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Delegation Without a Coherent Nation: Non-majoritarianism in European and American Single Market Governance

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Abstract: Non-majoritarian institutions like independent agencies and central banks play a significant role in market governance in the EU, the U.S., and everywhere. For many scholars, however, delegation to non-majoritarian institutions requires the embedding in a single, coherent democratic people in order to be legitimate. This view underlies many of the strongest normative critiques of the EU, where the substantial powers of non-majoritarian institutions like the Commisison, the European Central Bank, and many decentralized agencies enjoy no such justification. I argue that this common normative account relies on an unsustainable notion of cultural and political coherence as a prerequisite for legitimacy. In its place, I defend a theory of legitimacy which builds on robust claims to the common good, expertise, and value inputs—all authorized and controlled by thinner democratic procedures. Using the example of single-market governance in the EU and the U.S., I show that legitimacy assessments which presuppose strong cultural and political coherence overstate the differences between the two polities.

Keywords: legitimacy, single-market governance, non-majoritarian institutions, European Union, United States

Introduction

The delegation of power to non-majoritarian institutions is a consistent feature of modern governance. It is also hotly contested. The European Union is routinely attacked for being run by faceless and unelected bureaucrats. In the US today, the second Trump administration assaults the independent civil service, regulatory agencies, and the Federal Reserve with a fervor not seen in more than a century. Proponents see delegation as a necessary component of good governance: Certain policy decisions are best made by competent experts, away from the chaotic, volatile world of electoral politics. Opponents see it as suspicious from a democratic point of view. The delegation of power to unelected experts violates the fundamental principle of democratic equality as it gives power to institutions not ultimately accountable to elected politicians. It can lead to domination by the unelected.

Delegation in multi-level polities and federations like the European Union and the United States is especially complex. Delegation here entails not only a sideways transfer of power from parliaments to non-majoritarian institutions but also an upwards transfer of power from sub-units to the central authority. At the same time, the functional need for unelected bodies might also be higher in multi-level polities. Non-majoritarian institutions, because of their purported status as objective and neutral bodies building on sound empirical evaluations rather than value-laden politics, are often taken to be able to transcend sub-unit differences and provide necessary coordination and harmonized regulation. And indeed, independent agencies are core components of both the American federal government and the EU's "regulatory state."

Some scholars argue that the legitimacy of non-majoritarian delegation to the central level depends on authorization by, and embedding in, a coherent democratic people (Bellamy, 2019 is one prominent example). Wherever a truly unified public sphere, common political culture, or grounds for solidarity are lacking, non-majoritarian delegation will be problematic. This line of argument will conclude that non-majoritarianism in the EU suffers from a legitimacy deficit while the US does not.

This paper will argue against that position, using the example of single-market governance. Both the EU and the US are large internal market areas—areas of more or less free trade between member states in Europe and between states in the US. I will argue that while there is a democratic risk associated with delegation, it must be weighed against the risks associated with keeping markets unregulated (which will disproportionately benefit large corporations at the expense of states, consumers, or citizens) or with dismantling internal markets (which might lead to welfare losses). Societies are in principle free to choose to tackle the management of single markets by delegating to non-majoritarian institutions, so long as certain criteria are met. First (and this is uncontroversial), the act of delegation itself, including deliberation on institutional mandates, should be a task for ordinary, majoritarian democratic procedures. But I propose three further, non-procedural criteria for legitimate delegation. Non-majoritarian institutions must (1) work in service of a clearly specified common good, (2) build on reliable expertise, and (3) contain appropriate venues for value inputs (for an elaboration see Fjørtoft 2026). The single democratic people criterion, by contrast, is too coarse. It bans too many instances of potentially legitimate delegation, it fails to diagnose the most important failures of existing instances of delegation, and it comes with unattractive side effects. While I remain critical of many existing practices of delegation, I suggest that a more fruitful angle of criticism is one that does not rely on a shaky and unsustainable notion of cultural or political coherence.

The legitimacy of non-majoritarian institutions

Given the scale and complexity of governance, non-majoritarian institutions are facts of life in modern democratic systems. In most states, certain tasks are delegated to bodies that do not directly answer to elected politicians. There is a democratic problem by delegating to non-majoritarian institutions, namely that independence from majoritarian politics disconnects these institutions from a fundamental source of democratic legitimacy: democratic equality cashed out through representative processes of majority rule (see e.g. Waldron, 1999). Any defense of non-majoritarian delegation must deal with this democratic problem.

Existing defenses tend to either bite the bullet by saying that democracy is not the sole criterion of legitimacy in political systems or to expand the definition of democracy to include other principles in addition to democratic equality and majority rule. In the first camp, we find various defenders of technocracy and good governance, arguments "against democracy" (see e.g. Brennan, 2016), and a large tradition of research, influential in debates on EU democracy, that focuses on "output legitimacy" (Scharpf, 1999; Moravcsik, 2002). In the latter camp, we find discussions of democracy's obligation to safeguard the epistemic quality or truth-sensitivity of decisions (Christiano, 2012) or build on informed and reasonable deliberation (Pettit, 2004). My own approach treats non-majoritarian institutions as part of democracy, but it rejects a narrow, catch-all criterion of democracy which every part of government must satisfy in the same manner. Instead, I will argue that there is only claim that can possibly justify non-majoritarian delegation in democratic terms: Delegation can only be justified if it brings about benefits that are impossible to realize under majoritarian control. If non-majoritarian delegation is the only way to achieve certain outcomes we value as a society, such delegation should in principle be permitted—but subject to further constraints. The next section will present in more detail this rationale for delegation in the context of single market governance.

Single market governance and the management of externalities

Consider the reason for establishing non-majoritarian institutions in the first place. There are some instances where delegation simply serves to lower transaction costs. Political participation takes time and there are a limited number of elected officials. Neither politicians nor ordinary citizens can be directly involved in every decision of the state apparatus. In such instances of delegation, however, little seems to be gained and much lost from strong independence from majoritarian politics, so transaction costs offer no justification for *non-majoritarian* delegation. We want elected politicians to be able to exercise direct control over such issues when required, even if they spend most of their time on other things.

The stronger defense of *non-majoritarian* delegation comes in instances where delegation serves to obtain a good that is difficult or impossible to realize under direct control by elected politicians. This is arguably the case when institutions bring about credible commitments to a policy goal that politicians have short-term incentives to deviate from or when they bring about epistemic benefits, due to the institutions' specialized expertise, that need shielding from political influence (see e.g. Majone, 2001). An independent central bank is the classic example of an institution justified by credible commitments; a statistical office would be an example of an epistemically justified one. (Although, as we will see, the two justifications tend to overlap.) In both cases, there is something major to be lost, according to classical arguments, if it is too easy for politicians to influence these institutions' decisions. Delegation so understood is part of the toolbox of collective self-rule and not external to it (van 't Klooster, 2020). In many instances, citizens seem to accept or even prefer an extensive role for independent expertise in policymaking, perhaps due to a dissatisfaction with representative party politics or a high trust in science and expertise (Bertsou and Caramani 2022; Bickerton and Accetti 2021; Caramani 2017).

We should be clear about what kind of political independence non-majoritarian institutions require. There are good reasons to be skeptical towards non-majoritarian institutions as something that can be enacted in any policy area and entirely cut loose from all democratic procedures. This is not a defensible proposition from any reasonable theory of democracy. In order to obtain the goods that independence is said to provide, most arguments only require independence from *electoral cycles* and the incentives that such cycles bring (Lord, 2021, p. 69). Non-majoritarian institutions can be made unresponsive to the incentives coming from electoral politics (for instance the pressure to artificially boost the economy with interest rate cuts right before an election) without full insulation from democratic value inputs altogether. There might—

and as I will argue, there should—be a place for a range of more targeted democratic value input into institutions separate from the electoral channel (see e.g. Bagg, 2021).

The case of internal market governance in a multi-level polity is plausibly a favorable case for non-majoritarian delegation. Many would accept regulators acting in market-making as well as market-correcting modes, for instance by ensuring competition, enforcing homogeneous product safety standards, or dealing with positive and negative externalities. Wherever externalities are of a border-crossing nature, which many will be in an integrated market area, there seems to arise a need for non-majoritarian delegation not only horizontally but also upward to the centralized level. National politicians seek credible commitments in the eyes of politicians in other states in the polity. For instance, if a market-correcting measure like an intergovernmental environmental agreement "imposes heavy fines on industrial polluters, national regulators will be tempted not to prosecute domestic firms as rigorously if they determine the level of enforcement unilaterally rather than under supranational supervision" (Majone, 1999, p. 6). Such incentives might be avoided by uploading the regulatory competence to the supranational (or federal) level. Moreover, the need for non-majoritarian delegation can arguably be *greater* in societies like the US and the EU—one a federal system, the other a deeply plural one—than in more homogeneous cultures. They can in theory prevent the domination of minorities by majorities and work as a mechanism for cleavage management. As Majone puts it, they are a way to overcome deadlock and even disintegration (Majone, 1999, p. 19).

The governance of the EU's single market is non-majoritarian in two senses. First, many regulatory tasks are delegated to decentralized agencies that are by design independent of the Commission, European Parliament, and—to varying extents—the member states. Most of these agencies have management boards where member states are represented. But their independence is codified in their founding legislation through terms about the appointment of agency leadership, budgetary independence, discretion to make decisions within its remit, and so on (Wonka and Rittberger, 2010). EU single market governance is also non-majoritarian in the sense that rulemaking in the single market is decoupled from any one electoral cycle. The Commission has a monopoly right of initiative in proposing legislation on standards, which then must be approved by both the Council and the European Parliament (EP). The Council can only decide by a qualified majority or consensus. No one electoral cycle—either at the European or national levels—can therefore change all the different majorities needed to decide the EU's single market rules.

The United States also has a strong non-majoritarian streak. The US has a long tradition of independent agencies, or commissions, dating back to the Interstate

Commerce Commission (ICC) of 1887 (Rose-Ackerman, 2022, p. 90). They proliferated during the New Deal era, which was a high-water mark for public faith in unelected experts and administrators to solve social problems. Since Reagan's presidency, however, regulatory agencies have been under sustained criticism, and many have been dismantled. This includes the ICC, which was abolished in 1996. As evident by the fact that the ICC was the first independent US commission, the facilitation of interstate commerce has been a core reason for establishing independent agencies.

In summary, there are plausibly functional reasons, going beyond mere efficiency concerns, for delegation to non-majoritarian institutions in democratic societies. Such reasons arise wherever delegation away from majoritarian politics brings about benefits that would be impossible to realize under majoritarian procedures. The governance of trade in an integrated market area like the EU or the US might be an area where this condition holds true, due to the need for credible commitments to both market-correcting and market-making policies. As I will return to, however, I hold that functional benefits alone are not sufficient to justify delegation. But they are a necessary starting point.

Two arguments for the single democratic people requirement

Many authors are skeptical towards the above justifications for delegation. Majone's optimistic account of non-majoritarian institutions has been challenged on many fronts, though I will not rehash the general debate here. Instead, I will zoom in on the claim that non-majoritarian institutions need to be embedded in a single democratic people to be legitimate. Claims to this effect are found in Bellamy (2010, 2019), Føllesdal and Hix (2006, p. 556), and others—including Majone when writing about social policy or about the post-crisis ECB (Majone, 1999, p. 20; Majone 2014, ch. 5).[1]

The requirement of a single democratic people rests on two arguments. One starts from democratic legitimacy, the other from control and accountability. The argument from democratic legitimacy says that non-majoritarian institutions are part of the political domain, and that they therefore must be subject to the same legitimacy requirements as the system as a whole. And the system as a whole requires a coherent democratic people. The argument from control and accountability says that a single

[1] "…the delicate value judgements about the appropriate balance of efficiency and equity which social policy expresses, can be made legitimately only within homogeneous polities" (Majone, 1999, p. 20). "Those European scholars who look to the Federal Reserve as the better model … seem to forget that the Federal Reserve operates within the framework of a democratic polity capable of providing all the necessary checks and balances" (Majone 2014, p. 175).

democratic people acts as a control mechanism for non-majoritarian institutions, offering a necessary venue of accountability outside of the electoral channel.

Take the argument from democratic legitimacy first. This is most clearly developed by theorists who Christina Lafont calls "deep pluralists" (Lafont, 2019, p. 42). Deep pluralists claim that the need for a common course of action in the face of persistent disagreement make out the "circumstances of politics" (Waldron, 1999). There is no public conception of the common good that is acceptable beyond reasonable objection. But whereas no democratic theorists take issue with the fact of disagreement as such, there is debate as to how deep the disagreement runs: "[D]eep pluralists believe that disagreement runs so deep that a democratic theory should not assume that it can be overcome" (Lafont, 2019, p. 42). Other approaches, however, are more optimistic that certain disagreements can in fact be overcome.

If political disagreement runs so deep that any consensus on values or conceptions of the good is impossible, it will be difficult to justify non-majoritarian institutions on the grounds that they provide some benefit that is socially desirable across the board. Justifications of non-majoritarian delegation, when they define certain areas as technical and unaffected by the circumstances of politics, ignore "the obstacles posed by reasonable normative and empirical disagreements and fallibility to attempts to objectively define the common good even in these areas" (Bellamy, 2010, p. 11). Non-majoritarian institutions must therefore be subject to the same legitimacy requirements as the democratic system at large. If your larger theory of democracy requires a single democratic people, so will non-majoritarian institutions.

Richard Bellamy gives one such theory. The state is legitimate, he claims, because it gives citizens reasons to believe that it treats them as equal (Bellamy, 2019, p. 54; see also Waldron, 1999, p. 111). Building on Rawls, Bellamy holds that "democratic legitimacy will depend to some degree on whether those making up the citizenry relate to each other in ways that render such an equal and public process possible and appropriate" (Bellamy, 2019, p. 78). The definition of an appropriate *demos* requires a high degree of interdependence between the members of a community, and citizens need to "conceive themselves as a public and be able to act as such" (Bellamy, 2019, p. 79). This requires a shared public culture and sphere, a shared history and language, and so on. In Bellamy's republican framework, these conditions provide for a non-dominating democratic process (Bellamy, 2019, p. 80) and hence for legitimacy. We see here how the single democratic people criterion, for Bellamy, is a necessary part of the procedural answer to the problem posed by the circumstances of politics, i.e., deep disagreement.

The second argument is about control and accountability. Non-majoritarian institutions' embedding in a national public culture and sphere will provide a much-needed mechanism for accountability and control even for independent institutions. Here is Bellamy again:

> None of the above denies that [non-majoritarian] mechanisms might occasionally supplement standard forms of 'input democracy', as is the case in many member states. However, they are directly or indirectly controllable by formal or informal political channels that respond to majoritarian politics and public opinion. Thus, central banks have to deal with widespread discussion of their decisions in the media and the governors are often accountable to and removable by politicians. *By contrast, no pan-European public sphere capable of generating an equivalent pressure in the EU exists* while political control of the ECB is substantially weaker. (Bellamy, 2010, p. 11, my emphasis)

It will—and should—be difficult, according to this argument, to buck sustained majorities, even for institutions that are independent from direct political control, if they are embedded in a thick public sphere and political culture. Where no strong public sphere exists, this mechanism is lacking, leaving non-majoritarian institutions unaccountable and unchecked.

Against the two arguments

As I will show in this section, we have good reasons not to accept the arguments from democratic legitimacy and control and accountability. In countering the arguments, I will specify a democratic theory that includes non-majoritarian institutions in the political domain, but which rejects that a cultural coherence requirement follows.

There are two possible ways to counter the argument from democratic legitimacy. Recall that the argument says that institutions need to respect citizens as equal because there is no reasonable agreement on what the best policy would be, and majority rule, embedded in a single democratic people, is the way to respect citizens as equals in a non-dominating way. The first way to counter this argument is to reject the wide definition of the political domain and argue that certain types of decisions or government institutions are, in fact, outside it. The second is to grant a wide scope for the political but reject that a thick identity requirement follows. I will spell out each in turn.

The dominant twentieth-century solution to the "problem of expertise" has been to stipulate a division of labor between experts and politicians, relying on a separation between facts and values, means and ends (Pamuk, 2021, p. 7; Zacka, 2022, p. 24; Elster, 2024). Woodrow Wilson, in an article credited to have launched the field of public administration, asserts that "administration lies outside the proper sphere of politics. Administrative questions are not political questions." This distinction, he claims, is "too obvious to need further discussion" (Wilson, 1887, pp. 210–11; see also Postell, 2021).

According to this view, politicians take political and value-based decisions on ends, while the administrative apparatus and non-majoritarian institutions operate strictly in the realm of means—of *purely technical decisions*. This move, in effect, says that the circumstances of politics do not apply to the set of decisions that non-majoritarian institutions make. The entire problem of the *demos* requirement is bypassed entirely, since it does not apply to these decisions. In earlier debates on the European Union, scholars have made this exact move. They argued that the EU did not, in fact, suffer from a democratic deficit because the decisions it made were only about technical regulation, pure Pareto improvements, or politically unsalient matters, not *political* choices (Majone, 1996; e.g. Moravcsik, 2002; cf. Føllesdal and Hix, 2006).

The technical-political distinction has also routinely been used to justify delegation to non-majoritarian bodies at large (Vibert, 2007). One central way scholars have attempted to separate the political from the technical is to draw a distinction between redistributive and efficiency-seeking or Pareto improving decisions. The conventional justification says that redistributive decisions belong in the political domain, while purely efficiency-related matters are appropriately technical and can therefore be legitimately delegated to expert bodies.

For reasons spelled out by many scholars, however, this move is rarely a defensible justification for non-majoritarian delegation (Eriksen, 2021; Fjørtoft, 2024; 2026). In brief, this is because the separation between political and technical decisions is rarely as clean as presupposed. Epistemic procedures unavoidably involve value-based decisions, for instance on their significance (Pamuk, 2021) or the acceptability of different types of error (Douglas, 2009). Even matters of efficiency or Pareto optimality involve value judgments about what to optimize *for*. Pareto improvements are for instance compatible with increased inequality in society, which would be seen as unwarranted from an egalitarian moral position. (And sometimes one would need to choose between different Pareto improvements with different distributive shapes.) The unavoidable entanglement between political and technical decisions, and by extension the shortcomings of the division-of-labor approach of earlier debates, is also a core part of more recent debates in political economy on, most notably, post-crisis central banking in the EU and worldwide (see e.g. Downey, 2025; Moschella, 2024; Quaglia et al., 2025; Stahl, 2021; van 't Klooster, 2020). If these critiques are valid, the division-of-labor approach fails as a sweeping justification of non-majoritarian power. Delegation cannot be justified by a naive and often unsustainable claim to technical value freedom or a lack of distributive effects.

The failure of the division-of-labor approach implies that non-majoritarian institutions must be treated as part of the democratic system and evaluated on democratic credentials. Some kind of democratic anchoring is necessary. But does this anchoring need to be of the thick, cultural kind that Bellamy and others presuppose? To answer this question, I will spell out my alternative theory of non-majoritarian legitimacy in more detail. The question of non-majoritarian legitimacy is a search for the conditions under which it could be permitted to deviate from the democratic principle of majoritarian control and authorization in pursuit of functional goods that would be impossible to realize under it. Delegation is plausibly only permitted for a restricted set of policy tasks with specific demands on institutional design. I will suggest a set of three criteria that must be fulfilled if non-majoritarian authority is to be legitimate. A claim to non-majoritarian legitimacy must build on a functionally specific and plausible appeal to a common good; non-majoritarian institutions require reliable expertise and institutional mechanisms to safeguard it; and institutions must contain venues for value input which are decoupled from electoral cycles. For the present discussion, I will bracket the matter of expertise. I will only say that where robust expertise is lacking—either due to the unreliable nature of the expertise in question or due to an institutional structure that does not allow for epistemic flourishing—non-majoritarian legitimacy will run into trouble. Many existing institutions will run into such trouble, and this is a developed line of critique against delegation and technocracy writ large (see e.g. Friedman 2019). This is, however, more of an institutional-epistemic matter and bears little on the single democratic people argument which is the concern of this paper. I will instead center on the weight-bearing common good and value input requirements.

Common good

Take the common good requirement first. Bellamy claims that non-majoritarian authority is inappropriate because of the impossibility of objectively defining the common good even in purportedly technical areas (Waldron, 1999; Bellamy, 2010, p. 11). Zacka (2022) encapsulates the worry:

> [H]ow can one arrive at a specification of the public interest without consulting the people? Isn't that what elections are for, and how could one hope to short-circuit the process? It would seem that a theory of administrative legitimacy that aspires to be democratic cannot so readily disconnect inputs from outputs. (Zacka, 2022, p. 26)

This is clearly a challenge to the division-of-labor model discussed above. But it need not be a challenge to the prospect of non-majoritarian legitimacy altogether. This is because common goods are easier to ascertain in some areas than others, it is not the task of unelected bodies to define them, and they do not need to be objectively defined once and for all.

Non-majoritarian bodies should not be empowered to define and pursue *the* common good as a broad, monolithic thing. This would give too much leeway for such bodies to trade different goods against each other in a manner that should be reserved for democratic politics. Instead, it seems more defensible to look for functionally delineated, specific policy areas in which the common good can be more uncontroversially assumed (see Warren, 1996). For instance, as Jens Steffek observes, people seem to have a "consistent and enduring aversion to plane crashes, food poisoning, and buildings on fire" (Steffek, 2015, p. 275). What such policy areas have in common is that it is possible to construct an argument for why it is in the interest of all reasonable citizens to enforce a certain level of safety, protected from undue political and industry pressure. In the context of single market regulation, relatively clear candidates of common goods would be consumer product safety, the regulation of natural monopolies, or antitrust and competition regulation. In all these areas, both the EU and the US have established independent agencies. The underlying assumptions are, respectively, that all citizens will have an interest in safe products; it benefits all market actors to have some common rules for trade in energy, for instance; and monopolies or firms abusing a dominant position are undesirable by most economic theories. We see that common goods are often easiest to ascertain in the negative: While it may be difficult to react broad agreement on goods, agreement on what "bads" we wish to avoid is more feasible.

Actual democratic authorization will play an important role as a first-level democratic anchoring. The act of delegation, as well as the specification of the established institution's mandate, is a task for elected politicians. However, justifying delegation by reference to the common goods they provide will unavoidably also rest on a notion of hypothetical acceptance (Pettit, 2004). It is not realistic to ask all citizens whether they support an instance of delegation, and people are not perfectly rational, disinterested, and informed. A task for normative theory, then, is to evaluate such underlying claims to the common good. For example, the idea that independent central banks bring about optimal monetary policy without any real costs (see e.g. Grilli *et al.*, 1991) is a clear claim to a common good which has been central in justifying widespread delegation of monetary policy.

I will not defend a substantive idea of what counts as a common good here. I will only suggest the more minimal claim that it might be possible in many societies to converge on certain shared ideas of specific common goods that plausibly serve the general public and not some factional or private interest (my account is thereby agnostic in a similar manner to Bagg, 2021).

There is in this account no need to objectively establish the common good in a broad, once-and for all manner. Instead, I am speaking of the democratically authorized, limited, and clearly delineated delegation of specific policy areas away from the direct incentives coming from electoral politics. This is a less demanding (although far from *undemanding*) criterion. Most crucially, it means that the fact of disagreement that Bellamy, Waldron and other "deep pluralists" build on loses much of its teeth. I am simply willing to posit that there is more potential for reasonable acceptance of certain clearly delineated common goods than these more skeptical accounts would have it.[2]

Next, it is not the task of non-majoritarian institutions in my framework to *define* the common goods they are to pursue. They are restricted to their democratically given mandates, which serve as important checks on their conduct and a roadmap for their exercise of discretion (see Eriksen, 2021).

Finally, any act of delegation should be subject to time constraints and the possibility for politicians to adjust the course of non-majoritarian institutions if their defined common good comes into question over time (for different versions of this idea see Warren, 1996, pp. 57–58; Steffek, 2015, p. 275; Downey, 2020). The challenge for institutional design is to make such avenues for control available but not too available; control should still be difficult enough that institutions are genuinely independent in their day-to-day conduct. This style of setup is analogous to how constitutions are designed in many societies. They are often more difficult to change than ordinary laws, but not impossible to change.

All of this implies that the deep pluralist critique fails against the carving out of specific, functionally defined policy areas to delegate that are subject to democratic authorization and oversight but removed from direct day-to-day responsiveness to electoral political considerations. This is not a matter of removing policy decisions from

[2] Critics have observed that leaning too much on the "fact of disagreement" becomes self-defeating or leads to infinite regress. Either the proposed proceduralist alternative needs grounding in some higher-order procedure (a constitutional convention decides on the majoritarian procedure, but what procedure decides on the constitutional convention, and so on) or we need to say that disagreement about the procedure does not count (see Christiano, 2000). So some level of bullet-biting is necessary for the pure proceduralist, too.

the political sphere altogether. Instead, it is a matter of saying that democracy consists of a range of different institutions with different functions. Not every institution in democracy must be attached to electoral politics in the same manner to be legitimate. If we accept this, non-majoritarian bodies are not external to democracy; they are *democratically* justified (see Rosanvallon, 2011; Buchanan, 2013). They make out a part of the larger democratic system that rests on its own separate legitimacy foundation, but which contributes to the overall democratic goal of genuine collective self-rule.

How does the common good requirement play out in practice in US and EU single market governance? First, consider the case of central banking, which serves to demonstrate how legitimacy suffers if the underlying claim to a common good gets challenged. The legitimacy of delegation to independent central banks has come under increased scrutiny after the financial and Euro area crises, challenging some core tenets of the nineties-era debate over non-majoritarian institutions (see e.g. Downey, 2020; van 't Klooster, 2020; Quaglia et al, 2025). When central banks started taking on new tasks after the financial crisis, notably quantitative easing policies, they obtained 'many more instruments to use in pursuit of a much less clearly defined set of goals' (van't Klooster, 2020, p. 596). This placed a strain on the narrow price stability mandate that banks like the ECB and the Fed are set up to serve—price stability in this case being the common good that in theory legitimizes delegation. For instance, the ECB's "outright monetary transactions" (OMT), which enabled it to buy unlimited sovereign bonds, clearly had redistributive effects. OMT raised the values of financial assets, disproportionately favoring the top 5 % of households (van 't Klooster 2020, p. 594). Certain member states' economic interests were better served than others by the ECB's crisis measures (Iversen et al., 2016; Copelovitch et al., 2016). Price stability cannot be seen as a "free lunch" under these conditions but rather a meal with real costs. Perhaps the costs were defensible all things considered, but this consideration requires a sort of value judgment that the ECB was institutionally unable to explicitly make. Notably, both the Fed and the ECB faced a similar strain of their claim to a clearly defined common good. The former's embedding in a single democratic people made no difference. To be sure, there are institutional features of the Euro area that exacerbated problems, most notably the asymmetry between supranational monetary policy and nationalized fiscal policy. But these are institutional features that would not be solved by the ECB's deeper embedding in a more coherent pan-European public sphere.

Competition policy is another example. In this core component of single market regulation, the EU is more geared towards industrial policy and questions of fairness, while the US is guided by a Chicago-school inspired standard of consumer welfare (Fox, 1997, pp. 340–341; see also Everson, this issue). Both are plausible claims to common goods. One pressing challenge to the common good requirement comes when institutions do not serve the good they are set up to provide (see Warren, 1996). Arguably, this is the case in the US. As Foster and Thelen (2024) demonstrate, US competition enforcement happens overwhelmingly through litigation. American courts have interpreted competition legislation through a laissez-faire lens which views the exploitation of private economic power by dominant actors as mostly good and in fact necessary for innovation and growth (Foster, 2022, p. 1655). As a result, US antimonopoly enforcement has dwindled to a record low. The influence of certain ideologies through American courts that are "deeply hostile toward administrative agencies" have circumscribed regulators' discretion and led to "general rules that are based on particular economic ideologies more than empirical knowledge of how the economy works in practice" (Foster and Thelen, 2024, p. 1098). This has, in the eyes of many analysts, made the US unable to deal with for instance the severe concentration of power in the hands of large American tech firms—with potentially detrimental effects on the health of the economy and democracy at large. The EU, on the other hand, sees higher levels of antimonopoly enforcement and has taken a global leadership role in regulating "big tech" (Foster, 2022).

Can the American lack of anti-competition enforcement simply be read an expression of an American interpretation of the common good, namely consumer welfare? Some factors suggest that the US practice is self-defeating even judged by its own goals. First, there no agreement on the precise definition of 'consumer welfare' in antitrust (Orbach, 2011). This breaks with the criterion that any claim to a common good must be clearly specified and delineated. Next, there are reasons to believe that the consumer welfare standard as it is applied in practice often undermines the welfare of consumers and citizens. Orbach demonstrates that "under all present interpretations of the term 'consumer welfare,' there are several sets of circumstances in which the application of antitrust laws may hurt consumers and reduce total social welfare" (Orbach, 2011, p. 134; see also Khan, 2018, 739). Third, a focus on consumer welfare, by ignoring the wider perils of concentrated private power, seems far too permissive towards *democratic* threats from concentrated private power. Private power can be dangerous both in its own right and because of its tendency to capture the state (see e.g. Bagg, 2021). Consumers are not only consumers but also citizens, and their welfare as citizens should plausibly be part of a wider definition of consumer welfare when evaluated as a claim to a common good. The common good requirement therefore captures some legitimacy challenges with US competition policy that persist despite the US regime's embedding in a single democratic people.

Value inputs

We have established that non-majoritarian institutions can be part of the political system without necessarily responding to the same majoritarian procedural requirements as the system as a whole, making the single democratic people requirement redundant. I have defended a theory of democracy that allows for variation in the legitimacy bases of different institutions, and I have argued that certain narrow and clearly defined appeals to the common good can be legitimately made.

One implication of my theory is that non-majoritarian institutions require some form of value input. This is because they cannot be value-free in the way that the division-of-labor argument presupposes. But the necessary value input cannot, by definition, come in the form of direct majoritarian control. Some other mechanism is needed that respects the functional need for delegation as well as the democratic need for value inputs. Is an embedding in a single democratic people with a coherent culture and public sphere the best way to ensure such indirect democratic value inputs?

Let me first demonstrate why value input is necessary in market regulation by picking up the central bank example from above. If, as discussed above, central banks today are implicitly making trade-offs between price stability and unemployment, between bond holders and wage earners, or between the interests of different Euro area countries, they are making choices that unavoidably involve value judgments. Still, under current mandates, they are forced to "cloak their arguments in terms of their price stability mandate" (van 't Klooster 2020, p. 597). This impoverishes the banks' moral deliberations, it obfuscates the relevant stakes towards the public, and it may make decisions themselves epistemically poorer as certain types of evidence are privileged and others left out. An alternative model would be to admit that central banks sometimes make value-based decisions and make them institutionally equipped to do so by instituting public involvement mechanisms, hiring a wider diversity of experts, and mandating banks to make their value judgments explicit in their communications and deliberations.

This illustration highlights the downsides of relying too much on a technical division-of-labor style approach to regulation. Now, is the solution found in a deeper embedding in a single *demos*, trusting that this will generate the appropriate pressures and make experts attuned to appropriate values? I suggest that it is not. This seems like a circuitous route to improve what is ultimately an institutional shortcoming. I hold instead that the problem of value input is adequately solved at the institutional level. Democratic authorization at the delegation stage must be coupled with direct institutional avenues for value inputs in institutions' day-to-day conduct. This approach is more targeted, it does not block the possibility of obtaining border-crossing common goods, and it comes with fewer side effects. Moreover, the mechanisms suggested here also provide an answer to the argument from accountability and control: The same mechanisms that provide value input can also provide targeted mechanisms for accountability. The precise set of mechanisms will vary between institutions (see Erman, 2018; Scherz, 2021; Fjørtoft, 2024). More value inputs through public oversight, institutionalized levers for citizen influence like deliberative public hearings (see e.g. Wood, 2021) and a set of targeted levers for popular influence (see Bagg, 2021; Rahman, 2016) are all promising alternatives.

The first advantage of direct approaches is that it allows for value inputs while leveraging the gains that independence from electoral politics is theorized to bring. Samuel Bagg, for instance, finds it "perfectly consistent to insulate bureaucrats from the corrupting influences of legislative horse-trading and hyper-partisan mass politics while creating more *promising* levers for popular influence" (Bagg, 2021, p. 238). Relying on a notion of cultural coherence and identity, which is only incidentally and arbitrarily linked to the actual workings of unelected bodies, seems by contrast a more risky strategy.

Second, retaining a single democratic people requirement makes it more difficult to realize cross-border common goods. Societies might have good reasons to pursue goods that are difficult to realize in a single state (be it EU member states or US states). Facilitating free trade between sub-units brings, by most accounts, significant welfare benefits to the constituent units.[3] If we want to obtain such welfare gains while at the same time insisting on a thick cultural coherence criterion for non-majoritarian delegation, we rule out, in effect, the possibility to regulate the ensuing internal market in a multi-*demos* polity like the EU. This forces us to choose between an unregulated laissez-faire internal market and a reliance on regulatory institutions on the sub-unit level—neither of which seem like attractive options. Instead, we should realize that properly designed regulatory bodies can be useful tools for market-making and market-correction which at least earn a place in the toolbox.

Third, losing the reliance on a single democratic people, in combination with targeted measures for value inputs, reduces the risk of side effects. A thick requirement of cultural coherence would, for instance, give prima facie reasons to be skeptical towards immigration because it could threaten the coherence that makes government legitimate. This seems to me an unnecessary and unattractive consequence if the goal is to provide value inputs into non-majoritarian institutions. I agree, therefore, with Beetham and Lord (1998, p. 22), who question the necessity of "thick" identities in

[3] Although the distribution of such gains are often grotesquely uneven. This is a matter outside the scope of this paper.

modern politics: "There may be much to be said for the 'thin' —and lightly held—identities that consist of little more than shared norms and idioms of communication (which may not even require people to speak the same language)."

In summary, a theory of legitimacy which rests on non-majoritarian institutions' well-founded claim to specific common goods, reliable expertise, and targeted value inputs is able to diagnose the existing shortcomings of unelected bodies while also suggesting actionable pointers for institutional design. Arguments based in a single democratic people requirement seem, by contrast, unable to satisfyingly capture the stakes of non-majoritarian delegation in multi-level polities.

Conclusion

This paper has argued against the position that the delegation of power to non-majoritarian institutions is more legitimate in a state with a single democratic people like the US than in a multi-level, pluralist polity like the EU. Non-majoritarian legitimacy does not depend on an institution's embedding in a single democratic people. I have argued instead for a legitimacy framework that is compatible with different institutional structures. A legitimate non-majoritarian institution must be in service of a functionally delimited common good, build on reliable expertise, and contain appropriate non-electoral value inputs. This is a framework that aims to tackle the risks of delegation directly, rather than hoping that a thick public sphere and shared culture will indirectly provide the necessary legitimacy, accountability and control. It is therefore more targeted, it allows for the provision of cross-border common goods, and it comes with fewer side effects. By the proposed framework, non-majoritarian institutions in the EU and the US face similar legitimacy challenges. Their legitimacy is challenged whenever they lose a valid claim to serving a common good; they lack appropriate institutional mechanisms for expertise to flourish; or they lack avenues for value inputs.

My argument is not intended as a sweeping defense of non-majoritarian delegation. On the contrary, the criteria presented here are relatively demanding and can provide just as much ammunition to critics of delegation as to its defenders. My goal is more modest: to suggest that we can say most of what we want to say about delegation, its benefits, and its problems, without relying on ideas of cultural coherence, thick public spheres, and a single democratic people.

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