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FOREIGN AFFAIRS LAW AND DEMOCRACY

*Phillip R. Trimble**

CONSTITUTIONALISM, DEMOCRACY, AND FOREIGN AFFAIRS. By *Louis Henkin*. New York: Columbia University Press. 1990. Pp. viii, 125. \$25.

The Bush administration's preparations for war against Iraq set the stage for yet another debate over constitutional principle and prerogative in conduct of American foreign relations. Although Congress eventually authorized the war, the basic constitutional questions were deferred, not resolved. The President continued to assert his authority unilaterally to engage in military action,¹ and continued to maintain that the War Powers Resolution was unconstitutional. The Congress disagreed on both counts,² and the courts declined to decide the issues.³ This controversy is only the most recent of many conflicts in recent years between the President, Congress, and Senate over the conduct of foreign affairs: the Iran-Contra scandal, the ABM Treaty reinterpretation, termination of the Taiwan Defense Treaty, bombing Tripoli, waging limited war in Grenada, Panama, and Nicaragua, deploying armed forces to the Persian Gulf in the midst of the Iran-Iraq war, and numerous less publicized disputes.⁴ Each of these controversies raised questions about the authority of the President, Congress, or Senate to take foreign-policy related action, independently or in defiance of another branch. Because the courts traditionally have declined to intercede, these controversies remain unresolved in principle, and are instead settled through the political process. Yet, in that pro-

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1. See *Excerpts From Bush's Remarks on Baker's Mission and Diplomacy's Fate*, N.Y. Times, Jan. 10, 1991, at A6, col. 4. The President's letter to congressional leaders asked for political support of the UN resolution, not legal authorization to use military force. See *Bush's Letter to Congressional Leaders*, N.Y. Times, Jan. 9, 1991, at A6, col. 4.

2. Biskupie, *Constitutional Questions Remain*, CONG. Q., Jan. 12, 1990, at 70.

3. The U.S. district courts dismissed actions brought by members of Congress and servicemen to curtail presidential authority. See *Dellums v. Bush*, No. 90-2866 (D.D.C. Dec. 13, 1990) (LEXIS, Genfed library, Dist file) (dismissing case on grounds that it was not yet ripe for decision). *Pietsch v. Bush*, No. 91-0132 (E.D.N.Y. Jan. 16, 1991) (LEXIS, Genfed Library, Dist File) (dismissing case by citizen for lack of standing); *Ange v. Bush*, 752 F. Supp. 509 (D.D.C. 1990) (dismissing case by soldier called for Persian Gulf service on political question and ripeness grounds).

4. For a survey and critique, see H. KOH, *THE NATIONAL SECURITY CONSTITUTION* 38-64 (1990); M. GLENNON, *CONSTITUTIONAL DIPLOMACY* (1990).

cess, the issues are framed and debated as legal issues. To me the resulting debates are arcane and largely irrelevant.

A standard form of argument is to invoke the constitutional text and inferences from it, and to look to the Founding Fathers (through the Philadelphia Convention, state ratifying conventions, English history and political theory, the *Federalist Papers*, and the actions of early Presidents and Congresses, where many of the founders were present). The use of Original Intent is often embellished with references to historical practice and functional arguments appealing to the particular strengths of the President in carrying out foreign relations.⁵ It seems at least superficially anomalous that important twentieth-century issues of constitutional power should be decided by references to eighteenth-century sources. This peculiarity is compounded when out-of-context quotations are invoked by senators and presidents who are quite obviously making politically motivated decisions.⁶ Debate framed in the terminology of Original Intent is not only hopelessly indeterminate, but also, and more importantly, disingenuous in a political forum. For me, it does not speak in terms that are important, meaningful, or relevant to the subject of the decision.

In *Constitutionalism, Democracy and Foreign Affairs*, Louis Henkin proposes a new way to resolve, or at least discuss, these issues. Pointing out that in 200 years the U.S. political system has changed from a "republic" to a "democracy," Henkin suggests that we should "fill [the Constitution's] gaps and interpret its ambiguities to satisfy better the elements of democracy as well as constitutionalism" (p. 15) and that, in foreign affairs law, we accordingly shape our constitutional jurisprudence by reference to principles of democracy.

Initially, Henkin's suggestion may seem hopelessly vague and indeterminate, akin to invoking "principles of freedom" or the "American way."⁷ Upon reflection, however, this approach has considerable appeal because it may introduce a modern mode of analysis that speaks more honestly to the institutional issues involved. For example, at a minimum it would require an advocate to first specify her understand-

5. See, e.g., CONGRESSIONAL RESEARCH SERVICE, 98TH CONG., 2D SESS., TREATIES AND OTHER INTERNATIONAL AGREEMENTS: THE ROLE OF THE UNITED STATES SENATE 25-40 (Comm. Print 1984); NATIONAL SECURITY LAW 7-50 (S. Dycus, A. Berney, W. Banks & P. Raven-Hansen eds. 1990); 1 UNITED STATES FOREIGN RELATIONS LAW 274-76, 298-305 (M. Glennon & T. Franck eds. 1980) (exchange of views between Senate Legislative Counsel and State Department Legal Advisor on the constitutionality of the Sinai Accords); Glennon, *The Use of Custom in Resolving Separation of Powers Disputes*, 64 B.U. L. REV. 109, 111 (1984).

6. See, e.g., REPORT OF THE CONGRESSIONAL COMMITTEES INVESTIGATING THE IRAN-CONTRA AFFAIR, S. REP. 216, H.R. REP. 433, 100TH CONG., 1ST SESS. 457-79 (1987) (Minority report).

7. It also may be contradictory in that Henkin simultaneously proposes to use principles of constitutionalism. The principles of democracy may run counter to the commands of "constitutionalism," which Henkin interprets to imply "limited government . . . subject to the rule of law . . . [and] fractionalized authority." P. 7.

ing of the meaning of "democracy," and thereby expound the values and interests that will be served by a particular line of argument or a conclusion that one branch or another should have the authority to take action. Introducing democratic theory into the debate is not likely to produce more determinacy in the law, nor to promote agreement among political adversaries. Nevertheless, it promises to expose more clearly the values and interests at stake, and thereby contribute to a more meaningful debate of the issues, in Congress and in the public forum.

I. THE HENKIN CONTRIBUTION

The Henkin book is an expansion of the Cooley Lectures delivered at the University of Michigan Law School. Henkin surveys the historical background of foreign affairs law, the perennial conflict between President and Congress, judicial abstention, and individual liberties. The book focuses especially on war and treaty-making, which have been the two principal sources of repeated controversy.

Henkin first reviews the historical background and the traditional types of argument. As Henkin points out, "every argument for extrapolation of authority for Congress from one of its expressed powers is countered by an argument for inferring power for the President from one of his powers" (p. 20). Moreover, "the text reveals no unambiguous grand design. . . . [T]here is no compelling evidence of the intent of the framers, either as to the import of particular phrases as to grand design or as to many of the specific issues that agitate our constitutional universe" (p. 21). In the case of war, text and original intent have succumbed to presidential authority asserted in response to practical circumstances.

The evidence is that in the framers' contemplation, the armed forces would be under the command of the President but at the disposition of Congress. Principally, the President would command the forces in wars declared by Congress. As an exception, the framers agreed to leave to the executive "the power to repel sudden attacks": authorization by Congress might not be possible to obtain promptly, or at all, and could be assumed. There is no evidence that the Framers contemplated any significant independent role — or authority — for the President as Commander in Chief when there was no war. [pp. 25-26; footnote omitted] Nevertheless, following Holmes, Henkin points out that "the life of the Constitution" (p. 26) has been experience and that Madison's original view of the balance between Congress and the President has been supplanted by sweeping powers for the President that Hamilton would have preferred (p. 26). Henkin also calls attention to the functional justifications for a shift to presidential authority:

Foreign policy, then as now, consisted of much more than making treaties or legislating tariffs. Then as now, the conduct of foreign relations was a day-to-day process, continuous and informal. Unlike Congress,

dispersed during most of our early history in the distances of the country, the presidency was always "in session." Unlike Congress, which can act only formally, by statute or resolution (and therefore in effect only publicly and sometimes dramatically), the President can act quickly and informally, often discreetly or secretly . . . [p. 27]

And Congress has acquiesced:

Congress contributed to the steady growth of presidential power. Congress early recognized and confirmed the President's control of day-to-day foreign intercourse, and the resulting monopoly of information and experience promoted presidential claims of expertise and a congressional sense of inadequacy. Congress generally acquiesced even in the President's deployment of forces, and the Senate in his executive agreements. Later, a growing practice of informal consultations between the President and congressional leaders disarmed them as well as members of Congress generally and helped confirm presidential authority to act without formal congressional participation. [p. 28]

Recently Presidents have escalated their institutional claims. "Presidential authority to act when Congress has not is assumed; now it is claimed that presidential authority is supreme to or even exclusive of Congress" (p. 30). As Congress has become more assertive in prescribing detailed limitations on executive branch conduct, the President has asserted the right to act in defiance of Congress. "The issue is no longer the President's power, but the power of Congress" (p. 30). The most conspicuous example is the War Powers Resolution. Henkin observes:

Mr. Nixon supported [his veto and] the conclusion that the War Powers Resolution was unconstitutional by the statement that the resolution attempted "to take away . . . authorities which the President has properly exercised under the Constitution for almost 200 years." But the President exercised those "authorities" during those 200 years when Congress was silent. . . . History supports few limitations on the power of Congress in foreign affairs other than the Bill of Rights, and history gives no support for any presidential authority to flout congressional legislation in the matters we are addressing. The President would have to find foreign affairs and Commander in Chief powers that give the President power exclusive of Congress, and there is little basis for that in text, original intent, or history. [pp. 30-31]

Henkin's solution is that "[c]onstitutionalism and democracy . . . should be invoked to resolve disputes and to guide the branches in the exercise of their allotted authority" (p. 36). According to this analysis, issues of institutional authority should be examined in light of promoting "maximum attention to the will of the people and the consent of all the governed" (p. 37). Henkin urges that, in the face of ambiguity, "the principles and values of democracy may be determinative" (p. 38). Unfortunately, Henkin is not very clear about his conception of democracy. Upon reflection it is at least not self-evident, as Henkin seems to assume, that Congress has a better claim to decisionmaking

authority than the President, under the application of democratic principles and values.

II. THE SEVERAL THEORIES OF DEMOCRACY

One's choice among the many democratic theories will influence one's conclusion about which branch or combination of branches should have authority to take contested action, whether initiating war or concluding an international agreement.

The simplest theory is that a democratic government either reflects, or should reflect, the preferences of "the people." Presumably the preference of the "people" is intended to mean a majority or plurality of the people. Such an approach would be hopelessly simplistic and, as a descriptive theory, false and incoherent. In the U.S. foreign affairs law context, decisions may be made by one or some combination of four different bodies, the President, the Congress, the Senate, and the judiciary. The first three are elected, but from different segments of the "people." Consequently, excluding the judiciary,⁸ the foreign policy process may involve three different "democracies" competing for decisionmaking authority.

In addition, whatever democracy means, it means more than a decision by majority rule or preference of the people. First, decisions are made by representatives of the people, not by the people directly, and those representatives may or may not reflect the will of a majority (or plurality) of their constituents even if that will could be determined. Moreover, the representatives are not necessarily elected by a majority of their constituents. Democracy understood as decisionmaking according to the "will of the people" does not well describe the American (or any large-scale) political system.

Second, a decision rendered in the form of an act of Congress involves at least three different formal steps in which the "people's" known preferences are weighed and processed: first, upon the election of a representative; second, when the representatives vote to produce a bill; and third, when a conference committee compromises between differing versions of the bill. During legislative deliberations the "will of the people" has several manifestations.

In addition, an elected representative almost invariably has more than two choices, so that even if she could ascertain the preference of her constituents, a majority preference might not exist. Furthermore, a plurality preference may also be less popular than everyone's second choice, in which case the second choice arguably should prevail. Over time plurality preferences may also shift in response to tradeoffs among pluralities on different issues. As a descriptive theory, there-

8. Henkin argues for a more active role for the judiciary, which seems at odds with a more robust use of democratic principles to allocate decisionmaking authority. In this essay, however, I will only address the authority of the political branches.

fore, the idea of government simply reflecting the will of the people is insufficient.

Henkin seems to follow this path, yet at the same time he also suggests that Congress is the most democratic branch. I would argue that, at least in foreign affairs, the President has the strongest claim to make decisions because the President is the only official who is elected by, and is in fact as well as in theory accountable to, the nationwide political community. In this regard, Henkin offers a rather peculiar observation:

[O]urs is a unique, dual democracy, . . . Both Congress and the President are representative; . . . both accountable. But their representative character and their accountability are different, and the differences should reflect and be reflected in their authority. . . . In foreign affairs, the President represents the people of the United States to the world. Congress represents the people at home, the different regions, groups, constituencies, and interests (general and special). . . . The presidency is confidential, classified; Congress is open and more accessible for citizen participation. Both are accountable, but the President's accountability is essentially plebiscitarian quadrennially. Congress — its members — are accountable directly, daily. [pp. 37-38]

To the contrary, I believe the President represents the American people — all of them — at home as well as abroad. Moreover, some may feel that a true commitment to democratic principles would require representation in the decisionmaking process of all the people in the world whose welfare could be affected by the decision.⁹ From this perspective the President is the best representative. In making judgments that affect both domestic and foreign spheres — increasingly the normal situation — the President is more likely to take account of foreign concerns than Congress. For example, presidential tendencies to balance foreign policy against domestic welfare in trade policy has more than once caused Congress to sharply restrict presidential discretion in that area. To the extent that one is sympathetic to the idea that persons outside the United States directly affected by its actions should be represented in U.S. government decisionmaking under some form of democratic theory, one should favor more presidential authority. As to accountability, it is unclear why a member of Congress is accountable “directly” but the President is not, nor why a Senator is accountable “daily” but the President is not.

Some versions of democratic theory are very general and expressed at a high level of abstraction. For example, democracy may be conceived as a process designed to assure maximum individual autonomy

9. See, e.g., *ALTERNATIVE SECURITY: LIVING WITHOUT DETERRENCE* (B. Westin ed. 1990).

People in foreign states may of course be well represented by their own governments, which in turn seek to influence U.S. Government decisionmaking. But in a nonstate-centric view an argument can be made that purer democracy requires that the U.S. Government, or some part of it, should represent foreign people's views.

and equality,¹⁰ or to achieve the "common good," "public interest," or "republican values." This framework seems far removed from foreign policy decisionmaking, but could be used to debate which political branch is more likely to achieve the preferred ends. Another approach would reject instrumental theories holding that democracy is a means to some good end, and instead would argue that democracy is itself the end so that popular participation should be enhanced.¹¹ This approach may be applied fruitfully to foreign-policy decisionmaking, calling for processes such as referenda, increased use of local cable television, neighborhood meetings, and other devices to inform, coalesce, and convey public opinion. As Benjamin Barber points out, "[T]he public at large has no specified constituency in America's [existing] pluralist politics."¹² This approach, however, does not help decide which political branch would be best equipped to process the fruits of enhanced public participation, so its relevance to separation of powers issues seems limited. Perhaps the most fruitful theoretical approach would draw upon the literature dealing with political pluralism.

Any descriptive theory of American democracy must take account of interest groups.¹³ Even in an ideal democratic world, an elected representative must know the preferences of the people. Yet, as a practical matter, the wealthy and best organized segments of society can make their views more readily known, and therefore have a disproportionate impact even on decisionmakers determined to carry out the will of the people. Moreover, decisionmakers seek reelection,¹⁴ and wealthy or well-organized groups can help directly in financing campaigns and mobilizing voters.

One major theoretical approach to democratic theory portrays a political market in which politicians contend to gain election and, to that end, compete to produce public policy.¹⁵ In this analysis, small, highly organized interest groups may be particularly influential in getting or preventing policy decisions that satisfy or deny their interests, even though the decision may be contrary to the interests of most people.¹⁶ Public choice theory and the literature on political pluralism could be employed in dealing with foreign affairs law issues.¹⁷ Empirical research could show how interest groups influence in different

10. R. DAHL, *DEMOCRACY AND ITS CRITICS* 1 (1989).

11. B. BARBER, *STRONG DEMOCRACY* xiv-xv (1984).

12. *Id.* at 265.

13. See generally K. SCHLOZMAN & J. TIERNEY, *ORGANIZED INTERESTS AND AMERICAN DEMOCRACY* (1986).

14. See generally D. MAYHEW, *CONGRESS: THE ELECTORAL CONNECTION* (1974).

15. A. DOWNS, *AN ECONOMIC THEORY OF DEMOCRACY* (1957).

16. See K. SCHLOZMAN & J. TIERNEY, *supra* note 13, at 87.

17. See, e.g., Farber & Frickey, *The Jurisprudence of Public Choice*, 65 *TEXAS L. REV.* 873 (1987).

ways, and to different degrees, the three quite different democracies involved — the President, the Congress, and the Senate. From empirical research and descriptive theory, one could devise propositions about the institutional characteristics of the political branches of government, the constituencies they represent, the interests most likely to be served, and the operation of the decisionmaking process.

For example, of the three political institutions, members of the House of Representatives represent the smallest constituencies, and hence are more likely to be immediately responsive to local and grassroots interests. Biennial elections assure regular accountability; members of the House should in theory most clearly represent the will of the majority or plurality of the people in their districts because they face reelection every two years. Congress, especially the House, may also be better positioned to know the views of citizens because its members are in close touch with constituents, and the constituency is smaller than the nation as a whole. On the other hand, Congress has no special claim to knowledge of the preferences of the unorganized, such as consumers or the poor. Moreover, a theory favoring a special role for Congress as applied to overall foreign policy, like issues of war, is weak because most politics are local — national issues are often absent from their campaigns — and most House members are regularly reelected. Constituent service and careful attention to local issues would seem more important to reelection than correct foreign policy.¹⁸

Senators represent state-wide constituencies. Many of the interests that are powerful at a local level are similarly powerful at the state-level. In heterogenous states, however, Senators may have to tradeoff interests of different constituencies, for example urban and rural, in more complex ways than members of the House. Consequently, narrow, local interests may be less well attended to in the Senate than in the House. Senators are more likely to be sensitive to matters that affect the state government or the state as a political entity. A Senator's six-year term should also permit a longer-term view of public policy, less beholden to electoral interests.

The President must account to all the voters, and thus is likely to be responsive to highly organized, nationwide, well financed interests that can mobilize electoral support in the nationwide presidential campaign. The President seems at least as likely as Congress to take account of the range of intensity and views of the unorganized. As noted above, the President is uniquely responsive to foreign interests, and the four-year term, coupled with the two-term limit, should permit a longer-term perspective on decisions taken.

On the basis of this type of descriptive theory one could forge nor-

18. See D. MAYHEW, *supra* note 14, at 49-77.

mative arguments supporting or refuting the claims of Congress and the President for control of foreign policy. For example, in the modern era trade agreements have been congressional-executive agreements, in part because Congress has always established the tariffs that may be affected. The adjustment of tariff levels by international agreement normally involves tradeoffs among sectors, regions, and localized interests. A trade agreement may reward wheat farmers but damage the mushroom industry. Congressional involvement assures that participants in the process likely will be responsive to the localized interests affected, and permits maximum play of those interests. The congressional tradition of compromise may also assure that interests that lose in one agreement or in one session can be rewarded on some future occasion. It may seem appropriate, therefore, that trade agreements and other agreements that involve matters already subject to elaborate legislation by Congress should be subjected to the same kind of bargaining and compromise.

On the other hand, if one's preferred theory of democracy is that it is designed to assure the "common welfare," such as the economic interest of most people or the most economically efficient outcome, trade agreements should be concluded by the President alone (as was done in the cases of automobile and steel imports, in part to prevent a more protectionist, less economically efficient result dictated by Congress).

As to the decision to go to war — there are good arguments, rooted in democratic theory, for presidential authority. Special interests (whether nationally or locally powerful) play less of a role; local, regional, or sectoral interests need not be compared and compromised; and economic factors do not normally seem paramount. Consequently, Congress' particular ability to forge compromises among interest groups, especially locally powerful groups, is not much involved in the decision to go to war, and thus do not support a special role for it. On the other hand, other factors suggest that the President has a stronger claim to make the final decision. The decision has a relatively nationwide impact, and affects foreign people as well. The President's constituency is nationwide, even worldwide. He is best positioned to weigh long-term consequences, international relations and international law. To the extent that the "people's" immediate will can be known, and should control, the President can read polls as well as anyone. Moreover, the war question seems more likely to be a dominant issue in a presidential campaign than in congressional races. Thus, accountability would be enhanced by placing the decisionmaking authority in the hands of the President.¹⁹

19. Of course, the countervailing principles of constitutionalism require a congressional role in the decision to go to war. However, it has played a role by authorizing armed forces, including the rapid deployment force, in the face of known plans and commitments involving the use of

Henkin seems to believe that the Congress is better suited to satisfy democratic concerns. This seems dubious in light of the experience with the Iraq war. More frequent elections, and the resulting more sensitive accountability, may seem to suggest that the House (or Congress) would be more reflective of popular will and for that reason the preferred arbiter of issues of war and peace. However, Congress became concerned with the Iraq war issue only after the election, *i.e.*, after the members were freed of immediate electoral accountability. Proposals to enhance the congressional role in foreign policy fail to take into account Congress' reluctance to play such a role. Even then the congressional leadership tried to avoid a vote, and when the votes were finally taken, immediately before an externally imposed deadline for action, several members voted in favor of war because of perceived need to support the President, not because they agreed with his policy.

It is also not clear why the short-term popular will of the moment, even if Congress better reflects it, should prevail. Would the people have decided to go to war against Hitler absent Pearl Harbor? Finally, it may be that the decisionmaking process should make it particularly difficult to go to war, and, to that end, should require a congressional decision, but such a result does not seem justifiable in terms of notions of democracy.

The major loser in an analysis resting on democratic principles is the Senate. The Senate has a weak claim to decisionmaking authority from the point of view of any notion of democratic theory. Its supermajority requirement in treatymaking gives a minority (one third plus one) of Senators the ability to veto a treaty. Minority power is enhanced by the potential use of the filibuster that can only be overcome by another supermajority. Rural and conservative constituencies are disproportionately favored by the composition of the Senate and can block agreements that are preferred by a national majority or that are desirable in the President's long-term view of the national interest. The termination of the defense treaty with Taiwan illustrates the point in an analogous area. The President's decision to terminate the treaty and to proceed with the normalization of relations with China could have been frustrated by a minority of conservative Senators if a two-thirds vote of the Senate were required to terminate the treaty. If democracy means majoritarian preference, two thirds of the Senate has no role to play.²⁰

Historically, agreements dealing with the environment, investments, intellectual property, and arms control have been submitted to

force in the Persian Gulf area. Moreover, the Senate consented to ratification of the United Nations Charter which contemplated use of force in situations like the Kuwait crisis.

20. Henkin's counterbalancing appeal to constitutionalism does not seem to help to restore a senatorial role. Understood as a commitment to shared power among branches, the requirement of constitutionalism can be met by participation of the Congress.

the Senate. Today, however, many agreements in these areas are likely to affect the day-to-day affairs of local communities, so that foreign and domestic policies cannot readily be separated in many areas. For example, for decades investment treaties primarily helped U.S. corporations abroad. Today, foreign investment is becoming a major issue in the United States, and Congress has started to regulate it. In the face of congressional activity, it would now seem appropriate to conclude these agreements as congressional-executive agreements.

Perhaps the Senate's article II modern role should focus on agreements that deal with matters of special interest to the states as states, such as private international law treaties whose principal effect is to change state law, and perhaps some human rights treaties that, to the extent that any change in law is required, primarily affect state law (like the racial discrimination convention).

Henkin endorses more House involvement and suggests that the House and Senate establish a committee to work out a division of authority between article II treaties and congressional-executive agreements (p. 67). However, such an exercise does not seem likely to be fruitful because it would require the Senate to look at these issues primarily in terms of its article II prerogative in the abstract, divorced from the politics of particular agreements. It would be difficult for the Senate explicitly to agree to surrender authority not yet lost. Yet democratic theory suggests more should be lost. Perhaps the more realistic approach is for the President to take the initiative, with particular agreements, to push toward more congressional-executive agreements, as President Bush has done with the U.S.-Soviet Chemical Weapons Agreement.

CONCLUSION

To elaborate how principles of democracy can help elucidate foreign affairs law, much work needs to be done. For each discreet issue we must articulate and choose an underlying theory, such as facilitating competition and compromise among interest groups, economic efficiency, citizen involvement in public policy issues, economic, social, or political equality, equality of opportunity or equality in fact, or individual autonomy and freedom. Then we can better analyze what distribution of authority would most likely achieve the chosen ends. The result will not be a more determinate foreign affairs law. There are many different democratic theories. Even agreement on a particular theory would not automatically yield a single conclusion. Nevertheless, pursuing the Henkin suggestion would add a new dimension to the traditional arguments and thereby enrich what has become a rather stale debate.