportunities?</p> <p>Following elections are constitutional arrangements for the orderly transfer of power from one government to another broadly accepted?</p>	<p>Is the head of government or other chief national authority elected through free and fair elections?</p> <p>Did reputable election monitoring organisations judge the most recent elections for head of government to be free and fair?</p> <p>Is the registration of voters and candidates conducted in an accurate, timely, transparent and non-discriminatory manner?</p> <p>Does voting take place by secret ballot or by equivalent free voting procedure?</p> <p>Is the vote count transparent and is it reported honestly?</p> <p>Is each person's vote given equivalent weight to those of other votes in order to ensure equal representation?</p>

Representative Institutions

The third assumption made here is the familiar one that in contemporary societies citizens will need to be able to exercise day-to-day public control through representatives. On the one hand this may be the more or less unavoidable consequence of spatial and temporal limits modern mass societies put on opportunities for citizens to deliberate and decide all laws for themselves. On the other hand, there may be cognitive limits to how far citizens can control public decisions without the help of representatives who can blend understanding of the needs and values of the public with access to more specialised forms of knowledge needed for the effective control of

public policy. Before proposing an indicator of our own, it is worth considering John Stuart Mill's classic account of Representative Government:

The meaning of representative government is, that the whole people, exercise through deputies periodically elected by themselves, the ultimate controlling power [...] While it is essential that practical supremacy should reside in the representatives of the people, it is an open question what actual functions, what precise part in the machinery of government, shall be directly and personally discharged by the representative body. Great varieties in this respect are compatible with the essence of representative government, provided the functions are such as secure to the representative body the control of everything in the last resort.

(Mill 1972 [1861]: 228-9)

In other words, the goal of representation should be ambitious, but the means can be varied. The goal should be that all exercise of political and administrative power by all public bodies should be within the 'ultimate controlling powers' of a 'representative body [...] elected by the people themselves'. That said, controlling power can be given to representative bodies in more than one way: through opportunities to appoint and dismiss from office; through powers over budgets; and through agenda-setting and veto powers in the passing of legislation. It is also important to note that 'ultimate controlling powers' do not imply that representatives need assume governing functions themselves. Indeed, Mill believed that would distract representative bodies from their main role of demanding accounts and power-holders for accounts that do not justify their actions: 'instead of the function of governing, for which it is radically unfit, the proper office of a representative assembly is to watch and control the government [...] to compel a full exposition and justification, and to censure that which proves condemnable' (ibid.: 239). With these thoughts in mind, the following indicator is proposed here:

Indicator 3. How far can representatives elected by the people require all public bodies to account for their actions and exercise ultimate controlling power over them on a day-to-day basis?

Once again, similar and sometimes more fine-grained tests can be identified from other surveys, as set out in Table 3. It is worth noting the inclusion in the Democratic Audit indicators authored by Beetham *et al* of a test of 'how effective and open to scrutiny is the control exercised by elected leaders and their ministers over their administrative staff and other executive agencies'? Representative bodies would presumably need to conduct the scrutiny in question, and it is often assumed that such bodies do, indeed, have the power to require accounts to be given of decisions taken at all levels of public administration: either through the relationship between representative bodies and the (sometimes elected) office holders who head up each administrative hierarchy or through powers vested in legislatures to define the scope and resources of each agency.

Table 3. Representative Institutions. Recon indicator compared with some of those used in other surveys.

RECON Democratic Audit	Democratic Audit	Economist	Freedom House
<i>How far can representatives elected by the people require all public bodies to account for their actions and exercise ultimate controlling power over them on a day-to-day basis?</i>	<p>Do freely elected representatives determine government policy?</p> <p>Is the legislature the supreme political body, with a clear supremacy over other branches of government?</p> <p>Are sufficient mechanisms in place to ensure government accountability to the electorate in between elections?</p> <p>How effective and open to scrutiny is the control exercised by elected leaders and their ministers over their administrative staff and other executive agencies?</p>	<p>Do freely elected representatives determine government policy?</p> <p>Is the legislature the supreme political body, with a clear supremacy over other branches of government?</p> <p>Are sufficient mechanisms in place to ensure government accountability to the electorate in between elections?</p>	<p>Do the freely elected head of government and national legislative assemblies determine the policies of the government?</p> <p>Is the government accountable to the electorate between elections? Is the budget making process subject to meaningful legislative overview?</p>

Political parties

It might seem odd to include bodies as unloved as political parties amongst minimum conditions for democracy. Yet, the role of a well-functioning party system in linking citizens to the polity may be as vital to public control as free and fair elections and a representative body with day-to-day controlling powers.

First, there has to be some mechanism for considering all issues in relation to all others if public control is to be complete to the point of covering one of the most important roles of the political system, namely that of making trade-offs in the allocation of values and resources across the whole range of public policy, and not just in the handling of one issue. A system that cannot meet this basic requirement will have no means of exercising public control over negative externalities, or over what would otherwise be the cumulative unintended consequences that follow from 'cognitive accumulating problems' (Habermas 1996: 52). One way of delivering such 'holistic public control' is to have parties which compete across a range of issues and which can be judged on their overall governing performance both *ex ante* (on the basis of their commitments to a manifesto) and *ex post* (on the basis of their record).

Second, well-formed party systems help solve co-ordination problems in mass democracies. By directly or indirectly offering the same menu of choice across the political system, they can allow any two voters to co-ordinate their decisions to sanction or reward incumbent power holders by simply voting for the same party, even though, of course, most voters are unknown to one another (Cox 1997: 5).

Third, parties can simplify choice in ways that allow citizens to participate in complex democratic systems with only minimal information. Meaningful choice may require no

more than an understanding of the ordinal (i.e. relative) position of parties along a key dimension of choice, such as left-right; or no more than an opportunity to renew or recall existing patterns of power-holding by voting for parties of government or opposition.

Fourth, parties can help solve some of the inter-temporal problems of democratic politics. Individual power holders may come and go, but in systems of 'party responsible government', parties can be rewarded or sanctioned sometimes long after the event. This gives them an incentive to 'protect their brands'.

Given that the unifying theme of the foregoing points is that a well-formed party system can structure voter choice in ways which help citizens exercise public control, the indicator proposed here is:

Indicator 4. How far do political parties structure voter choice in ways which help citizens exercise public control as equals?

Table 4. Political Parties. RECON indicator compared with some of those used in other surveys.

RECON Democratic Audit	Democratic Audit	Bertelsmann	Economist	Freedom House
<i>How far do political parties structure voter choice in ways which help citizens exercise public control as equals?</i>	<p>How effective a range of choice does the electoral and party system allow the voters?</p> <p>How free are opposition and non-governing parties to organise within the legislature, and how effectively do they contribute to government accountability?</p> <p>How far are parties effective membership organisations, and how far are members able to influence party policy and candidate selection?</p> <p>How far does the system of party financing prevent the subordination of parties to special interests?</p>	To what extent is there a stable, moderate and socially rooted party system to articulate and aggregate societal interests?	<p>Is the process of financing political parties transparent and generally accepted?</p> <p>Are citizens offered a range of choice (of parties and candidates)?</p> <p>Are citizens free to form political parties that are independent of government?</p> <p>Do opposition parties have a realistic prospect of achieving government?</p>	A competitive multi-party system.

Civil Society

It is often observed that liberal democracy presupposes a delicate balance. On the one hand it requires that the political system should not be able to dominate the very society of individuals by which it is supposed to be controlled. Yet, that civil society must, in turn, be regulated by the political system so that no source of private power can interfere with procedures needed to secure public control with political equality

(Bauman 1999: 154-5). These difficulties are especially acute in relation to the formation and exchange of political opinions amongst the people themselves. Even individual preference formation may be social in nature to the extent it best occurs through political discussion supported by a rich associational life, rather than as a prelude to those things. For its part, norm formation is inherently social and inter-subjective. If, moreover, opinion formation is to be spontaneous it should not just be confined to the polity but should also occur through 'adequate non-institutionalised forms of public communication anchored in voluntary associations of civic society and in liberal patterns of political culture' (Habermas 1996: 358). Yet, as Habermas continues, it is precisely on account of its 'anarchic structure' that civil society is 'vulnerable to the repressive and exclusionary effects of unequally distributed social power' (ibid.: 307). Against the background of these possibilities and difficulties the following indicator is proposed here:

Indicator 5. How plural, how independent and how robust is the range of social groups, organised interests and communications media that seeks to influence the polity? How equal is their access to public institutions and how equally accessible are they themselves to individual citizens?

Table 5. Civil Society. RECON indicator compared with some of those used in other surveys.

RECON Democratic Audit	Democratic Audit	Bertelsmann	Economist	Freedom House
<p><i>How plural, how independent and how robust is the range of social groups, organised interests and communications media that seeks to influence the polity?</i></p> <p><i>How equal is their access to public institutions and how equally accessible are they themselves to individual citizens?</i></p>	<p>How extensive is the range of voluntary associations, citizens groups, social movements etc, and how independent are they from government?</p> <p>How extensive is citizen participation in voluntary associations, and in other voluntary public activity?</p> <p>How independent are the media from government, how pluralistic is their ownership, and how free are they from subordination to foreign governments or multinational corporations How effective are the media in investigating government?</p> <p>How free are journalists from restrictive laws, harassment and intimidation?</p>	<p>To what extent is there a network of co-operative associations or interest groups to mediate between society and the political system?</p> <p>Does the government encourage the involvement of civil society actors in the political process?</p>	<p>Citizens' engagement with politics. Membership of political non-governmental organisations. The preparedness of the public to take part in lawful demonstrations?</p> <p>Special economic, religious or other powerful domestic groups do not exercise significant political power, parallel to domestic institutions?</p> <p>Is there a free electronic and print media?</p> <p>Is media coverage robust? Is there free and open coverage of public issues, with a reasonable diversity of opinion?</p>	<p>Are civil society groups, interest groups, journalists and other citizens able to comment on pending policies or legislation?</p>

Public sphere

As seen, John Dewey famously observed voting is unlikely to be enough on its own to make democracy an acceptable form of political rule (Dewey 1927). Being outvoted by others, and being compelled, as a result, to abide by unwanted laws, is a harsh discipline that is only likely to be acceptable to those who first have an opportunity to state their point of view, and have it considered open-mindedly. Perhaps John Stuart Mill provides the classic statement of this position in his argument that representative bodies should provide a 'Congress of Opinions' where all points of view should present themselves 'in the light of day' and those who are over-ruled should 'feel satisfied that [their opinion has been] heard, and set aside not by a mere act of will, but for what are thought to be superior reasons' (Mill 1972 [1861]: 239-40). Amongst more contemporary commentators, John Rawls (1993) has argued that democracy's commitment to political equality ideally requires that decisions should be shaped by the quality of justifications reasoned out in public, and not by distributions of private power or resources. Rainer Schmalz-Bruns likewise sees deliberative rights and duties as 'rationality assumptions' that we cannot help but make once we understand that 'the idea of democracy resides in a basic moral right to justification' (2007: 284). In view of these various insights, the following indicator is proposed here:

Indicator 6. How far are the decisions of the polity deliberated within a public sphere that allows all points of view to be considered, justified and decided in relation to all others, free of inequalities in power and resources?

Table 6. Public Sphere. RECON indicator compared with some of those used in other surveys.

RECON Democratic Audit	Democratic Audit
<i>How far are the decisions of the polity deliberated within a public sphere that allows all points of view to be considered, justified and decided in relation to all others, free of inequalities in power and resources?</i>	How representative are the media of different opinions and how accessible are they to different sections of society?

Civic Capabilities

If there are limits to participatory democracy, there are also limits to representative democracy. Indeed representation presupposes some minimum level of participation in voting and will formation themselves. This rules out any possibility of democracy being a costless form of government, without burdens of citizenship or a need to invest in the capabilities of representatives and citizens alike (March and Olsen 1995). Since citizens must enjoy whatever capabilities are necessary to exercise their rights of public control through representatives - and, ideally, they should enjoy those capabilities equally - the following indicator is proposed here:

Indicator 7. How far and how equally do citizens enjoy civic capabilities needed for them to exercise public control over the polity?

Table 7 sets out indicators of civic capabilities used in other surveys. Most probe understanding of the political system and access to information needed to form judgements about governing performance. Worthy of brief note, though, is the inclusion of social capital amongst the Bertelsmann indicators. In his book *Making Democracy Work*, Robert Putnam refers to social capital as 'features of social organisation, such as trust, norms and networks' which can improve the efficiency of

society by facilitating co-ordinated actions' (1993: 167). He then goes on to argue that these contribute to 'a conception of one's role and obligations as a citizen, coupled to a commitment to political equality' (ibid.: 183), which, of course, goes to the heart of the definition of democracy.

Table 7. Civic capabilities. RECON indicator compared with some of those used in other surveys.

RECON Democratic Audit	Democratic Audit	Bertelsmann	Freedom House
<i>How far and how equally do citizens enjoy civic capabilities needed for them to exercise public control over the polity?</i>	How extensive and inclusive is the right to education, including education in the rights and responsibilities of citizenship? How comprehensive and effective is legislation giving citizens the right of access to government information?	Does the government encourage the development of social capital amongst its citizens and social groups?	Do citizens have the legal right and the practical ability to obtain information about government operations?

Rule of Law

The relationship between law and democracy often appears perplexing. In a democracy, citizens must be able to see themselves as authoring their own laws as equals. Yet there would also appear to be some need for laws which can be made by judges and/or enshrined in constitutions against the will of day-to-day majorities of the people or their representatives. It is thus easy to see law as in some sense autonomous of and prior to democracy to the extent it must set limits to the operation of the latter, and up-hold a deeper 'social contract' in which individuals can only be assumed to have rationally consented to a system as potentially coercive as majority rule on the understanding that the law can protect each person's rights against majority will formation itself.

If, however, we see popular sovereignty as consisting not in the will of this or that majority but in the process by which majorities are formed (Habermas 1996: 170; 185-6), we can, as it were, simultaneously prick any claims that law can be superior to democracy and see all the more clearly why it is of the foremost importance to it. Thus Habermas argues that far from law being external constraint on democracy, it is in performing or carrying out the conditions for authoring our own laws as equals that we commit ourselves to at least the following roles for law. First, 'comprehensive legal protection for individuals guaranteed by an independent judiciary'. Second, 'principles requiring that administration be subject to law and to judicial review. Third, 'the separation of state and society' (ibid.: 169). In sum then, the following indicator is proposed here:

Indicator 8. How far does the polity rest on a rule of law that itself encompasses no more and no less than those conditions required for citizens to author their own laws as equals?

Table 8. Rule of Law. RECON indicator compared with some of those used in other surveys

RECON Democratic Audit	Democratic Audit	Bertelsmann	Economist	Freedom House
<i>How far does the polity rest on a rule of law that itself encompasses no more and no less than those conditions required for citizens to author their own laws as equals?</i>	<p>Are state and society consistently subject to the law?</p> <p>How far is the rule of law operative throughout the territory?</p> <p>How independent are the courts and the judiciary from the executive, and how free are they from all forms of interference?</p> <p>To what extent are all public officials subject to the rule of law and to transparent rules in the operation of their functions?</p> <p>How equal and secure is the access of citizens to justice, to due process and to redress in the event of maladministration?</p>	<p>Does the separation of powers work?</p> <p>Does an independent judiciary exist?</p> <p>Are there legal or political penalties on officeholders who abuse their position?</p>	<p>Degree to which the judiciary is independent of government influence (Have the courts ever issued an important judgement against the government or a senior government official?)</p> <p>The degree to which citizens are treated equally under the law.</p>	<p>Is the judiciary subject to interference from the executive branch of government or from other influences?</p> <p>Are judges appointed and dismissed in a fair and unbiased manner?</p> <p>Do executive, legislative and other governmental authorities comply with judicial decisions and are those decisions effectively enforced?</p> <p>Do powerful private concerns comply with judicial decisions, and are decisions that run counter to the interests of powerful actors effectively enforced?</p>

Polity and Political Community

Few of us are likely to accept what we perceive to be rule 'by someone else's democracy'. Not only, though, does a democracy require citizens to identify with it and feel it is theirs, it may also require some determinacy in the definition of its membership: in who is an 'insider' and who is an 'outsiders'. Voting systems that require careful and uncontested calculations of majorities are especially dependent on this requirement. Representative democracy presupposes some agreed means of establishing congruence between representatives and represented, if it is to be clear which votes should contribute to the elections of which representatives, and which representatives should participate in the making of which binding decisions. But even more deliberative forms of democracy presuppose some understanding of who is and who is not to be included in the conversation on a basis of equality.

On top of all this, we will later encounter the argument that the self-determining ideals of democracy must extend to the design of democracy and presumably,

therefore, to the definition of the demos themselves. Thus putting the various elements of this section together, the following indicator is proposed here:

Indicator 9. How far is the polity accepted as a unit whose citizens can (themselves and through their representatives) make decisions that are morally and legally binding on one another? And how far can citizens acting as equals exercise public control over the design of the polity itself?

Table 9. Polity and Political Community. RECON indicator compared with some of those used in other surveys

RECON Democratic Audit	Democratic Audit	Bertelsmann	Economist
<p><i>How far is the polity accepted as a unit whose citizens can (themselves and through their representatives) make decisions that are morally and legally binding on one another?</i></p> <p><i>And how far can citizens acting as equals exercise public control over the design of the polity itself?</i></p>	<p>How inclusive is the polity of all those living within the territory?</p> <p>How much consensus is there on state boundaries and on constitutional arrangements?</p> <p>How impartial and how inclusive are procedures for amending the Constitution?</p>	<p>Is there fundamental agreement about which people qualify as citizens of the state?</p>	<p>Is there a sufficient degree of societal consensus and cohesion to underpin a stable, functioning democracy?</p>

Beyond the democratic minimum

On the assumption that they are either directly entailed by ‘public control with political equality’ or follow from that definition of democracy on fairly common place assumptions, the last section argued that something close to the indicators in table 10 constitute a minimum any political system must satisfy if it is to be classified as democratic. Yet, the indicators in the table still fall a long way short of a fully specified set of standards of democratic performance. By that I do *not* mean that there are likely to be difficulties testing them. Indeed, I will go on to make a case for defining indicators of democratic performance independently of how readily they can be tested. Rather, the under-specification of the indicators in table 1 is philosophical before it is methodological. The problem is that democratic theory itself implies that any attempt to base indicators on a ‘democratic minimum’ is likely to tell us only a part of what we need to find out if we are to make a satisfactory assessment of democratic rule in a particular time or place.

First, it is possible to have varying value preferences for how public control with political equality should be delivered. Perhaps the foremost example here is the argument between those who believe that there is inherent value in civic participation (since the citizen only develops and becomes a citizen through participation) and those who believe, to the contrary, representation is to be preferred (since it frees citizens to pursue other values and get on with the rest of their lives). But we might also add that different people seem to have different value preferences for how choice, competition, consensus, aggregation and deliberation should be balanced and combined in the delivery of public control with political equality.

Table 10. Summary of all RECON Democratic Audit indicators.

<p>The Indicators based on a democratic minimum</p> <ol style="list-style-type: none">1. How far, how equally and how securely do citizens enjoy rights of free speech, association and assembly?2. How far and how equally can citizens exercise public control through free and fair voting?3. How far can representatives elected by the people require all public bodies to account for their actions and exercise ultimate controlling power over them on a day-to-day basis?4. How far do political parties structure voter choice in ways which help citizens exercise public control as equals?5. How plural and how independent is the range of social groups, organised interests and communications media that seeks to influence the polity? How equal is their access to public institutions and how equally accessible are they themselves to individual citizens?6. How far are the decisions of the polity deliberated within a public sphere that allows all points of view to be considered, justified and decided in relation to all others, free of inequalities in power and resources?7. How far and how equally do citizens enjoy civic capabilities needed for them to exercise public control over the polity?8. How far does the polity rest on a rule of law that itself encompasses no more and no less than those conditions required for citizens to author their own laws as equals?9. How far is the polity accepted as a unit whose citizens can (themselves and through their representatives) make decisions that are morally and legally binding on one another? And how far can citizens acting as equals exercise public control over the design of the polity itself?

Second, it is likewise possible to have different preferences for how democracy should relate to other values and identities that are not themselves explicitly democratic. Democratic rule often involves trade-offs between values associated with democracy itself, and between democratic and non-democratic values. Those trade-offs may, in turn, be made more acute by technological limits to what is institutionally and socially feasible in any place at any one time. Minority protections, certain individual rights including rights to administrative fairness, and even certain technical aspects of governing performance (such as how to achieve certain outcomes that are 'time-inconsistent with the electoral cycle) are all values that different people believe should, to different degrees, be ring-fenced from the normal operation of the democratic process.

Third, as long as we accept that somewhat different justifications of democracy are possible, we have also to accept that there is room for putting different relative weight on those justifications, and that too has implications for standards of how democracy ought to be practised in any one place at any one time. Whilst it makes little sense to suggest that values of autonomy have nothing to do with justifications for democracy, it is up to any one historically situated group of individuals, precisely because they are assumed to be autonomous, to decide how far they *also* value democracy for its consequences, and, if so, which consequences. It is at this point that 'doing what the people want' can quite plausibly be brought back in as a secondary standard of democratic performance. Too contingent, and too context-bound to be part of a universal definition of democracy, it can quite plausibly feature sufficiently amongst reasons why a particular people value democracy to be adopted as a subsidiary

standard of democratic performance (after those which follow directly from a need for public control with political equality) for that people.

Yet it is not just on account local variations in value preference that indicators based on a democratic minimum will always need further specification in context. A further consideration is that empirical judgements – which will always be contextual in nature – need to be integrated to, and not separated from, the process of deciding what is a good form of democracy. As Jeffery Checkel puts it, ‘the best normative theory up-dates its arguments in the light of new empirical findings’ (2006: 20). Why is this? One answer is provided by Albert Weale’s observation that for any ‘non-utopian political theory ought implies can’ (Weale 1999: 8-9). Another answer is to be found in Hilary Putnam’s deconstruction of the fact-value distinction that has blighted so much of our thinking about social life. Amongst Putnam’s arguments for holding that we will ‘misunderstand the nature of fact as badly as we misunderstand the nature of value’ if we do not recognise the degree to which they are ‘mutually entangled’ (2002: 46) is a pragmatic view of how we arrive at values. Far from it being the case that values are somehow ‘mysteriously embedded’ in individual minds prior to encounters with the empirical world, ‘we make ways of dealing with the problematical situations’ that the latter throws at us and then ‘discover which ones’ we think ‘are better and which are worse’. In other words we discover our values through ‘learning and experience’; and all forms of ‘inquiry’ works through revisable ‘value presuppositions’ as much as they work through revisable ‘factual presuppositions’. ‘Changing ones values is not only a legitimate way of solving a problem, but frequently the only way of solving a problem.’ (ibid.: 97-8).

Thus indicators based on a democratic minimum will be doubly indeterminate. On the one hand, publics can have varying value preferences for how the democratic minimum should be realised, for how it should combined with other values, and even for how it should be justified. On the other, each of those value preferences must depend, in some part, on empirical assumptions that are themselves contingent and changeable.

However, democratic theory also implies that any indeterminacies in how any one polity should meet the democratic minimum can only be cleared up within the democratic process itself; and, even then, they can only be made temporarily determinate. This is a point of fundamental importance that is best understood by conjoining a general requirement of norm-setting with a specific characteristic of democratic norms.

By their nature, norms are socially or ‘inter-subjectively’ defined (Schmalz-Bruns 2007). The value of a norm to me depends in part on their value to others: on the possibility they offer of living together with others and combining with them to solve collective action problems using rules and procedures we can all recognise as right (Habermas 1996). What is inter-subjectively defined can, however, be inter-subjectively redefined. Modern – i.e. post-traditional – society involves precisely an understanding of norms as requiring continuous reflection on their continuing validity and optimal specification.

To this general recursiveness of norms, democratic theory adds its own reasons why it must be open to democratic publics to make their own normative choices and empirical judgements on a ‘real-time’ basis. If, we hold with James Bohman that the conditions of democracy must themselves be democratically determined, it has to

remain open to any demos to define and redefine as often as it wants any standards beyond those required for a democratic minimum, to change its value preferences between alternative ways of doing democracy, and even to revisit its own self-definition as a demos. Democracy may need pre-democratic if not pre-political to generate its own preconditions in the first place. But, once established, it cannot prescribe limits to any choices of value or of empirical means of realisation that can be made within the democratic minimum.

4. Where from here? Democratic Auditing based on the RECON models

The last section argued that indicators based on a democratic minimum – such as those set out in table 1 – cannot be fully determinate. There is room for both reasonable and recursive disagreement on what should count as satisfaction of that minimum. This section illustrates the difficulty with the help of three models of European Union democracy developed by the RECON project of which this research is a part.

First, a few words are needed on the contentious question of whether it makes much sense to talk of ‘models of democracy’. Following David Held (1996), and before him C. B. Macpherson (1977: 4), the value of distinguishing models of democracy lies in this: understandings of democracy are many and varied, but one thing they have in common is that each makes a number of closely interdependent assumptions about ethics, norms, institutions, human nature, economic and social relations, and so on (Held 1996: 8). Only by making those assumptions explicit and by exploring the often tight interdependencies between them can we adequately understand each type of democracy and identify what choices of value and what empirical judgements are involved in preferring one to another.

Full specifications of the RECON models can be found in Eriksen and Fossum (2007), and some of their further features will be drawn out over subsequent paragraphs. In summary, though, **RECON Model 1 (Delegated Democracy)** assumes democratic control of the Union through the democratic institutions of each Member State. **RECON Model 2 (Federal Democracy)** assumes ‘a democratic constitutional state, based on direct legitimation’ (ibid.: 20) at the Union level. **RECON Model 3 (Cosmopolitan Democracy)** assumes that the Union can be democratic without itself being a state (in contrast to model 2) or without depending on the democratic institutions of its Member States (in contrast to model 3). (Eriksen and Fossum 2007: 15-26).

Without attempting to be exhaustive, the following paragraphs distinguish the contrasting implications of each model for public control, for political equality, and for their corollaries. These conclusions are then set out in a table which demonstrates just how far each model implies quite different tests of how far our indicators of democratic performance are satisfied in the case of the European Union.

Public control. Under model 1 Member States contract with one another to delegate powers to the Union. Only evidence that the Union is so configured that citizens of each Member State can use national democratic institutions to secure *continued* control of delegations of power to the Union can constitute public control under model 1. Thus, for example, adherents of model 1 would look for evidence that procedures for Treaty change, for appointing to key Union office, for allocating resources to Union

budgets, for retaining national veto rights over Union legislations and for supervising execution of existing measures (such as comitology), can provide majorities of voters or representatives in each Member State what Mill termed 'the control of everything in the last resort' (see above for full quotation from Mill). Whilst it would be consistent with model 1 for Member States to set up constraining mechanisms at Union level (Eriksen and Fossum 2007)- such as a European Parliament, a European Court of Justice, and an Ombudsman –the only test of such devices is how far they help national democratic institutions in *their* controlling powers by, for example, setting off 'fire alarms', providing information that is helpful to national parliaments in their scrutiny, or by functioning as 'proxy actors' who for one reason or another are likely to behave as their national equivalents would have done in like circumstances.

In marked contrast, model 2 requires that public control of the Union powers should be exercised by pan-European majorities of all EU citizens or their representatives acting as equals. Model 2 assumes the Union is or should be a Federal order which has a demos of its own and in favour of which Member States alienate – rather than delegate – selected powers. Adherents of model 2 would probably regard model 1 as applying methods that are only suited to the democratic control of those parts of a federal order concerned with 'rule apart' to those aspects of it aimed at 'rule together: as applying methods suited to the control of powers reserved to the Member States to the powers assigned to the Union.

The core assumption of model 3 is that European citizens should be able to see themselves as authoring all laws made by the EU (Eriksen and Fossum 2007: 22) even where the Union operates from beyond the state without itself possessing the characteristics of a state; and even where it lacks a direct and visible relationship between polity and citizen, or, indeed, anything approaching an agreed demos. By considering what democracy would have to be like under such conditions, model 3 posits conditions for public control which both overlap with, and depart from, the other two models.

On the one hand, the Union would have to reproduce those features of the democratic state needed to meet the central assumption of model 3 that, whatever the form of the Union's polity, all its citizens should be equally able to see themselves as authoring their own laws through representatives. Thus, however appealing it may be for the non-stateness Union's polity to take the form of significant functional differentiation and/or segmentation into directly deliberative polyarchies (the continuous shaping and re-shaping of laws by conversations between their addressees) (Sabel and Zeitlin 2006), all proposals for new laws would still need to be publicly controlled in at least one conventional sense: they would need to pass at some point (Habermas 1996) through representative structures proceduralised for both political equality (of voting and deliberative rights) and for meeting the full range of challenges presented by the public control of authoritative allocations of value (see especially the above discussion of the difficulties of achieving 'holistic public control'). Here I understand Eriksen and Fossum to be claiming that what distinguishes model 3 from the other two is that those 'sluices' or 'filters' - those requirements that even in a non-state polity decisions should at some point pass through procedures similar to those of the constitutional democratic state – can mix the 'intergovernmental and the supranational' (2007: 20), provided that the end result allows all addresses of Union laws to see themselves as equal authors of those laws.

Political Equality. Although we have begun to touch on them, it is worth spelling out the markedly different assumptions the models make about political equality. Model 1 implies that individual citizens should count equally when the domestic arena is used to control delegations of power to Union institutions, but all national democracies should count equally in the European arena. Since delegated democracy aims to align the Union with continued control by national democracies, it presupposes each of the latter should be equally capable of exercising ultimate controlling powers over the Union. Only if each national democracy formally or informally retains means of reasserting control, would it be justifiable under model 1 for it to delegate powers to the Union that can be exercised by procedures that attribute more votes to some Member States than others.

In contrast, Model 2 implies that it is individual citizens, and not national democracies, who should count equally in procedures designed to ensure representation and control at the Union level. If this principle has to be traded off against others, Model 2 would imply that individual citizens should at least count equally in all trade-offs made. Thus, for example, Model 2 would require either linear or degressive proportionality in the allocation of Council votes and EP seats: once each Member State has received the same minimum level of representation needed to make some provision for the representation of cultural-territorial units and not just persons, extra votes and seats should be allocated in some regular and principled relationship to the total adult citizenry of the Union residing in that Member State.

Proponents of model 3, on other hand, are more likely to assume that political equality should be delivered at least as much through discursive standards as through formal and procedural rights. According to this model what really counts is that all points of view should have equal chance of shaping the outcome, regardless of inequalities in the political, economic or social power of those supporting them. This is, in turn, a condition that can only be met through procedures for justification rather than aggregation. Whilst, then, adherents of model 3 would obviously regard equal votes as being essential, they would be likely to do so from within an Habermassian position that regards voting itself as no more than the fairest way of making *pro-tem* decisions pending the emergence of discursively ideal conditions in which the real hopes for political equality consist.

Corollaries of public control with political equality. Turning from public control and political equality themselves to their enabling conditions, the three models are, once again, contrasting in their implications. Whilst, as seen, model 1 implies that Union institutions must be configured to allow for control by national democracies, it is also clear that all the enabling conditions for democracy - rights, civil society, public sphere, civic capabilities and political community - can and should be delivered through the domestic arena.

In contrast the core assumption of model 2 - that only majorities of all Union citizens counting acting as equals can democratically control the exercise of powers assigned to the Union - implies that rights protections, a public sphere, a functioning civil society and an agreed demos will all need to be secured to some measure at the Union level. The following paragraphs elaborate.

If majorities of all EU citizens are to make decisions binding on all, it surely follows that all Union citizens are entitled to some guarantee that the majorities binding on

them have been formed with the help of ‘fundamental freedoms’ of speech, assembly and action’ that are adequately secured throughout the territory of the Union? Thus even if the political rights necessary for democratic majority formation in Union institutions originate in the Member States, there would be a strong case under model 2 for agreement at the Union level on minimum standards and guarantees for those rights.

The assumption of model 2 that pan European majorities will use the powers of the Union to regulate aspects of their lives in common also implies the need for a European Union public sphere. Even if the latter were to operate through a mutual opening of national public spheres, the key point is this: rights and duties to equal consideration would no longer stop (if they ever really did) at the boundary of each national public sphere. Each member of each domestic public sphere would owe all other Union citizens all those obligations– to mutual justification of arguments, to public reason, to non-coercive will formation and so on – that are necessary for legitimate majority formation.

For like reasons, model 2 presupposes a sufficiently developed ‘political community’ at the Union level. It is an open question whether that could be as ‘thin’ as a shared understanding of those norms of mutual recognition and respect that are needed for individuals to communicate and decide together, or whether ‘political community’ at the Union level would have to be ‘thickened up’ at least as far as a ‘constitutional patriotism’ and possibly as far as more affective ties of shared history, myths and *teloi*. Likewise it is an open question whether procedures for majority formation can be varied to lighten the demands of political community formation, perhaps with help of decision rules which aim at the largest and not the smallest possible majority or which follow the adage the ‘majority should get its way, but only with difficulty’ (Lijphart 1984). But whatever combination is adopted from the many possible ways of constructing political community and the many possible ways of designing decision rules, model 2 presupposes some level of agreement that all Union citizens can bind one another through majorities of voters and of representatives.

Model 3, for its part, is doubly challenging of conventional understandings of how to meet the enabling conditions for democracy. Since model 3 is premised on a non-state polity, Union law, including that enjoining all actors to comply fully with the controlling functions of the representative system, cannot in and of itself enjoy the coercive force of the state. Thus, model 3 must assume a high level of voluntary compliance (Eriksen and Fossum 2007: 20) with formally structured democratic procedures, even from those who might otherwise have the cunning, power or resources to get at least some of their way without exposing themselves to the controlling powers of elected representatives.

As if that is not challenge enough, standards of public control are owed – as are all rights under the cosmopolitan assumptions of model 3 – to all those affected by Union policy and law and not just to that more or less determinate set of individuals who enjoy formal status as citizens of the Union. Whereas models 1 and 2 are free to reproduce the assumption of state based conceptions of democracy that there is a distinction to be made between ‘insider’ and ‘outsider’ rights albeit within different containers (Member States in the case of model 1 and a European federal state in that of model 2), model 3 understands democratic rights as being owed to all addressees of a law and not just those who happen to be the same unit of governance. ‘Insiders’ can only decide how to use their own rights in particular ways. They cannot expunge the

rights of 'outsiders' which must be continuously kept in view within their own internal decision-making. Indeed, we will see in a moment model 3 requires the removal of territorially bounded – and any other 'essentialist' - understandings of the demos.

Yet, if I understand model 3 correctly, its adherents see the foregoing challenges as having the same origin and the same solution. Not only do I assume its proponents regard democracy as the only valid means of legitimating political power in post-traditional society - as having, as it were, a monopoly of legitimate legitimation - but model 3 effectively strips the legitimating force of democracy itself down to the single principle that citizens acting as equals should be authors of their own laws (Eriksen and Fossum 2007). All else – including the democratic state and use of territoriality to deliver congruence between *demoi* and systems of representation – are but institutional means to be used when they support the principle of equal self-authorship of laws by all those affected by them, to be transcended when they do not. Once, however this is taken into account, it is easier to see why adherents of model 3 are prepared to put confidence in compliance with democratic norms in the absence of the enforcing structures of the state and in a cosmopolitan respect for rights. In so far as both or either of these are required if all those affected by a Union law are to see themselves as authoring those laws, attempts to do without them will simply not be legitimate, a point which those who properly understand legitimacy will comprehend in terms of their own standards, and others may sometimes grasp for the more prudential reason that they are more likely to achieve their objectives by means they can justify to all their policy addressees.

Pulling the various strands together, table 11 summarises how adherents of the three models might test the indicators of a 'democratic minimum' proposed earlier in the paper. The table is necessarily crude and provisional. It is intended to provoke, rather than close, debate on comparative institutional means of realising and recognising the three models. These qualifications aside, it confirms that any one of the models could indeed make broad indicators based on a democratic minimum more determinate. Yet they do so in such markedly different ways that what would count as adequate evidence of democratic performance under the assumptions of any one model would clearly not satisfy either of the other two. The conclusion will argue that the only reasonable response to this is to test the democratic performance of the Union simultaneously against all three models.

Table 11. Model specific ways of meeting the RECON indicators of democratic performance

Indicator	Model 1	Model 2	Model 3
How far, how equally and how securely do citizens enjoy rights of free speech, association and assembly?	National freedoms of speech, association and assembly are available to domestic publics in their control of powers delegated to the EU.	Union-wide guarantees of freedoms of speech, association and assembly in each Member State.	EU treats freedoms of speech, association and assembly as cosmopolitan rights to which even those addressees of its laws who are not its own citizens are entitled.
How far and how equally can citizens exercise public control through free and fair voting?	Free and fair elections to national executive and legislative offices which control delegations of power to the Union.	Free and fair elections to executive and legislative office at the Union level	Free and fair elections to all representative bodies that together exercise controlling powers over the Union (see next point)
How far can representatives elected by the people exercise ultimate controlling power over all public bodies on a day-to-day basis?	Effective national parliamentary scrutiny and control of powers delegated to the Union.	A European Parliament scrutinises and controls of the powers of other Union institutions.	Combinations of national and European parliamentary control reproduce aspects of the democratic state (holistic public control and political equality) even in a non-state polity
How far do political parties structure voter choice in ways which help citizens exercise public control as equals?	National party competition allows citizens to exercise control over delegations of power to the Union	Parties structure voter choice so that elections to EU office can be used to exercise control over Union decisions	Networks of party actors at the national, European and international levels support an inter-parliamentary co-operation with a cosmopolitan reach.
How plural and how independent is the range of social groups, organised interests and communications media that seeks to influence the polity?	Range and independence of the national civil society actors that seek to influence Union policy, and the equality of their access.	Range and independence of civil society actors organised to influence majority formation at EU level and equality of their access	National, European and international networks of all civil society actors allow all affected by Union policies to participate equally and critically in their formulation.
How far are decisions deliberated within a public sphere that allows all matters to be justified and decided, free of inequalities in power and resources?	Each Member State is a well-formed public sphere where all points of view have equal access to national procedures for controlling delegations of power to the EU	The EU is itself a public sphere in which all views on the exercise of its powers are considered and justified in relation to one another on a basis of equality	The exercise of EU powers is guided by a commitment to ideals of a cosmopolitan public sphere in which equal consideration is given even to policy addressees who are not EU citizens.
How far and how equally do citizens enjoy civic capabilities needed for them to exercise public control over the polity?	Citizens are able to make informed and deliberated choices in selecting representatives who exercise national procedures for controlling delegations of power to the EU	Citizens are able to make informed and deliberated choices in elections to executive and legislative office at the Union level.	As well as allowing its own citizens to make informed choices, the EU puts no unreasonable obstacles on capabilities that addressees of its laws who are not Union citizens need for the exercise of their rights to fair consideration in the making of EU decisions.
How far does the polity rest on a rule of law that itself encompasses no more and no less than those conditions required for citizens to author their own laws as equals?	National procedures for controlling delegations of power to the EU are covered by rule of law principles in all Member States	The European Union develops its own democratic rule of law controlled by majorities formed at the European level	Soft law is sufficient to ensure compliance with all conditions necessary for all the Union's policy addressees to see themselves as equal authors of those laws.
How far is the polity accepted as a unit whose members can make decisions binding on all? How far can citizens exercise equal control over the design of the polity itself?	National control over delegations of power to the Union ground public acceptance of the EU polity itself. National procedures for bargaining and ratifying Treaty change allow citizens of all Member States to exercise public control over the design of the EU polity as equals	Majorities of voters and their representatives are widely accepted as having the right to make legally binding decisions in the exercise of powers assigned to the EU. Those majorities can also control the further development of the EU polity as equals in so far as changes affect powers already assigned to the Union.	The EU polity is accepted as a legitimate source of law-making by all addressees of those laws (and not just by citizens of the Union) who are also able to control as equals further developments in how the Union polity will apply to them

5. Conclusion

This paper has argued that indicators of democratic performance need to be specified in two stages: first, by considering conditions that any democracy should be expected to meet; and second, by identifying local variations in value preferences and conditions of feasibility. Far from implying anything goes the two steps are, in combination, quite demanding. Section 2 suggested that there are at least nine corollaries of public control with political equality that all polities should have some means of satisfying. Section 4 then argued that any further assumptions about local variations in value preferences and in conditions of feasibility need to be set out systematically in models of democracy.

The paper then went on to apply this approach to the EU. If we assume that the RECON models demonstrate just how much room there is for reasonable disagreement on what empirical conditions should count as satisfaction of indicators based on a democratic minimum, it is presumably only by simultaneously testing the democratic performance of the Union against all the tests set out in table 11 that we can avoid presupposing the superiority of any of the very value positions that is in dispute in choosing between alternative approaches to the democratic control of the Union. The need to avoid this error will be more acute if we assume that surveys of democratic performance should not just appraise polities against fixed standards. For all the reasons set out in section 4, evaluations of democratic performance may themselves have a role in deciding on-going standards and broader questions of democratic design.

The suggestion, however, that we may need to test the democratic control of the Union against multiple standards, and then feed the results of those appraisals back into our views of how democratic we can reasonably expect the Union to be at any one time and against which set of standards, must seem hopelessly daunting. In order to offer some reassurance, I would like to de-dramatise what I believe is involved in any democratic evaluation by justifying my earlier comments that the choice of indicators of democratic performance should be normative first and empirical second. Although *elements* of democratic performance are manifestly measurable, the key difficulty is that we cannot hope to arrive at an *overall* assessment of the democratic minimum defended in section 2 using straightforwardly quantitative measures alone.

It is thus unsurprising that all the surveys mentioned in this study rely to some degree on qualitative expert judgements of how polities perform against their indicators. Thus armies of scorers, deliberative panels and so on, are typically asked to assess each indicator. Before this is regarded as a second-best solution that in an ideal world would be replaced by entirely judgement-free measurements, two points need to be emphasised. First, the 'linguistic turn' in epistemology questions the coherence of even attempting a science that is free of any need to make judgements about criteria of validity, selection and significance. Second, judgement too has its epistemic responsibilities. There is, for example, a difference between judgements that make their criteria of appraisal explicit and those that do not; between those that leave an audit trail of all empirical evidence used in the making of judgements, and those that do not; and those that do or do not test whether the shortcomings they identify can be causally attributed to recurrent features of a political system, rather than to once-off events. If, though, we have no reason to be shy of expert judgements for these reasons, it seems to me that the task of evaluating the Union against alternative models of how it might be democratically controlled, and of doing so at repeat intervals, is well within the bounds of feasibility.

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