

THE MORAL HORIZON OF DEMOCRACY, “MAJORITY RULE” AND ROUSSEAU’S SOLUTION: ON THE DEMOCRATIC PROCEDURES FOR DECISION-MAKING¹

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Decision by majority is as much an
expedient as lighting by gas.

WILLIAM GLADSTONE,

A Speech in the House of Commons, 1858.

Introduction

Despite advances and setbacks, sometimes referred to as the “the waves of democracy”, about 80% of countries are democracies and 65% of the world’s population lives in democracies today (see Huntington, 1991; cf. Diamond, 2002). This expansion of the democratic world took place against the indications of the best forecasts of some famous political theorists. Today, this expansion of democracy is fact, but no longer seems inevitable (Freedom House, 2021). Yet more than this, it has become a moral and political “inevitability”. Although doubts repeatedly arise about whether “democracy” is a sufficient

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political solution, and concerns resurface about its well-known imperfections, it evidently still remains the only *legitimate regime*.

The most ardent advocates of democracy *in practice* have often expressed their qualms about the goodness and wisdom of the regime. Churchill, for example, famously declared that “democracy is the worst of the regimes except all others,” adding that “the best argument against democracy is a fifteen-minutes long conversation with the average voter” (Churchill, 2008: 573).² The most ardent advocates of democracy *in theory* also acknowledge that it is an essentially imperfect regime. However, they sometimes rush to say that what is usually designated by the word “democracy” is something different from what existing democracies really are – and to this qualification is added the remark that the very idea of “democracy” needs to be articulated differently today (Popper, 2011).³

Some theorists and political philosophers believe that the solution to the current problems of democracy is more *democracy*, and they write books about how democracies die (Levitsky & Ziblatt, 2018), against voting and in favour of the draw by lot (Van Reybrouck, 2013), etc.; others, instead, fear the excesses of democracy, and out of concern they speak of the myth of rational voters, of illiberal democracies, of minority rights, etc. Notwithstanding the variety of outlooks, almost no one seriously questions political democracy as *the* only legitimate regime.

Even the opponents of democracy *in practice* have long ago adopted at least the “appearances” of democratic decision-making processes. At times, they even simulate the “externals” of democracy, including voting, periodic elections, *parliaments*, *referenda*, and the like – which, one may recall, were mechanisms originally devised to secure in more

² “No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of Government except for all those other forms that have been tried from time to time (...).”

³ Some may argue that the specific nature of liberal democracy, which is founded on the principle of equality and the consequent need for unanimity at least in the initial decision on which the aggregate is politically based evades the problem because it incorporates legal instruments, collected mainly in English constitutionalism, which maintain equality as a guiding principle but circumvent the aporias that its strict application raises, given the practical impossibility of making the demos equivalent to an effective subject/decision maker. We are grateful to the journal reviewer to point the necessity of this clarification. This paper explains why is not so: there is an essential imperfection given the asymmetric information – as Popper avers.

than an external way the accountability of statesmen and politicians to the citizens they govern on behalf of. These externals are sometimes easier to emulate today because citizens are ordinarily regarded primarily as passive *voters*. In consequence, the more active involvement in decision-making that was common in the past is not the obstacle to such emulation that it otherwise would be. In any case, it is instructive that this kind of emulation is sought after in the way that it is.

What was it that made “democracy” the standard for legitimacy that it has become? Is it not strange that a specific political regime has emerged among others as an inescapable moral and political horizon? This may be all the more surprising to us since the history of classical political philosophy has generally failed to produce for us great champions of democracy. There was no great political philosopher among the ancients who defended this regime, and the medieval and early modern thinkers who did dare to defend it did not also dare to defend it without an arsenal of reservations and qualifications.

One answer to these questions about democracy’s prestige is that there has been a fundamental transformation in the way that “democracy” could materialize. According to this view, ancient democracies, for example, or the type of democracy found in mediaeval republics, signified something deeply different from modern democracies. If we were looking to understand what this difference of meaning would be, it would be reasonably intuitive to say that it is connected with the fact that pre-modern democracies were beset by a much deeper scarcity of wealth, of leisure, and of time to participate in the life of the city. So, it should not strike us as utterly absurd that the request of the populace was often “bread and circus”. Nor should it be incomprehensible that the government of “the many” amounted, *in practice*, to forcible government of the miserably poor, of the uneducated, and often enough of the notorious violent mobs. These “democratic” regimes were inherently instable, conducive to *stasis*, and almost always short-lived. Even in Athens, the democracy from Pericles to Demosthenes survived for less than a century before Athens reverted to the regime of municipal aristocracy – so that Athenian democracy could be characterized as just a brief Greek interlude. Indeed, it was rather municipal aristocracy that

endured throughout the Hellenistic and Roman period. It is true that direct democracy re-emerged later in medieval cities, but, again, it re-emerged amidst the extant political instability, civil dissension, and riots – as in ancient times (Veyne, 1976; Hansen, 1998).

According to this view, the reason for the failure and decial of democracy before the inception of modernity can largely be explained by fundamental differences of context, which modern democracies, by contrast, have not been overwhelmed by. These differences would have been essentially sociological, so that modern democracies would become possible only in countries with a certain level of *wealth* (Dahl, 1971) or *of formal education*, or “democratic culture” (Lipset, 1981). The sociological limit after which democracies could emerge could, on this view, be measured by an income per capita above a certain threshold, or by a certain level of instruction determined by a low rate of illiteracy, or even by widespread “cultural habits” of critical examination, as, for example, free interpretation of the Bible. One could say that democracies before the Enlightenment were decried because they were not in fact, and could not be, real forums for deliberation among citizens – even if there may be a variety of different reasons for saying this.

This sociological explanation for democracy’s historical lack of its present prestige has often shown itself to be a deficient explanation, partly in the way that its delivered forecasts have turned out to be infirmed factual observations. However, the main deficiency of the sociological explanation is that it fails to capture *the* essential difference between modern and ancient democracy. Even though few or none of the classical authors defended the democracy of their time, they were far from blind to the flaws of oligarchies and monarchies, and they were additionally aware of the virtues of decision-making processes shared by “the many” – notwithstanding their little wealth, little leisure, and little education. To take one important example, Aristotle’s conception of the “regime” is only fully realized in a democracy. And as a further example, Plato in certain passages speaks of a form of government of the many which, while perhaps an imperfect regime, is not the rule of the democratic mob. Thus, when Lincoln speaks of the “wisdom of the crowds”, which cannot be deceived all the time, he is in fact echoing classical philosophy.

In the shift from the pre-modern attitudes about democracy to the modern attitudes, the main change was not so much a sociological one as it was a *moral* one. The ancients felt that the government was up to those who deserved it for their wisdom, even if that wisdom had to be tempered by the consent of the many. Today we would consider *morally* unacceptable the right of the wise to rule. According to pre-modern conceptions, only the wise – or at least only reasonable men – can discern the best means to achieve man’s ultimate end, that is, his happiness. This conception, if followed to its last consequences, would lead to the acceptance of an “irresponsible” and unlimited government of the wise. We moderns find ourselves apt to think exactly the opposite of this conception. The discernment and the choice of means for our ends, such as self-preservation and happiness, is supposed to be up to each individual, regardless of his wisdom or his “madness”. For although “madmen” can and indeed do make foolish or otherwise poor choices, they are more concerned with their happiness than they may suppose any wise advisor to be. Self-interest replaces, with benefits, the lack of wisdom. The idea that, for all practical or political purposes, each individual is a better judge of his own interests than any guardian, leads as a consequence the adoption of a democratic perspective. This much would explain the shift from pre-modern attitudes. Yet what is more, this idea still seems to be the best *moral* argument in favour of democracy.

Such lines of argument were developed in important part by Hobbes and Rousseau. Sometimes it is additionally claimed that even our modern idea of democracy comes from Rousseau’s thinking on these matters, and in particular his defence of popular sovereignty. However, such an opinion is based on at least two misunderstandings. On the one hand, Rousseau defends republicanism, but rejects democracy – preferring rather, as he seems to, a kind of meritocratic aristocracy. On the other hand, Rousseau rejects parliamentary representation (or any other form of representation), which makes representative democracy impossible in a large modern country. Whatever the case, Rousseau is certainly one of the first and most important to debate decision-making mechanisms, including majority voting, and this aspect of his theory has been unduly neglected.

1. Decision-Making Procedures

According to the different regimes in which they are used, many different decision-making procedures have been used throughout history: the rule of elders of the tribe, the rule of the most ancient and noble families, the rule of the wealthiest and more powerful, vote by demos in popular assembly or by “general” acclamation, shouting out loud in *comitia*, secret ballot, negotiating between different solutions, referenda, votes by order or class, or by city or state in a federation, etc. Most of these procedures are still in use today in different institutional settings.

Of all these procedures, however, we think today that the vote of the majority is not just the most apt for a democracy where all men are equal. We take it as almost synonymous with democratic decision-making. It is in a sense obvious that if democracy should be the rule of the people, the system that gives voice to the majority of the people – as opposed to a minority – is therefore its logical outcome. Moreover, if we discard the use of sheer brute force, or the rule of the more experienced elders, it surely is as “expedient as lighting by gas”.

As obvious as its expediency may seem, and despite the long historical experience of different procedures – as well as numerous commentaries on the topic by different philosophers – the systematic search for *the* single best method to achieve results concurring with the common good may have been first articulated by Rousseau, and then mathematically formulated some twenty years later by the Marquis de Condorcet.

In the *Social Contract*, Rousseau writes that “[w]hen a law is proposed in the assembly of the people (...) each one in casting his vote expresses his opinion thereupon; and from the counting of the votes is obtained the declaration of the general will” (Rousseau, 2012: 230).⁴ Condorcet was more precise. In essence, he claimed that majority rule is more likely to produce correct decisions (Young, 1997: 181). Or, to use Robert Dahl’s words (in summarizing a rather complex formal

⁴ Rousseau, *Social Contract*, IV.2.

argument), “[t]he probability that the majority is right increases dramatically the larger it is” (Dahl, 1989: 142).⁵

Nonetheless Dahl takes “majority rule” to be a rule for decision-making, and to be carefully distinguished from the democratic process. He acknowledges that, at the very least in a “weak sense”, a majority seems to be a necessary criterion for passing a law (Dahl, 1989: 136-136), even if it is not always a sufficient criterion. After careful consideration, he wonders why majority rule is far more popular in democratic theory than in democratic practice. Yet this attention is tempered by his assertion that it is impossible to find any optimal method. For, as he says, “the quest for a single rule to specify how collective decisions must be made in a system governed by the democratic process is bound to fail” (Dahl, 1989: 162).

Is Majority Rule the Voice of the People?

The problem we face is, then, to justify the appeal of majority rule to political theorists rather than the opposite. An adjacent concern, however, it to discern why majority rule seems so intuitive, and why its appeal extends to political theorists as well as to politicians’ rhetoric. Why is majority vote so often equated to “the voice of the people”?

Despite his reservations in *Democracy and its Critics*, Robert Dahl in fact tries to demonstrate that majority rule follows from equal consideration of all citizens and, ultimately, that most alternatives to majority rule are unsatisfactory. Given a set of reasonable assumptions – which he calls “Preliminaries,” including namely the notions of an egalitarian ethos, defined boundaries, and the need for some kind of collective decision-making process – Dahl derives the conclusion that granting minorities the right to block the decision of the majority would lead to minority rule (and this by means of a Socratic-type dialogue between a majoritarian and a critic) (Dahl, 1989: 137).⁶

⁵ This is a developed version of a rather common view, which in an early iteration was maintained by Aristotle and amounted to the proposition that sometimes a crowd can be wiser than any wise man.

⁶ See also his exam of the elitist theory of democracy such as Gaetano Mosca’s and Wilhelm Pareto’s in Chapter 19: “Is minority dominion inevitable?”

Dahl points out four arguments in favour of majoritarianism. First, majority rule seems to maximize self-determination (Dahl, 1989: 138-139). Second, majority rule seems to be a necessary consequence of some reasonable conditions, so that an argument can be made by way of strict logical entailment (Dahl, 1989: 139-141). Third, it could be that majority rule maximizes utility (Dahl, 1989: 142-144). Fourthly, majority rule seems more likely to produce correct decisions – in which argument Dahl looks for support in a peculiar reading of Condorcet’s theorem (Black, 1963).

Why the need of a Socratic-type dialogue in which the critic, more often than not, gives his passive agreement? Perhaps in one sense, Dahl is simply looking to nuance his presentation. Yet in another sense, he is trying to map out what sort of justifications and arguments are available and what they are supposed to achieve. So that when he addresses the question of whether there is a better alternative than those just mapped, namely, when he repeats that the restraints to majority tyranny are apt to end in minority tyranny, he indicates that there are some views generally taken as viable which he, by contrast, does not take as viable. Thus, he claims that the decision-making processes which do not work acceptably are supermajorities, limited democracy as presented in William Riker’s book against populism (Riker, 1982),⁷ as well as the view that he refers to as the “quasi-guardianship” of a supreme court.

Sociologists and Economists Inveighing Against Majority Rule (I): Economists

When Dahl was writing in 1989, a ghost was haunting academia: the consequences of Arrow’s theorem (Arrow, 1963).⁸ Arrow’s theorem

⁷ See especially the Introduction.

⁸ These questions found articulation especially in economists’ approaches to decision-making, and Dahl addresses them as such (Dahl, 1989: 144-148).

was not more than a version of Condorcet's paradox, which had of course been around and well-known since the 18th century.

The successors of Condorcet and Arrow do infer from a reasonable set of conditions – at least as reasonable as we may take Dahl's own set of assumptions to be. They say that majority decision-making is unable to rank-order more than two political alternatives in a consistent way when those alternatives are subject to cyclical changes. Otherwise, those who control the schedule of political alternation turn out to be the real decision-makers wherever simple majority procedures are enforced.

As Dahl puts the matter in the words of the majoritarian critic,

[Arrow's] Impossibility Theorem demonstrates that unless you allow one person to dictate to all the rest, no solution to a cyclic majority exists that doesn't violate at least one of several other reasonable assumptions. To my knowledge, no one has ever succeeded in showing that any of Arrow's assumptions are unreasonable (...) (Dahl, 1989: 146).

The literature henceforth has multiplied and developed intricately. But paradoxically the haunt of Arrow's theorem implies that the literature has never quite escaped their Rousseauist inspiration (or curse). Modern economists have found Rousseau's formulas basically reasonable and have rearticulated them in roughly the following terms.

The only decision-making rule in which no one is imposed upon, really assuming individual freedom and the separation between such individuals, is unanimity (Buchanan & Tullock, 1999: 11). Even so, different decision-making rules may be summoned when the costs of decision-making are sufficiently high. Since the going rate of unanimity is often astronomical, alternative decision-making rules would often be useful. Compromise rules extending in strictness from supermajorities down to mere plurality (or 'relative majority') are, the economists say, conditionally acceptable. Even accepting such a rule is itself of course a trade-off, since affording compromise means affording a minority as such. On the other hand, decision-making costs are supposed to run lower when the need for expediency runs higher.

Trade-off can also be represented graphically by a curve which measures unanimity-expediency against relative costs.⁹

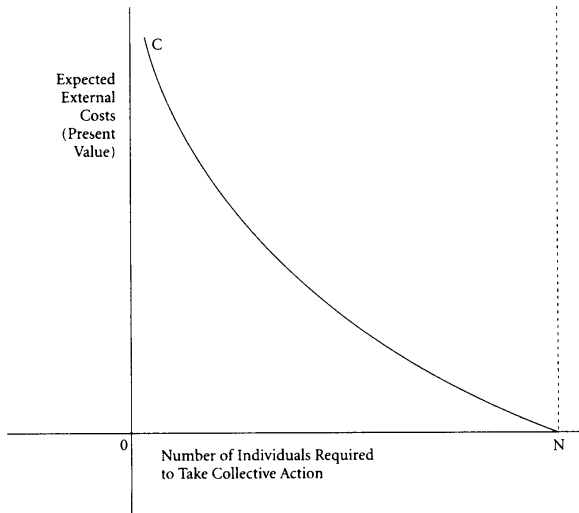


Figure 1

An approach to the problem resorting to economic methods carries a non-insignificant measure of unreality. On the other hand, this measure of unreality is sufficiently small that few would deny the approach's usefulness (see Barry, 1988).

Sociologists and Economists Inveighing Against Majority Rule (II): Sociologists

If economists make some assumptions, sociologists in their empirical inquiries also make their own simplifications. Dahl knows, as an experienced sociologist, that counting solely on majority rule is less frequent in practice. Relying on some cold numbers from the classic work of Arend Lijphart, Dahl figures that the Westminster kind of democracy is less successful than the "consociational" (Lijphart, 1984).¹⁰

⁹ On the costs approach see the seminal work of Buchanan & Tullock, 1999: 97 ff.

¹⁰ Dahl prefers to call them the democracies that follow the "Consensual-Unitary" model (Dahl, 1989: 159).

In his *Patterns of Democracy*, Lijphart expands his original survey from 24 to 36 democracies, examined from 1945 to 1996. He notes that while “modern democracies exhibit a variety of formal governmental institutions (...) clear patterns and regularities appear when these institutions are examined from the perspective of how *majoritarian* or how *consensual* their rules and practices are” (Lijphart, 2012: 1). While Lijphart advocated consociationalism primarily for societies deeply divided along ethnic, religious, ideological, or other fault lines, he sees consensus democracy as appropriate for any society with a consensual political culture.¹¹ Lijphart sees consociational democracy as fitted to societies with consensual political expectations, although the model is useful especially for societies which are divided so that substantive consensus is difficult, that is, because they are deeply divided along ethnic, religious, linguistic, or other cultural lines. These kinds of society that struggle with cultural and moral consensus contrast with majoritarian ones. In the latter case, their institutions allow that policy is controlled only by a wide supermajority and that newly elected political administrations or coalitions have limited power over minorities. Lijphart finds these to be a “kinder, gentler” variety, i.e., higher quality of life from a democratic viewpoint (Lijphart, 2012: 293).

Dahl adds another argument taken from his on sociological studies to an extraordinary amount of empirical evidence against sheer majoritarian democracy, namely, the famous “boundary problem”. The “boundary problem” engages with the (often untrue) assumption that “the boundaries of the collectivity are fixed” (Dahl, 1989: 139), an assumption which ignores the fact that differently arranged borders or districts would make for a different political and social outlook. In fact, in previous books, Dahl had called the attention to the fact that there is at the very least one major democratic decision which cannot be decided by democratic means: the decision about “who the demos is” (Dahl, 1973). Dahl proposes a broad solution that he calls “inclusive democracy”. But not even a fully inclusive democracy evades the problem, for no matter how inclusive the demos is, it cannot decide on the matter of

¹¹ His model seeks to refine Almond’s and Verba’s taxonomy of democracies that focus mostly on the antinomy of Anglo-Saxon majoritarian systems and the continental constitutions – paying little attention to the Dutch-Nordic kind.

inclusion if there is not yet a demos to decide on it. Dahl comes, in the end, to the conclusion that “majority rule is far less popular in democratic practice than in democratic theory” (Dahl, 1989: 160).

2. Rousseau’s Solution

The contemporary research on the question of majority rule, and the alternative decision-making procedures implying unanimity, cast some light on Rousseau’s solution – as well as explain the solution’s paradoxical nature (Berlin, 2002: 28-51). It is true, that, as Dahl asserts, Rousseau is not alone in the defence of majority rule. As he states rather plainly, “many advocates of popular republican or democratic government have defended majority rule” (Dahl, 1989: 135). John Locke and Jean-Jacques Rousseau number among such advocates, and both prescribe unanimity at the time of the original contract, as well as majority rule thereafter (Dahl, 1989: 134). That Rousseau is reasonably placed alongside Locke in this respect should not, however, lead us to forget Rousseau’s originality. There is an important difference between both political philosophers.

To Locke’s mind, rights have priority over the majority simply so. Thus, we find among the rights that Locke enumerates a right of rebellion. If a bit anachronistically, we may say that Locke’s priorities lead him to articulate something like what Dahl calls “limited democracy”.

By contrast, recall that Rousseau makes majority the criterion of the general will. When majority is achieved – so that it is an expression of the general will rather than some or another faction – full conformity with the majority is required. As Rousseau says, “excepting this original contract, the vote of the majority always binds all the rest, this being a result of the contract itself.”¹² He was well aware that such a

¹² Jean-Jacques Rousseau, *Social Contract*, IV 2. He goes on explaining why minorities should not be considered: “When a law is proposed in the assembly of the people, what is asked of them is not exactly whether they approve the proposition or reject it, but whether it conforms or not to the general will, which is their own; each one in casting his vote expresses his opinion thereupon; and from the counting of the votes is obtained the declaration of the general will. When, therefore, an opinion opposed to my own prevails, that simply shows that I was mistaken, and that what I considered to be the general will was not so. Had my private opinion prevailed, I would have done something other than I wished; and in that case I would not have been free.”

contention is problematic as regards the definition of freedom. How is it that the associates of the contract are free, on the one hand, while on the other hand they may be bound to others' choices when they find themselves in a minority? Rousseau replies that "the question is wrongly put. The citizen consents to all the laws, even to those passed in spite of him, and even to those that punish him when he dares to violate any of them. The unvarying will of all the members of the State is the general will; it is through the general will that they are citizens and free. (...)" (Rousseau, 2012: 230).

Regardless of the strangeness of his solution, Rousseau gives us some general formulas for voting procedure in the *Social Contract* which we may summarize as follows: (1) The majority vote, after the social contract, can oblige citizens; (2) majority vote can have a threshold of unanimity, of simple majority, or of one merely stricter than simple majority; (3) political needs determine the suitable proportion within that range, so that (a) unanimity agrees in increasing appropriateness with greater importance and need for deliberation, and (b) simple majority corresponds more with greater urgency or parvity of consequence; (4) the first formula, (a), seems more appropriately employed for legislation, and (b) more so for business.¹³

Modern social choice and political theorist alike are often both appalled by some of his justifications as well as enticed by the reasonableness and simplicity of his criteria. Regarding which criteria, Rousseau states:

With regard to the proportional number of votes for declaring this will, I have also laid down the principles according to which it may be determined. The difference of a single vote destroys unanimity; but between unanimity and equality there are many unequal divisions, at each of which this number can be fixed according to the condition and requirements of the body politic (Rousseau, 2012: 230).¹⁴

¹³ Jean-Jacques Rousseau, *Social Contract* IV.4. See Dahl, 1989, p. 355.

¹⁴ Jean-Jacques Rousseau, *Social Contract*, IV.2. After this, he explains why minorities should not be considered: "When a law is proposed in the assembly of the people, what is asked of them is not exactly whether they approve the proposition or reject it, but whether it conforms or not to the general will, which is their own; each one in casting his vote expresses his opinion thereupon; and from the counting of the votes is obtained the declaration of the general will. When, therefore, an opinion opposed to my own prevails, that simply shows that I was mistaken, and that

Unanimity, Majority and the General Will

Notwithstanding Rousseau's strong appeal, his "decision-making" rules need to be understood with three qualifications especially.

First, while Rousseau was an advocate of popular sovereignty, this does not translate into advocacy for democracy. Democracy is a proper regime for gods, but not for men (Rousseau, 2012: 202).¹⁵ Political instability, mob rule, and other misfortunes are supposed to very likely follow upon democratic government. We might more accurately call him a proponent of a kind of elective meritocracy. In this, Rousseau merely followed the classical tradition, since none of the major political philosophers since antiquity had deemed democracy the best regime.

Second, although Rousseau might be classed as a republican, he also clearly asserts that rule should not be entrusted to the majority of citizens, since it is against nature that the many rule the few (Rousseau, 2012: 201). Only a few may rule.

Thirdly, Rousseau does not allow for any kind of representation, which he describes as a corruption of republican virtue. So, *in fine*, Rousseau would reject the idea of any modern representative democracy (Rousseau, 2012: 221-222).

Accordingly, unlike Dahl, Rousseau is not trying to solve the problem of democratic decision-making. Instead, the procedures of determining the general will are built into his attempt at solving the paradox of freedom. Rousseau makes his engagement especially in the *Social Contract*, which is written as though with a calculated ambiguity.

what I considered to be the general will was not so. Had my private opinion prevailed, I would have done something other than I wished; and in that case I would not have been free."

¹⁵ Rousseau, *Social Contract*, III.4.

Collective Action and Unanimity

Rousseau separated himself from Hobbes, Locke, and other predecessors, stating that in their quest for the “state of nature” they had fallen short by not going back far enough. Why does Rousseau rely on their idea of a social contract between men that, according to him, were living apart from their natural condition? According to the *Discourses*, the social contract was sought because men needed protection due to divisive and conflictual institutions – such as property.

Moreover, as much as his own work as a proto-sociologist (or perhaps proto-anthropologist) made him question the view of his predecessors on man’s state of nature, why did he still rely on their idea of an (“imaginary”?) social contract? The function of Rousseau’s idea for the social contract is explained by his own words as a solution to a problem of a very different kind than democratic decision-making.

‘To find a form of association that may defend and protect with the whole force of the community the person and property of every associate, and by means of which each, joining together with all, may nevertheless obey only himself, and remain as free as before.’ Such is the fundamental problem of which the social contract provides the solution (Rousseau, 2012: 163).

The social contract associates individuals so that each is secured by the common force of all, although each individual remains free.

The literature on Rousseau’s political ideas is so extensive that it makes little sense to even attempt at summarizing it or commenting upon it here (see Riley, 2001). But we may note at least that Rousseau had seriously searched out and written on other decision-making procedures – the rule of experienced elders, or the rule of the most ancient or wealthiest and more powerful. In both his homeland and in France, votes by order or by city were commonly used as an alternative to brute force. He condemned them all as illegitimate; only the free individual was natural, while all contracts were conventional. His proposal of a social contract was different in that *all* individuals agreed, without coercion or otherwise undue social influence, on a convention

which had their very agreement as the source of justification. So, the justification was not derived from some fact of force.

In light of this, we note two features of the social contract: the continuity of individuals' freedom in the transition into the state of association, and the fusion of forces into a common force. Again, the key question for Rousseau is how individuals' freedom is maintained through that "fusion", so to say, which occurs in the social contract. How is this problematic?

A difficulty emerges when we consider what Rousseau has to say about necessity and freedom. "To yield to force is an act of necessity, not of will; it is at most an act of prudence" (Rousseau, 2012: 158). Yielding to force is not a free act, but an act of necessity. But the general reason for the social contract is that the associates need protection by the common force, which is at the direction of the general will.

How is their collective choice really a free one, then? Is it not one of necessity, in which case there is no continuity of individuals' freedom? In the social contract, natural freedom is traded for civil freedom. This is an axiomatic clause in any legitimate instance of the social contract which Rousseau points out: each individual abdicates all rights to the whole community¹⁶.

Although in his proto-sociological method of approach he effectively says that the fact of force occasioned the social contract – or *occasions* it, if we interpret the social contract at least as heuristically as we do genealogically – the decisive condition for the contract and its justification is that free individuals freely associate by means of it, and that (1) the common expression of that free association in the general will, as well as (2) the means of determining the general will through vote, are likewise legitimate.

¹⁶ An auxiliary remark, from the beginning of the work, is that social order is a conventional right upon which all others are based. This should leave us confused for at least a few reasons. (1) If there is continuity of natural elements, however fused, what then is a right? (2) Are rights natural? (3) If so, why is the abdication of rights not unnatural?

Why Unanimity in the Social Contract?

The nature of the social contract is such that it requires complete unanimity; for the general will must be constituted “generally,” so as to direct all the physical powers of the associates into a common force. However, there is a subtlety regarding the fusion of physical forces.

Only those who freely agree to the social contract enter into it, and Rousseau says there are some who may be opposed to it; they are thus excluded, but after society has been contracted, they tacitly consent to the social contract by their residence (Rousseau, 2012: 229). The subtlety, then, is that once the common force of the general will is catalysed, there is a subjugation of individuals’ freedom to the common force of the general will so that majority becomes sufficient, and unanimity becomes unnecessary (Rousseau, 2012: 229-230).

This conjunction of physical force and moral duty is apparent in the sudden significance of residence; the general will is immediately caused by the determining condition, the free assent of the associates, but the common force of the general will is composed of individuals’ physical powers, which merge as though in consequence of individuals’ free assent. The formation of the general will entails the aggregation of the common force. But the aggregation of the common force entails territorial sovereignty.

The popular sovereignty of the general will, with its common force, obligates all the associates. All that is required for this general obligation is that the majority’s vote expresses the general will. And as Rousseau says, those who defy the general will would be “forced to be free” (Rousseau, 2012: 166).

This twist of a phrase is meant to be intelligible by Rousseau’s distinction between natural freedom (or perhaps “individual freedom”)¹⁷ and civil freedom (Rousseau, 2012: 167). The prior has only the constraint of an individual’s physical power. Civil freedom is limited by the general will, and the general will is established as a precedent by unanimous, free assent of the original associates.

¹⁷ “Indeed, each individual can, as a man, have a particular will contrary to or differing from the general will he has as a citizen” (Rousseau, 2012: 166; *Social Contract*, I.7).

Why does the majority express the general will? This follows from the nature of the social contract, Rousseau says (Rousseau, 2012: 229-230), and it follows from the social contract because this is what was stipulated in the beginning by unanimity (Rousseau, 2012: 162).

3. Concluding Remarks

What function or purpose may an imaginary social contract fulfil, based on free and unanimous association, as one that Rousseau proposes to us as the precondition of civil life? We suggest that real contracts, by comparison, are liable to produce injustices because the different parties in the contract have unequal powers of influence and different interests. Imaginary contracts, by contrast, can be idealized in such a way that all parties agree and are in a position of perfect equality and fairness (Sandel, 2008).¹⁸

While imaginary contracts are characteristically *not enforceable* – and at best heuristic – they can fill an important role in providing standards for political decision-making. Their advantage over real contracts in the explanation and justification of majority rule is that they can dodge the characteristic but circumstantially determined forces involved in real agreements.¹⁹

¹⁸ See Sandel's commentary in Ch. 6 on Rawls's hypothetical contract.

¹⁹ "The early theorists (Hobbes, Althusius, Locke, and Rousseau) did assume consensus in the formation of the original contract. They did so because the essence of any contractual arrangement is *voluntary* participation, and no rational being will voluntarily agree to something which yields him, in net terms, expected damage or harm. The categorical opposition of interests that many theorists assume to arise to prevent unanimity is much more likely to characterize the operational as opposed to the constitutional level of decision, and it is essential that these two levels of decision be sharply distinguished. It is at the operational level, where solidified economic interests of individuals and groups are directly subjected to modification and change by State action, that violent conflicts of interest can, and do, arise. At the 'higher' constitutional level the problem confronted by the individuals of the group is that of choosing among alternative *rules* for organizing operational choices, and the discussion at this level will be concerned with the predicted operation of these rules. By a careful separation of these two levels of decision, much of the confusion inherent in modern interpretations of the contract theory of the State can be removed. Conceptually, men can reach agreement on rules, even when each party recognizes in advance that he will be 'coerced' by the operation of agreed-on rules in certain circumstances" (Buchanan & Tullock, 1999: 248-49). Rawls's solution, we may note, is obviously similar.

By contrast, real agreements are enforceable in a way that ideal ones are not. When “imaginary unanimous contracts” were historically enforced, the result was neither peaceful agreement nor justice. In fact, Rousseau was not a democrat, and his *Social Contract* on top of Robespierre’s bedtable led to one the bloodiest modern tyrannies.

We think that is preferable for an advocate of democracy to acknowledge that, even *in theory*, it is an essentially imperfect regime. We also think that such advocates should clearly distinguish liberal democracies’ many advantages from the rule of the people that they fail to embody properly. So, we may expect such imperfections as cyclical instability, irrational voting that damages the economy, disregard of minority rights, etc. *In practice*, many of these concerns may (or may not) be properly addressed by piecemeal constitutional amendments without questioning the “least bad of all the regimes”. Out of a perhaps reasonable fear for democracy’s recent loss of prestige in favour of populist movements or populist regimes, it may be worth exploring reforms of decision-procedures (including the draw by lot) that foster more active citizenship. Whatever the procedure, none will enable us to dispense with trade-offs between costs and expediency in democratic decision-making. There is no single solution.

The goal of this paper has been to show that the awareness of all these problems and imperfections is not new. In fact, it was inherently part of the very first “experiments in democracy” in the modern era. And we should also be aware that even majority-rule might be as good as it gets.

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