

Consensus and Conflict in Western Thought on Representative Government*

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Abstract

Representative government in the West was born under an ideology that postulated a basic harmony of interests in society. The political decision process was thus expected to be largely consensual. This ideology obfuscated important conflicts of values and interests, and it became untenable with the rise of class-based and religious parties. Beginning with Kelsen (1923) and culminating with Schumpeter (1942), theorists of representative government conceptualized it as a system for processing conflicts. In one view, representation is assured by compromises among parties, in another by partisan alternation in office.

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1 Introduction

The ideal that propelled movements toward representative government in the West was "self-government of the people," where "the people" always appears in singular, as *le peuple*, *el pueblo*, etc. But how could the people govern itself? "The people" in singular cannot act. As the Demiurge, it is an apathetic one. This is why Rousseau (1964: 184) needed to make terminological distinctions: "As for those associated, they collectively take the name of the *people*, and are called in particular *Citizens* as participants in the sovereign authority and *Subjects* as submitted to the laws of the State."¹ But how is the will of the *people* in singular to be determined by *Citizens* in plural?

Clearly, this question does not arise if all people are in some way identical, if the citizens who choose the order which they are to obey as subjects are but copies of a species. In Kant's (1793) view, guided by universal reason, each and all individuals will want to live under the same laws, "For Reason itself wills this." As Berlin (2002: 191-2) emphasized, the ideology of self-government was based on the premise that there was a single truth, which was either self-evident or could be discovered, à la J.S. Mill, if opinions are free to confront one another. His characterization of this idea merits citing *in extenso*:

All truths could in principle be discovered by any rational thinker, and demonstrated so clearly that all other rational men could not but accept them.... On this assumption the problem of political liberty was soluble by establishing a just order that would give to each man all the freedom to which a rational being was entitled.... it is only irrationality on the part of men (according to this doctrine) that leads them to wish to oppress or exploit or humiliate one another. Rational men respect the principle of reason in each other....

As Descombes (2004: 337) puts it, "the man as *subject* is not this or that man, but rather something like the rational faculty which is found among human individuals, everywhere identical."

Representative government in the West was thus born under an ideology that postulated a basic harmony of interests in society. The condition under which the people would rule itself is that each and all persons rationally want to live under the same laws, unanimity. If the same legal order is considered best by all, the decision of each is the same as would be that of all others. Indeed, the fact that others want the same is irrelevant: if others command me to do the same that I command myself to do, I obey but myself. Moreover, the procedure for lawmaking is inconsequential: when everyone wants the same, all procedures generate the same decision. Each one and any subset of all can dictate to all others with their consent.

This ideology was naturally hostile to any kind of political divisions. Protagonists of representative government thought that since the people was naturally

¹Kant (1891 [1793]: 35) made similar distinctions when he spoke of everyone's Liberty as a Man, Equality as a Subject, and Self-dependency (self-sufficiency, autonomy) as a Citizen.

united, it could be divided only artificially. As Hofstadter (1969: 12) reports, eighteenth century thinkers "often postulated that society should be pervaded by concord and governed by a consensus that approached, if it did not attain, unanimity. Party, and the malicious and mendacious spirit it encouraged, were believed only to create social conflicts that would not otherwise occur..."² "There is nothing I dread so much," John Adams remarked, "as a division of the republic into two great parties, each arranged under its leader, and concerting measures in opposition to each other" (cited in Dunn 2004: 39). The founders of representative institutions could see no middle road between consensus and civil war, harmony and mayhem.

But while in any society people share many interests, values or norms, other interests, values, and norms divide them. All reasonable people would agree to ban actions we classify as "murder," but we are still deeply divided whether to aborting a fetus qualifies as such. All reasonable people would agree that the economy should function efficiently, but each group wants to receive high income. Even if all were endowed with reason, and even when all the reasons have been elucidated, rational deliberation need not culminate in unanimity. The consensual ideology that underlaid the formation of representative governments obfuscates important conflicts of values and interests. With the rise of class-based and religious parties this ideology became untenable. Beginning with Kelsen (1988 [1928]) and culminating with Schumpeter (1942), theorists of representative government conceptualized it no longer as an institution for identifying and implementing the common good but as a method for processing conflicts.

The central question which this new conception thus opened was how representative institutions can structure, absorb, and regulate conflicts so as to confine them to peaceful solutions. Political institutions must be self-sustaining, that is, they survive and function only if they continually generate outcomes that are preferred to the use of force by each and every group that could impose itself by violating the institutional order. Such outcomes can be generated either by compromises among parties or by prospects of partisan alternation in office. Neither of these solutions, however, guarantees that conflicts would be solved peacefully under all conditions and, even if they are peacefully resolved, that all sectors of society would be represented.

This is the preview of the paper. The next section summarizes the main features of the consensualist foundations of representative government. This section is followed by a different reading of the same history. The critiques of consensualism offered by Kelsen and Schumpeter are summarized next. The validity of partisan compromises and of alternation in office as methods for processing conflicts is then examined. A conclusion focuses on the issue of

²The spirit of party, George Washington (2002: 48) sermonized in his 1796 Farewell Address, "serves to distract the public councils and enfeeble the public administration. It agitates the community with ill-founded jealousies and false alarms, kindles the animosity of one part against another, foments occasionally riots and insurrections. It opens the door to foreign influence and corruption...."

representation.

2 The "Classical" Conception of Representative Government

The basic assumption underlying the "classical"³ conception of representative government was that the society is characterized by a basic harmony of values and interests, so that there exists something that can be identified as the common, public, or general good, interest, or will. The role of representative institutions was to identify and implement this common interest. This role was thus epistemic: a search for truth. To be able to participate in the process of rational deliberation, one needed reason and virtue: thus not everyone qualified as a potential representative. Since the truth was out there to be discovered, deliberation should arrive at unanimity, or at least an overwhelming consensus. Political divisions based on interests or values are inimical to this search for truth, since they introduce elements of passion and irrationality. Once the common good was identified, it was to be implemented by the representatives without interference by ordinary citizens. Thus, opposition to the government was seen as obstruction.

2.1 Common Good

Conceptions of the common, public, or general interest, good, or will offered by particular thinkers were not the same: the multiplicity of the terminology is not accidental. One distinction is whether the common good was assumed to exist independently of individual wills or was identified only as their aggregation. Rousseau thought the former, while utilitarians maintained the latter. Another distinction was whether the common interest could be identified by all the people through some process or only by some enlightened few. Here both Rousseau and utilitarians maintained the former, while authoritarians of different stripes held the latter view.

Using modern analytical apparatus, we can distinguish two types of situations in which interests would be harmonious:

(1) *Individual wills coincide in the sense that the same state of the world is best for each and all.* We all want to prevent foreign invasion; we all want to be able to trade if trade makes each and all better off, we all want to evacuate a coastal town if a hurricane is impending, etc. As a small wrinkle, note that the same would be true if everyone was indifferent whether to do one thing or another as long as everyone does the same. No one cares whether we drive on the left or the right as long as we drive on the same side. In a classical example, we can meet at the train station or at the bus station, and we care only that

³Following Schumpeter, I will refer as the "classical" theory of representative government to the ideology under which it was formed at the end of the eighteenth century, rather than to ancient Greece.

we meet, not where. Such problems are solved simply by communication: it is enough that we announce where to meet. Note that when individual wills coincide the common will is just an aggregation of individual wills.

When interests are harmonious in this sense, collective decisions are self-enforcing. No compulsion is needed for everyone to do whatever the common interest dictates: each individual wants to do it in self-interest. Indeed, one can wonder why we would need laws. Even in the case of coordination a simple announcement is sufficient and announcements are not laws since they do not carry sanctions.

Disagreements may emerge in such situations only if individuals are uncertain which decision is best. For example, all members of a jury want to condemn an accused if he is guilty and to absolve him if he is innocent. The jurors have no other interest than to administer justice. Hence, if the true state of nature (guilty, innocent) were known, the decision how to act would be unanimous. Everyone in a coastal town wants to evacuate it if the hurricane is to strike and not to evacuate if it will not, so that the only issue is whether it will. The collective decision process is then a search for truth. Its role is *epistemic* (Coleman 1989). If there are any disagreements, they are purely cognitive.

(2) *Pursuit of individual interests leads to an outcome that is collectively suboptimal.* Such situations are typified by the prisoners' dilemma: situations in which whenever each individual pursues his interests or values, his will, all individuals are worse off than they could be. The collective result of individually rational actions is socially suboptimal. Examples abound. Everyone would want to grab everyone else's property, but if everyone tries to do so, the result is that everyone fights rather than invests, life that is grim, short and brutish. I want to catch as many fish from the lake as I can; so do you; and as the result over time each of us catches fewer fish⁴.

How can we remedy this situation? We can adopt laws. The law would say that no one can steal or that no one can catch more than some number of fish, and that violations would be subject to punishment. Suppose we were to vote whether to adopt this law or to allow each individual to make decisions independently. Since compliance with this law makes each and all of us better off, the vote for this law would be unanimous. Our common interest is for everyone to obey the law and our general will is that everyone should obey it. Moreover, individuals are free to act in the common interest *only* if the law compels everyone to act in this way. In the state of nature, I would know that if I act in the common interest, others will not do so, so that I could not, would not be free to do what is best for me.

Note, however, that acting in the common interest is not in the best interest of each individual when other individuals do so. If others invest, I am still

⁴Since this topic is a matter of frequent confusion, let me just emphasize that nothing is assumed here about the content of these preferences: if I am perfectly altruistic and want only you to catch fish and so are you, we will both end without any fish, while each of us could catch some without reducing the stock. What matters here is that each person behaves independently, as an individual, not what the content of preferences is.

better off grabbing their accumulated property. If others do not overfish, I am still better off if I do. We have to be compelled not to act in our individual interests, against our individual will. The general will is thus not an aggregation of particular wills.⁵

The collectively beneficial outcome can also be supported by rational morality. Suppose I ask myself "What is it that I would not want others to do to me?," the answer to which is that they should not steal my property or overfish. The rule of conduct I would want everyone else to adopt is thus "do not do to others what you do not want them to do to me." Each individual would want all others to adopt this rule. This, then, is the only rule that can be adopted universally and, if we are guided by universal reason, we would all adopt it.

Is this what Rousseau, or Kant, had in mind? There are certainly enough passages in Rousseau to support the view that he would not object to this interpretation, which was deliberately couched in his language.⁶ Rousseau did think that the social contract must be Pareto superior to the state of nature: otherwise it would not be voluntarily concluded. He also thought that "as the particular will cannot represent the general will, general will, in turn, cannot without changing its nature become particular will" (1964: 129). What matters is that both the idea that in some situations individuals must be compelled to act in their own good and that each individual would want to be compelled by laws are perfectly coherent. To be able to pursue the common good, individuals must act on the basis of the general will, as instituted in laws, even against their particular wills.

2.2 The Role of Representative Institutions

The role of representative institutions was to deliberate so as to find the common good of all. As formulated famously by Edmund Burke in 1774,

Parliament is not a *congress* of ambassadors from different and hostile interests; which interests each must maintain, as an agent and advocate, against other agents and advocates, but parliament is a *deliberative* assembly of *one* nation, with *one* interest, that of the whole; where, not local purposes, not local prejudices ought to guide, but the general good, resulting from the general reason of the whole.

Politics, Sieyes would say, "is not a question of a democratic election, but of proposing, listening, concerting, changing one's opinion, in order to form in

⁵On this issue, see the polemic between Grofman and Feld (1989), Eastlund (1989) and Waldron (1989).

⁶As for Kant (1881 [1793]: 34-35), here is the relevant passage: "Right in general may be defined as the limitation of the Freedom of any individual to the extent of its agreement with the freedoms of all other individuals, in so far as this is possible by a universal Law... Now as all limitations of freedom by external acts of the will of another, is a mode of *coercion* or *compulsion*, it follows that the Civil Constitution is a relation of *free* men who live under coercive Laws, without prejudicing their Liberty otherwise in the whole of their connection with others."

common a common will.” As Schumpeter (1942: 250) aptly characterized it, “The eighteenth century philosophy of democracy held that ... there exists a Common Good, the obvious beacon light of policy.... There is no excuse for not seeing it and in fact no explanation for the presence of persons who do not see it except ignorance – which can be removed – stupidity and anti-social interest.”

Note first that not everyone was deemed to be qualified to participate in this process of rational deliberation. While the arguments were self-serving and convoluted, franchise restrictions were portrayed by their proponents as serving the common good of all. The French Declaration of Rights qualified its recognition of equality in the sentence that immediately followed: “Men are born equal and remain free and equal in rights. Social distinctions may be founded only upon the general good.” The argument for restricting suffrage was spelled out in full already by Montesquieu (1995: 155), who parted from the principle that “All inequality under democracy should be derived from the nature of democracy and from the very principle of democracy”. His example was that people who must continually work to live are not prepared for public office or would have to neglect to their functions. “In such cases,” Montesquieu went on, “equality among citizens can be lifted in a democracy for the good of democracy. But it is only apparent equality which is lifted...” The generic argument, to be found in slightly different versions, was that: (1) Representation is acting in the best interest of all. (2) To determine the best interest of all one needs reason. (3) Reason has sociological determinants: not having to work for a living (“disinterest”), or not being employed or otherwise dependent on others (“independence”). As a Chilean statesman put it in 1865, to exercise political rights it is necessary “to have the intelligence to recognize the truth and the good, the will to want it, and the freedom to execute it.” (A speech by Senador Abdón Cifuentes, cited in Maza Valenzuela 1995: 153). In turn, the claim that only apparent equality is being violated was built in three steps: (1) Acting in the best common interest considers everyone equally, so that everyone is equally represented. (2) The only quality that is being distinguished is the capacity to recognize the common good. (3) No one is barred from acquiring this quality, so that suffrage is potentially open to all.

Elections were seen as a way of recognizing those fit to govern in the best interest of all (Manin 1997). The role of voters was to acknowledge natural leaders. “The purpose of elections,” said the Spanish Moderates around 1870, “is to identify social power and turn it into political power” (Garrido 1998: 214). In the indirect elections in monarchical Brazil, the role of the elector was to ‘nominate the good men, worthy of governing’ (Neves 1995: 395). Early elections in Latin America, Sabato (2003) summarizes, were understood “as a mechanism for selecting the betters.... It was supposed that in this transaction the notables of each place will impose themselves naturally.” The quality of leadership, of being “fit to govern,”⁷ was manifest and thus spontaneously recognizable as such. Candidatures were unnecessary since, according to Montesquieu (1995 [1748]: 99), “The people is admirable in its ability to choose those to whom it must

⁷Winston Churchill used this phrase still in 1924 to disqualify Labour government.

entrust some part of authority. It has only to decide on the basis of things it cannot ignore and of facts that are self-evident." Condorcet (1986 [1788]: 293) thought that recognizing the natural ability to govern is so simple that even women (albeit only propertied among them) can do it. Madison believed that a large republic would permit such "a process of elections as will most certainly extract from the mass of the society the purest and noblest characters which it contains" (cited in Rakove 2002: 56).

The representatives were to find the true common interest of all. But how were they to know if and when they found it? What should be, to use the language of computer science, the "stopping signal" for their deliberations?⁸

Objective truth is subjectively convincing, at least to people endowed with reason. Thus, Milton proclaimed, "Let [Truth] and Falsehood grapple; who ever knew Truth put to the worse in a free and open encounter."⁹ Locke believed that "the truth would do well enough if she were once left to shift for herself." Cato wrote "Truth has so many Advantages above Error, that she wants only to be shewn, to gain admiration and Esteem." Jefferson asserted that "Truth is great and will prevail if left to herself." And since truth was manifest, everyone should be able to recognize it. Hence, the obvious sign that the truth is found is unanimity. Indeed, this criterion was widely used in early medieval times: Urfalino (2005: 2) reports that "consensus or unanimity seem to have been the predominant mode of collective decisions in almost all human societies before it was replaced by vote." Bentham reports that ninety-nine of each one hundred decisions in the English parliament were unanimous at the end of the eighteenth century. Still in 1962, Buchanan and Tullock assumed that deliberation would lead to unanimity if not for the pressure of time. And even today, this is the assumption of some theories of political deliberation. Endowed with reason, recognizing everyone as equal, and susceptible to moral appeals, participants in the deliberative process do not need to "aggregate" their preferences through voting since they arrive at the same decision. Thus, according to Cohen (1989: 33), "deliberation aims to arrive at a rationally motivated consensus – to find reasons that are persuasive to all..."

If unanimity cannot be reached, the truth is in doubt. As Simmel (1950: 241) observed, "a mere majority decision probably does not yet contain the full truth because, if it did, it ought to have succeeded in uniting *all* votes." Disagreement may indicate that the truth is not manifest, that any decision may be erroneous. Hence, Condorcet (1986) required unanimity in situations when ascertaining truth was a matter of life and death, although he was willing

⁸Urfalino (2005: 2) identifies the problem as follows: "En effet, les réflexions sur la démocratie délibérative, aussi bien que les descriptions des ethnologues, souffrent dans la quasi-totalité des cas du même défaut. La séquence finale de ce qu'ils appellent la « décision par consensus » ou la « décision à l'unanimité » n'est évoquée que de manière allusive. Le lecteur est censé comprendre que, à la fin, un consensus permet de prendre la décision. Mais les auteurs ne décrivent pas la manière dont la décision est arrêtée, ils ne se sont pas donnés les moyens de répondre à la question suivante : comment les participants se rendent-ils compte que, de fait, un consensus a été établi et donc que la décision collective est prise ?"

⁹This and the subsequent quotes are from Holmes (1995: 169-170).

to accept less consensus in other situations. A "hung jury," a body that cannot reach unanimity even after all the deliberation, does not provide certain guidance as to how each and all of us ought to act. If some want us to do one thing and others another, what ought we do in common?

Note Schumpeter's caveats: unanimity may be not reached even when the beacon light is obvious, because of ignorance, stupidity, or anti-social interests. But how can one tell whether it is not reached because the truth is not manifest or because of these illegitimate reasons? One solution was to distinguish persons and their reasons. In addition to numbers (*numerus*), both the early German legal theories and the canon law held, we can distinguish authority (*auctoridad*), merit (*meritus*), and intensity (*zelum*). In the early medieval English theory, these were rank, repute, and judgment. Decisions should be based on the views that are not only more numerous but also more valid, *major et sanior*. Yet even if not all opinions are of the same quality, an overwhelming numerical evidence is sufficient to recognize that the decision is based on all the relevant dimensions. Thus, according to Heinberg (1926) different supermajorities were used by thirteen Italian communes: while Genoa typically demanded unanimity, Brescia, Ivrea, and Bologna required two-thirds, and several other cities four-sevenths. In turn, while still in 1159 the election of the pope Alexander III by twenty four out of twenty seven votes provoked a schism, the rule of two-thirds was subsequently adopted by the church for the election of popes. Hence, supermajorities were accepted as the indication that the common interest had been identified.

Whether decisions reached by an overwhelming consensus indicated the true common interest or only that disobeying them would be futile, voting was thought to be at best an expedient substitute for unanimity.¹⁰ Divisions were a sign of a malady, either incomplete knowledge or particularistic interests.

2.3 No Divisions

The original ideology of representative government was hostile to all political divisions. The people were a body and "No body, corporeal or political, could survive if its members worked at cross-purposes" (Ball 1989: 160). The analogy with the body originated in the late medieval period and even when the contractual perspective replaced the organic one, parties to a covenant or contract were seen as parts of a whole, rather than any kind of divisions. Many, even if not all, democratic protagonists thought that since the people was naturally united, it could be divided only artificially. Parties or "factions" were seen as spurious divisions of a naturally integral body, products of ambitions of politicians, rather than reflections of any pre-political differences or conflicts.

¹⁰Describing what he calls "decisions by apparent consensus," Urfalino (2005) emphasizes that "Le consensus apparent exige non pas l'unanimité mais, à côté de ceux qui approuvent, le consentement des réticents;" and "La contribution des participants à la décision est marquée par le contraste entre un droit égal à la participation et une inégalité légitime des influences."

The rejection of political divisions was not restricted to parties. As Rosanvallon (2004) emphasizes, while democracy was not to be direct, it was "immediate," in the sense that no body could stand between individuals and their representatives. In the famous phrase of Le Chapelier, "There are no more corporations within the state; there is no more that the particular interest of each individual and the general interest. No one is permitted to inspire citizens with intermediate interests, to separate them from the public realm by a spirit of corporation." (cited by Rosanvallon 2004: 13).

Rosanvallon (2004) emphasizes that in France collective action was an improper instrument for influencing or opposing the incumbent governments. The last decree of the Constituent Assembly stated in 1791: "No society, club, association of citizens can have, in no form, a political existence, nor exercise any kind of inspection over the act of constituted powers and legal authorities; under no pretext can they appear under a collective name, whether to form petitions or deputations, participate in public ceremonies, or whatever other goal." (cited in Rosanvallon 2004: 59). And this principle seems to have travelled: the 1830 Constitution of Uruguay also made it illegal for citizens to organize into associations. (López-Alves 2000: 55).

While France was an extreme case, similar voices were heard in the United States. As Hofstadter (1969: 8) warns, "The idea of a legitimate opposition ... was not an idea that the Fathers found fully developed and ready to hand when they began their enterprise in republican constitutionalism in 1788. We will misunderstand their policies badly if we read them so anachronistically as to imagine that they had a matured conception of a legitimate opposition..." As Noah Webster's wrote in the famous letter to Joseph Priestly:

In our country this power is not in the hands of the people but of their representatives. The powers of the people are principally restricted to the direct exercise of the rights of suffrage.... Hence the word *Democrat* has been used as synonymous with the word *Jacobin* in France; and by an additional idea, which arose from the attempt to control our government by private popular associations, the word has come to signify a person who attempts an undue opposition or influence over government by means of private clubs, secret intrigues, or by public popular meetings which are extraneous to the constitution. By Republicans we understand the friends of our Representative Government, who believe that no influence whatever should be exercised in a state which is not directly authorized by the Constitution and laws.

Thus, when President Washington called the clubs "self-created," he meant that they were extra-legal and that only duly constituted bodies and duly elected representatives should deliberate or exert pressure on public issues (Palmer 1964; Peterson 1973: 7). Washington's Farewell Address, written in 1796,¹¹ is so

¹¹The Address was never delivered. Some parts of the Address were drafted by Hamilton: Ellis (2002: 152) hears Hamilton's voice in the principle cited in the brackets.

astonishing in its intolerance of any kind of opposition that it requires citing *in extenso*:

All obstructions to the execution of the laws, all combinations and associations, under whatever plausible character, with the real design to direct, control, counteract, or awe the regular deliberation and action of the constituted authorities, are destructive of this fundamental principle [the duty of every individual to obey the established government] and of fatal tendency. They serve to organize faction; to give it an artificial and extraordinary force; to put in the place of the delegated will of the nation the will of a party, often a small but artful and enterprising minority of the community, and according to the alternate triumphs of different parties to make the public administration the mirror of the ill-conceived and incongruous projects of faction rather than the organ of consistent and wholesome plan, digested by common councils and modified by mutual interests. (2002: 47; italics supplied for a future reference.)

According to Palmer (1964: 526-7), "Hamilton, supported by Washington, took the view that the opposition [to his measures] was opposition to government itself. Since no parties of modern kind yet existed, nor was the idea or need of them even recognized, the issues soon took on larger dimensions, becoming a question of the propriety of opposition itself, or the right of citizens to disagree with, criticize, and work against public officials."¹² Opposition was thus tantamount to obstruction of legitimately constituted government.

3 Ideology and Reality

There is another way to spin this stylized tale. One reason to do so is that the Aristotelian tradition, of which Machiavelli was the last representative (Pasquino 1996, 1998) lingered until at least the American revolution. Moreover, the fear that, if endowed with political rights, the poor would use them to confiscate property was reborn together with the founding of modern representative institutions. But a more fundamental reason is that the reality did not bend easily to the consensual ideology.

In the Aristotelian tradition, conflict was inevitable and it was a conflict between the rich and the poor. The solution to this conflict was a mixed constitution, in which different classes would find separate representation in the organs of the state. The difference between these two traditions is best exemplified by the justifications of bicameralism: while Madison and Hamilton insisted that the House and the Senate equally represent everyone, just differently, Adams saw them as representing different groups. Yet the Aristotelian tradition could not and did not survive the onslaught of the democratic principle

¹²For the evidence that opposition was seen as illegitimate by the government in the United States between 1794 and 1800, see Dunn (2004), Stone (2004), and Weisberger (2000).

that representative institutions must be blind to the social position of individuals. Democracy places a veil over distinctions that exist in society. The only attribute of democratic citizens is that they have none as such. As Rousseau (1964: 129) said, "the sovereign [the people united] knows only the body of the nation and does not distinguish any of those who compose it." The democratic citizen is a "man without qualities" (Pasquino 1998: 149-150), an individual outside society. One can say "an aristocrat," "a wealthy person," and "male," but not "an aristocratic citizen," "a wealthy citizen," or "a male citizen." As Sieyès (1979: 183) put it, "*On doit concevoir les nations sur terre comme des individus hors de lien social.*" And since citizens are indistinguishable, there is nothing by which law could possibly distinguish them. Hence, the democratic aspect of representative institutions rendered representation in class terms no longer conceivable.

This is not to say that founders of representative institutions were blind to conflicts, to the manifest fact that not everyone would agree to everything. Not even Sieyès maintained that the consensus must include all issues: "That people unite in the common interest is not to say that they put all their interests on common" (cited by Pasquino 1998: 48). Condorcet (1986: 22) pointed out that "what is entailed in a law that was not adopted unanimously is submitting people to an opinion which is not theirs or to a decision which they believe to be contrary to their interest." The classical argument admitted that people may disagree about many issues; it claimed only that some values or interests bind them together so strongly that whatever is common overwhelms all the divisions. All that was required was an agreement on some basics, in Rousseau's (1984: 66) words "some point in which all interests agree."¹³

The reality of divisions and of conflicts they generated was, even if grudgingly, admitted in the tradition originating with Hume. Some social divisions were seen as inevitable: as Madison, educated in Hume, would observe in Federalist #10, "the latent sources of faction are ... sown in the nature of man." Hume (2002 [1742]) himself thought that divisions based on material interests were less dangerous than those based on principles, particularly religious values, or affection. Yet almost everyone else saw as the central threat the prospect that political participation of the poor would undermine property and thus the social order on which the society was based. In a society that is unequal, political equality opens the possibility that the majority would by law equalize property or the benefits of its use. Since, as distinct from liberty or happiness, property, the kind of property that can be used to generate incomes, always was and continues to be held by a minority, the right to protect property would have to hurl itself against the interest of majorities. Hence, a tension between democracy and property was predictable, and it was predicted. Indeed, at some moment, legal and economic equality became connected by a *syllogism*: Universal suffrage, combined with majority rule, grants political power to the majority. And since the majority is poor, it will confiscate the riches. The syllogism was perhaps

¹³The full quote is "If there were not some point in which all interests agree, no society could exist."

first drawn by a French conservative polemicist, J. Mallet du Pan, who insisted in 1796 that legal equality must lead to equality of wealth: "Do you wish a republic of equals amid the inequalities which the public services, inheritances, marriage, industry and commerce have introduced into society? You will have to overthrow property" (cited by Palmer 1964: 230).¹⁴

Note that, contrary to frequent misquoting, of which I am guilty as well,¹⁵ Madison (*Federalist* #10) thought that this consequence applied to direct, but not to representative democracies. Having identified a "pure Democracy" as a system of direct rule, Madison continues that "*such* Democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths" (italics supplied). Yet "A Republic, by which I mean a Government in which the scheme of representation takes place, opens a different prospect and promises the cure for which we are seeking." Still, he seems to have been less sanguine some decades later: "the danger to the holders of property can not be disguised, if they are undefended against a majority without property. Bodies of men are not less swayed by interest than individuals.... Hence, the liability of the rights of property...." (Note written at some time between 1821 and 1829, in Ketcham 1986: 152).

Once coined, this syllogism has dominated the fears and the hopes attached to democracy ever since. Conservatives agreed with socialists¹⁶ that democracy, specifically universal suffrage, must undermine property. The self-serving nature of the convoluted arguments for restricting suffrage to the propertied was apparent. The Scottish philosopher James Mackintosh predicted in 1818 that if the "laborious classes" gain franchise, "a permanent animosity between opinion and property must be the consequence" (Cited in Collini, Winch and Burrow, 1983: 98). David Ricardo was prepared to extend suffrage only "to that part of them which cannot be supposed to have an interest in overturning the right to property" (In Collini, Winch and Burrow, 1983: 107). Thomas Macaulay in the 1842 speech on the Chartists pictured the danger presented by universal suffrage in the following terms:

The essence of the Charter is universal suffrage. If you withhold that, it matters not very much what else you grant. If you grant that, it matters not at all what else you withhold. If you grant that, the country is lost.... My firm conviction is that, in our country, universal suffrage is incompatible, not only with this or that form of government, and with everything for the sake of which government

¹⁴Hamilton formulated something like this syllogism in his "Plan for the National Government" (in Ketcham 1986: 75), delivered at the Convention on June 18: "In every community where industry is encouraged, there will be a division of it into the few and the many. Hence separate interests will arise. There will be debtors and creditors, etc. Give all power to the many, they will oppress the few." Yet he thought, like Madison, that this effect can be prevented.

¹⁵The misquoting consists of skipping the "such" in the citation below. See, for example, Hanson (1985: 57) or Przeworski and Limongi (1993).

¹⁶According to Rosanvallon (2004), this particular word appeared in France in 1834.

exists; that it is incompatible with property and that it is consequently incompatible with civilization. (1900: 263)

Yet even those that recognized the inevitability of social divisions insisted that partisan divisions can be and must be moderated and mitigated by a proper design of representative institutions. "If ... separate interest be not checked, and not be directed to the public" Hume predicted, "we ought to look for nothing but faction, disorder, and tyranny from such government." (**cite). The first virtue of the United States Constitution Madison vaunted in the opening sentence of *Federalist* #10 was that "Among the numerous advantages promised by a well constructed Union, none deserves to be more accurately developed than the tendency to break and control the violence of factions." Madison recognized that differences of passions and interests are ubiquitous and inevitable in society; moreover, their most common and durable source has been the "various and unequal distribution of property." Such differences cannot be permitted to enter into the realm of politics. But the cost of prohibiting them would be the loss of liberty. Thus Madison concluded that while "the *causes* of faction cannot be removed; and that relief is only to be sought in the means of controlling its *effects*." Even if the etymology of these two words is different (Ball 1989: 139), "factions" were exactly what we would understand today as "parties"¹⁷: "By a faction," Madison defines, "I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community." Yet factions would be controlled, Madison asserts, by discussion among representatives as well as by the fact that in sufficiently large districts each representative would respond to heterogeneous interests. Hence, Madison's solution was not to prohibit the organization of public opinion but to entrust the government exclusively to representatives.

Perhaps paradoxically, one solution to partisan divisions could be a single party, uniting everyone in the pursuit of common good. According to Hofstadter (1969: 23) the main proponent of this solution was James Monroe: "It is party *conflict* that is evil, Monroe postulated, but a single party may be laudable and useful, ... , *if* it can make itself universal and strong enough to embody the common interest and to choke party strife.... Monroe did not think it legitimate to *prohibit* opposition by law. Rather he hoped that the single party would eliminate partyism through its ecumenical and absorptive quality." However unity was to be attained, unity had to prevail.

With regard to no other aspect did democratic ideology experience turnabouts as sharp as with regard to political parties. Consider Madison himself. As soon as he found himself in opposition to Hamilton's policies, by the spring of 1791, he undertook with Jefferson a trip through New York and Vermont the

¹⁷"Faction," however, had a more clearly offensive connotation: as Bolingbroke could say, "Faction is to party what the superlative is to the positive: party is a political evil, and faction is the worst of all parties." (cited in Hofstadter 1969: 10).

purpose of which was none other but to create a party¹⁸. While he still believed that ideally, if economic differences could be reduced, parties would not be necessary, he came to recognize that "the great art of politicians lies in making one party a check on another" (quoted in S. Dunn 2004: 53). Soon he used a label, "Republican," to identify its programmatic orientation. And toward the end of his life, at some time between 1821 and 1829, Madison would arrive at the conclusion that "No free Country has ever been without parties, which are a natural offspring of Freedom." (In Ketcham 1986: 153).

First partisan divisions emerged in England in 1679-80.¹⁹ Polarization over the policy toward France led to the rise of parties in the United States in 1794,²⁰ even if the Federalist Party dissipated after the defeat of 1800 and a two-party system crystallized only a quarter of century later. In France parties became recognizable in 1828. In some Latin American countries, notably Colombia and Uruguay, parties emerged from the wars of independence before the formation of the state (López-Alves 2000).

Yet the hostility to parties was so profound that they were banned in German principalities in 1842; in some countries it was illegal to refer to parties in the parliament until 1914; and mass parties became fully legal in France only in 1901. While Burke defended parties in 1770, he reverted to what everyone else would have considered as a wishful view: "Party is a body of men united for promoting by their joint endeavours *the national interest* upon some principle in which they are all agreed" (2002: 40; italics supplied).²¹ Henry Peter, Lord Brougham, referred in 1839 to party government as "this most anomalous state of things – this arrangement of political affairs which systematically excludes at least one half of the great men of each age from their country's service, and devotes both classes infinitely more to maintaining a conflict with one another than to furthering the general good" (2002: 52)²² Although they advanced democracy by tying the representatives to the represented and by offering explicit platforms from which to choose, parties were seen as destroying discussion and as undermining the separation of powers. "Party government" was a negative term, connoting conflicts motivated by personal ambitions of politicians, "obsession with winning power by winning elections,"²³ pursuit of particularistic interests, altogether a rather unsavory spectacle. It required a remedy in the form of some neutral, moderating power, such as the Emperor in the 1825 Brazilian Constitution or the President in the Weimar Constitution.²⁴

¹⁸The following account is based on S. Dunn (2004: 47-61).

¹⁹Laslett (1998: 31) considers the 1681 "Instructions to the Knights of the Country of — for their Conduct in Parliament," perhaps written by Locke, as the first party document in history.

²⁰According to S. Dunn (2004: 70), "Historians who have analyzed voting patterns in the Congress confirm the existence of clear partisan voting blocs at least as early as 1794."

²¹Moreover, Hofstadter (1969: 34) observes, this view found only a faint echo in the United States.

²²A mathematician the great Lord was not: majority rule may exclude *at most* one half.

²³This quote is from the German President Richard von Weizsäcker, in Scarrow (2002: 1).

²⁴The connection between the emergence of parties and the need for a moderating power was the theme of Henry Saint-John, Viscount Bolingbroke, in 1738: "To espouse no party but

As Schmitt (1998) observed, even this solution was devoured by partisan politics; in the end, presidents were elected by agreements among parties. And when this solution failed, constitutional review by independent courts emerged to constrain party government (Pasquino 1998: 153).

While representative government certainly meant that the people have the right to organize in order to remove the incumbent government through elections, the proper role of the people in between elections remained, and continues to remain, ambiguous. Madison (*Federalist #63*) observed that what distinguished the American from the ancient republics "lies in the total exclusion of the people, in their collective capacity from any share" in the government. He seems to have meant it literally, that the people should leave governing to their representatives, "as a defense against their own temporary errors and delusions." According to Hofstadter (1969: 9), "When they [The Founders] began their work, they spoke a great deal – indeed they spoke almost incessantly – about freedom, and they understood that freedom requires some latitude for opposition. But they were far from clear how opposition should make itself felt, for they also valued social unity or harmony, and they had not arrived at the view that opposition, manifested in organized popular parties, could sustain freedom without fatally shattering such harmony." Lavaux (1998: 140), in turn, observes that "Les conceptions de la démocraties issues de la tradition du *Contrat social* ne font pas la part de la minorité, *a fortiori* celle de l'opposition. La démocratie conçue comme identité des gouvernants et de gouvernés ne laisse pas de place à la reconnaissance d'un droit d'opposition..." The notion that people can freely oppose the government elected by a majority emerged only gradually and painfully everywhere, the United States included. After all, Hofstadter (1969: 7) is right, "The normal view of governments about organized opposition is that it is intrinsically subversive and illegitimate." And the insistence on delegating governance to the illustrious few, on excluding the people from governing, remained at the core of liberal thought, from Montesquieu (1995: 332) to Mill. Freedom will be secured, J.S. Mill (1859, ch5) would maintain, only "by disjoining the office of control and criticism from the actual conduct of affairs, and devolving the former on the representatives of the Many, while securing for the latter, under strict responsibility to the nation, the acquired knowledge and practiced intelligence of a specially trained and experienced Few."

Here, then, is an alternative spin on the consensualist ideology. The ideologues of representative government knew that social divisions and the conflicts they would generate were inevitable. Yet they feared that conflicts, at least some conflicts, would spill beyond institutional boundaries and would lead to civil strife, perhaps even civil wars. One way to prevent violence was by properly designing the representative institutions themselves, perhaps most importantly by restricting suffrage to the propertied, but also by a number of other devices, to govern like the common father of his people, is so essential to the character of a Patriot King that he who does otherwise forfeits the title." (2002: 29) Washington, in the *Farewell Address*, thought that parties have virtues under monarchy, where the king can arbitrate between them, but not under democracy.

such as bicameralism, indirect or open voting, lists of official candidates, etc. (On these devices, see Przeworski 2006). But another way was to *persuade* everyone that what they share in common is more profound than all that divides them. Hence, the ideology of the harmony of interests was an *instrument* of rule.

Such an interpretation raises complex methodological issues that cannot get proper attention here. I certainly do not want to suggest that the propertied elites somehow conspired to use the consensualist ideology as an instrument with which to persuade the poor that they are better off being ruled by the rich. Neither do I believe that any ideology can be imposed arbitrarily.²⁵ An ideology is plausible only if it corresponds to real life experience, only if it is an effective guide in everyday life. The power of the consensualist ideology was perhaps due to the fact that it did speak to the fears and the prospects of broad masses, and to a large extent it still does. This is an ideology that satisfies Gramsci's (1971: 161, 182) criteria for hegemony:

The development and expansion of the particular group are conceived of, and presented, as being the "motor force of a universal expansion, of a development of all the "national" energies; in other words, the dominant group is coordinated concretely with the general interests of the subordinate groups, and the life of the State is conceived of as a continuous process of formation and superseding of unstable equilibria (on the juridical plane) between the interests of the fundamental group and those of the subordinate groups – equilibria in which the interests of the dominant social group prevail, but only up to a certain point, i.e., stopping short of narrowly corporate economic interests.

4 Representative Government in the Face of Conflicts

By 1929 Kelsen (1988: 29) could write that "Modern democracy rests entirely on political parties.... [T]he hostility of the old monarchy against political parties, ..., the opposition between them and the State, are but a manifestation of poorly veiled hostility against democracy.... It is an illusion or hypocrisy to maintain that democracy is possible without political parties.... Democracy is thus necessarily and inevitably a State of parties (*Parteienstaat*)."²⁶ Several post-1945 constitutions recognized parties as institutions essential to democracy (Lavaux 1998: 67-68).²⁶ Moreover, parties developed the capacity to discipline

²⁵ An instrumentalist interpretation of Gramsci (1971), put forth by Anderson (1977), is unpersuasive, for reasons discussed in Przeworski (1998).

²⁶ The Italian Constitution of 1947 was the first to mention the role of parties in "the determination of national policy" (Article 2). The Bonn Constitution of 1949 (Article 21) and the Spanish one of 1978 render to parties a constitutional status. The Swedish Constitution of 1974 mentions the preeminent role of parties in the formation of the democratic will.

the behavior of their members in legislatures, so that individual representatives can no longer exercise their own reasons. Indeed, in some countries representatives are legally compelled to resign their mandate if they change parties: the law recognizes that they serve only as party members.

Beginning with Kelsen (1988: 27), theorists of representative government take it as the point of departure that all citizens cannot rule at the same time: "[I]t is not possible for all individuals who are compelled and ruled by the norms of the state to participate in their creation, which is the necessary form of exercise of power; this seems so evident that the democratic ideologists most often do not suspect what abyss they conceal when they make the two 'people' [in singular and in plural] one." People must be represented and they can be represented only through political parties,²⁷ which "group men of the same opinion to assure them real influence over the management of public affairs" (Kelsen 1988: 28) or which are groups "whose members propose to act in concert in the competitive struggle for political power" (Schumpeter 1942: 283) or "a team of men seeking to control the governing apparatus by gaining office in a duly constituted election" (Downs 1957: 25). Isolated individuals cannot have any influence over the government; they exist politically only through parties (Kelsen 1988: 29).

While governments may not be able to express the will of all the people, supporters of *particular* parties may be sufficiently homogeneous to render meaning to a notion of partisan interest. True, even the will of supporters of particular parties is still likely to be multidimensional, so partisan interest will need not be uniquely determined. But given the platform of other parties – by which I mean both the issues on which to take a position and the positions taken – the platforms to which supporters of a particular party would agree are circumscribed. In elections, people sort themselves out by their distinct wills in response to proposals of parties which, in turn, must anticipate how people will sort themselves out. In the end, "the electoral equilibrium," people vote for particular parties because they think that they will represent them better than others. Hence, partisan interests are distinct.²⁸

Parties have followers and leaders, who become representatives through elec-

²⁷Both Kelsen and Bobbio (1987) consider and reject the alternative of functional representation, by corporatist bodies.

²⁸To understand this process, it is useful to consider electoral competition between two parties (or coalitions) which choose policies from a single dimension of policy, say the extent of redistribution. As long as parties propose or implement different platforms, almost all voters, except for those whose ideal preferences are equidistant from the proposals of the two parties, strictly prefer one party over another. But even if the two parties offer the same platform (as in the median voter model), parties still represent different constituencies. The electoral constraint pushes the parties to the center (the position of the median voter). But the parties are still distinguishable as "left" and "right," which can be seen as follows. If the electoral constraint were relaxed by a notch, so that both parties would have had the same chance to win the election (which in this story is 50/50) if they proposed to implement the ideal preference of the voter removed from the median by one to the left, the left party would move to this voter while the right party would not. Hence, even when parties converge, they converge "from the left" and "from the right." And voters know it.

tions. Representatives will for the people. "Parliamentarism," Kelsen (1988: 38) says, "is the formation of the directive will of the State by a collegial organ elected by the people.... the will of the State generated by the Parliament is not the will of the people ..." Schumpeter (1942: 269) echoes: "Suppose we reverse the roles of these two elements and make the deciding of issues by the electorate secondary to the election of the men who are to do the deciding." While in the classical theory "the democratic method is that institutional arrangement for arriving at political decisions ... by making *the people decide issues* through the election of individuals who are to assemble in order to carry out its will" (1942: 250), Schumpeter maintains that in fact the democratic method is one in which the individuals who are to assemble *to will for the people* are selected through elections.

Thus far these views do not diverge as far from the classical conception as Schumpeter would have it. Although they would be uncomfortable with the emphasis on interests and parties, Madison or Sieyes would have agreed that the role of representatives is to determine for the people, and sometimes against the people, what is good for them. But here comes the crucial break with the classical tradition: Kelsen (1988), Schumpeter (1942), Downs (1957), Dahl (1971), and Bobbio (1987) all agree that nobody and no body can represent the will of all the people. Societies are inevitably divided by interests and values and the particular groups can be at most represented by political parties. The theory of representative government based on the assumption of the common good is just incoherent. As Shklar (1979: 14) put it, in an article entitled "Let Us Not Be Hypocritical," "A people is not just a political entity, as was once hoped. Parties, organized campaigns, and leaders make up the reality, if not the promise, of electoral regimes...."

The classical assumption of the basic harmony of interests was first questioned by Marx, who thought that the most important interests divide societies deeply and irrevocably, so that no common interest is to be found.: "Even the most favorable situation for the working class, the most rapid possible growth of capital, however much it may improve the material existence of the worker, does not remove the antagonism between his interest and the interests of the bourgeoisie. Profit and wages remain as before in inverse proportions" (Marx 1952 [1867]: 37). Equipped with modern analytical apparatus, we know that this claim is not quite correct: class conflict has a cooperative, as well as a conflictive, aspect (Przeworski 1986). But even if adopting inefficient solutions is obviously irrational, each group wants to be on a different place along the possibility frontier, so that some conflict is inevitable.

Kelsen (1988: 25-26) was perhaps the first to systematically challenge the theory of representative government based on the assumption of harmony of interests: "Divided by national, religious and economic differences, the people presents itself to the view of a sociologist more as a multiplicity of distinct groups than as a coherent mass of one piece." He rejected what Schumpeter would later dub "the classical conception" with an equal vigor:

Moreover, the ideal of a general interest superior and transcending

interests of groups, thus parties, the ideal of solidarity of interests of all members of the collectivity without distinction of religion, of nationality, of class, etc. is a metaphysical, more exactly, a metapolitical illusion, habitually expressed by speaking, in an extremely obscure terminology, of an 'organic' collective or 'organic' structure.... (Kelsen 1988: 32-33).

Schumpeter (1942: 250ff) offered a systematic critique of the concept of the common good or general will by making four points: (1) "There is no such thing as a uniquely determined common good that all people could agree on or be made to agree on by the force of rational argument." (2) The individual preferences which the utilitarians adopted to justify their conception of common good are not autonomous but shaped by persuasion, "not a genuine but a manufactured will." (3) Even if a common will would emerge from the democratic process,²⁹ it need not have the rational sanction of necessarily identifying the common good. Given the pathologies of mass psychology, nothing guarantees that people would recognize what is good for them. (4) Even if we would know the common good, there would still be controversies about how to implement it.

The political process, therefore, is not a search for the true common good – it cannot have an epistemic quality – for the simple reason that there is no such truth to be found. The classical conception of representation was logically incoherent. What is good for different groups is not the same and no process of rational deliberation and no process of aggregation can overcome this sociological fact.

Schumpeter wanted us to believe that his view is "much truer to life and at the same time salvages much of what sponsors of the democratic method really mean by this term." Yet even if his conception is more realistic, this is not what the classical theory meant by "democracy." The association between the decisions made by the representatives and the will of the people was the justification for representative government in the first place. If democracy is only a method, what is it a method for? The classical theory had an answer to this question: representative government was a system through which people would identify and implement their common good. Schumpeter thought this answer to be unrealistic but did not offer another in its place. Hence, he ended with a method for no purpose.

5 Conflicts and Representation

If interests or values are in conflict and if no single government can represent everyone, what prevents the conflicting parties from reverting to physical force in order to impose them? As we have seen, the classical theory thought that representative government is not possible unless interests are harmonious: political divisions portended violence, civil war. The assertion that some interests are

²⁹The difficulty of identifying the common will was recognized only nine years after Schumpeter published his text, by Arrow (1951).

harmonious is not sufficient to warrant the claim that societies will find a way to peacefully resolve issues that divide them. All Argentines want Argentina to win the World Soccer Cup but a *Boca-River* game can and did provoke riots. Even if some laws are accepted unanimously, laws that divide need not be accepted by a minority. As a French political theorist wrote in the middle of the eighteenth century,³⁰ if elections were to be contested, "Given men as they are, there would be no agreement on merit; each would think himself or his leader more meritorious than others; conflict and even civil war would follow." Still for Marx, class conflict would necessarily lead to revolution, while for J.S. Mill (1991: 230) ethnic and linguistic divisions made representative government "next to impossible."³¹ Yet it is obvious that in spite of the dire warning about the effects of partisan divisions and independent unions, in many countries representative institutions succeeded in confining conflicts to institutional channels. Hence, the central question posed by the revisionist view is how can conflicts be limited to peaceful solutions, how can institutions of representative government structure, absorb, and regulate them so that they would be routinely processed, without erupting in violence.

Representative institutions peacefully process conflicts only if they continually generate outcomes that are preferred to the use of force by each and every group that could impose itself by violating the institutional order.³² An institutional system that peacefully processes conflicts may not be possible under all conditions, particularly when a country is poor and unequal. Moreover, if any such system is feasible given the historical conditions, to evoke compliance political institutions must be organized in such a way that the outcomes they generate, whether the distribution of incomes or division of rents or realization of some non-material values, must reflect the distribution of the "brute," pre-institutional power, including the military force of different groups. Finally, such institutions must counteract increasing returns to incumbency, since otherwise forward-looking outsiders would prefer to fight immediately rather than wait for their power to be eroded.

The question, then, concerns the mechanisms that can generate outcomes that would be tolerated by all the relevant conflicting political forces. One such mechanism are compromises among political parties, most importantly the majority and minority. Another is partisan alternation in office. These mechanisms are discussed in turn.

5.1 Compromise

If no government can represent everyone, how can everyone be represented? If no body, parliament or government, can will for all the people, is democracy just

³⁰Réal de Curban, work published posthumously between 1751 and 1764, cited in Palmer (1959: 64).

³¹"Free institutions are next to impossible in a country made up of different nationalities. Among a people without fellow-feeling, especially if they read and speak different languages, the united public opinion necessary to the working of representative government cannot exist."

³²For a general logic of self-sustaining institutions, see Przeworski (2006).

a method for imposing the will of some, who happen to constitute a numerical majority, on others? Schumpeter (1942: 272-3) does pose the question but quickly dismisses the only solution that occurs to him, which is proportional representation. "Evidently," he observes, "the will of the majority is the will of the majority and not the will of 'the people'." Then he mentions that some authors – he must have had in mind Kelsen (1988: 60-63) – tried to solve the problem by various plans for proportional representation. He finds this system unworkable, since "it may prevent democracy from producing efficient governments and thus prove a danger in times of stress." "The principle of democracy," Schumpeter insists, "merely means the reins of government should be handed to those who command more support than do any of the competing individuals or teams." But why would a minority obey the dictates of the majority?

Kelsen (1988: 34) does offer a solution: a compromise among parties. He argues that "the general will, if it should not express the interest of a single and unique group, can be only a result of such oppositions, a compromise between opposing interests. The formation of the people in political parties is in fact an organization necessary to realize such compromises, so that the general will could move in the middle (*dans une ligne moyenne*)." "The application of the majority principle," Kelsen (1988: 65) maintains, "contains quasi-natural limits. Majority and minority must understand each other if they are to agree." But here he encounters a problem so thorny that it requires Freudian psychology, the "unconscious," to solve: why would "compromise," in fact concessions made by the majority to the minority, be specific to democracy? He claims – in the light of recent research (Gandhi 2004) erroneously so – that autocracies do not make compromises.³³ The only reason he can adduce is psychological: "Democracy and autocracy thus distinguish themselves by a psychological difference in their political state" (1988: 64). But if this solution – preserving political rule by making concessions – is not exclusive to democracy, a central value Kelsen claims for democracy vanishes.

A mechanism that supports partisan compromises, moderation on the part of majorities, has been elucidated by Alesina (1988). Even if party leaders do not represent anyone else – if the system were a true "polyarchy" rather than an electoral one – as long as party leaders prefer smaller oscillations of policies to larger ones (because their preferences are concave), Kelsen's *ligne moyenne* would be supported by the threat of taking an extreme position (one's own ideal point) if control over office were to change (Alesina 1988). Note, however, that such compromises are induced only by the prospects that majorities would change as the result of elections, of alternation in office, rather than by any psychological predisposition to compromise. And the question is why would majorities ever change if governments of all partisan stripes pursue the same, compromise, policies.

³³The difference between these two types of regimes is not that compromises occur only under democracy but that autocracies can be, and many are, ruled by a minority. But dictators also combine repression with cooptation to maintain their rule.

Indeed, Bobbio (1989: 116), attributing this view to Max Weber, claims that the normal procedure for making decisions under democracy is one in which "collective decisions are the fruit of negotiation and agreements between groups which represent social forces (unions) and political forces (parties) rather than an assembly where majority voting operates." Clearly, opposition parties in the parliament can try to persuade the majority to modify its views; they can exercise their institutional prerogatives to block some legislation ((in Germany presidencies of parliamentary committees are distributed proportionately to party strength; in the United Kingdom the Committee of Public Accounts is always controlled by the opposition); they can threaten with obstructive tactics (a government proposal to privatize an electric utility company was recently met with thousands of amendments in France, filibuster in the United States Senate); they can threaten with non-cooperation at lower levels of governments they control. Hence, the minority is not impotent.

But when party leaders negotiate, the role of voters is reduced to a minimum. All that voters can do is to ratify agreements "reached in other places by the process of negotiation" (Bobbio 1989: 116). Compromise among party leaders, subject to periodic ratification by voters, is as much as Kelsen or Bobbio can salvage from the classical conception of representative government. Representative government now means the government of parties in the parliament. Parties do not pursue the common good but negotiate compromises among partisan interests. Bargaining replaces deliberation. The outcomes are to a large extent independent of results of elections. The specificity of democracy is reduced to the requirement that these bargains must be from time to time approved by voters. Yet all voters can do is either to approve the deals negotiated by party leaders or rise in sporadic outbursts to throw the rascals out: in the language of recent Argentine outburst against the political class, "*fuera todos!*", "everyone out." And then?

5.2 Alternation in Office

To be fair to Kelsen, at the end of his essay, having summarized the reasons that democracy should and will generate compromise, most importantly proportionality, he ends with the sentence "And it is necessary that this coercive order [democracy] be organized in such a way that the minority as well ... could at any time become majority" (1988: 93).

The emergence of partisan alternation in office is the most surprising aspect of history of representative government.³⁴ As Dahl (1966: xvii) observed, "The system of allowing one or more opposition parties to compete with the governing party for votes in elections and in parliament is, then, not only modern; it is also one of the greatest and most unexpected social discoveries that man has

³⁴First partisan alternation in history occurred in Great Britain, but dating it is not obvious. In 1700 the Tories won the parliamentary election and the king incorporated them into his cabinet but still in 1741 Walpole refused to resign having lost an election. Schmitt (1988: 468) dates the first partisan change of the entire cabinet to 1782 and the recognition of the principle of parliamentary responsibility to 1803.

ever stumbled onto.” The idea of a government losing office as a result of an election could not have been even conceived within the perspective of the eighteenth-century. The very language would have been incomprehensible, since all its ingredients were missing. Elections were to select individuals, not parties. As representatives, those elected were to serve the interest of all, not of those who had voted for them. Since actions of representatives were not to depend on results of elections, the notion of alternation through elections could not be envisaged, and since there were no parties, alternation could not have been partisan. What happened in the United States in 1801 – “when, without use of a coup d’état, and without armed rebellion against him, a man denounced hysterically in some quarters as a Jacobin calmly assumed the highest executive office,” as Palmer (1964: 511) describes the event – is mind-boggling.³⁵

The magic of alternation in office lies in the possibility that its mere prospect can induce the current minority to wait for its turn while obeying the current majority. If one party is certain to stay in power for ever, the supporters of other parties know that they will never live under laws they prefer. In turn, suppose that a party won the current election but other parties have some positive probability of entering the government as the result of the next one. Now the supporters of these parties expect that they may win in the future. Assume that members of these parties can either obey the verdict of the current election or rebel against it. If the value of rebellion for them is greater than the prospect of life under a social order they dislike but smaller than the prospect associated with the possibility that they may win in the future, then these parties would rebel if they were certain to lose all elections but would accept the result if they had a sufficient chance to win the next election. Alternation in office enables the political forces to think in intertemporal terms, to say “All is not lost; we were defeated this time, but we will win at some time in the future, and we should wait for our turn.” And if everyone makes the same calculation, then everyone obeys the current rulers while waiting for their turn to rule. As Bobbio (1984: 116) put it, “democracy is a set of rules ... for the solution of conflicts without bloodshed” (See also Popper 1962: 124 and Przeworski 1999). The genius of representative government is that it enables conflicting groups to think in intertemporal terms, to wait for their chance to be represented respecting the verdict of the polls while they wait.

Yet this magic may not work under all conditions. Poor people may be unwilling to wait (Benhabib and Przeworski 2005, Przeworski 2005). Moreover, while the Greeks assured that everyone would have an equal chance to rule by using lot and that the chance would materialize by keeping the terms in office short (Finley 1983, Hansen 1991), representative government offers no such assurances. Some people may have to wait for ever. Indeed, in an unchanging electorate, in which children inherit the preferences of their grandparents, an

³⁵ Calm it was not. Partisan divisions were perhaps more intense than at any other time. Indeed, probably at no other time in its history did the United States come as close to a coup d’état as in 1800. For detailed accounts of these events, see Dunn (2004) and Weisberger (2004).

accountable party would stay in office indefinitely. Hence, if parties did not slip up in representing their constituencies, some people, perhaps as many as a half, would be never represented. This possibility haunts democracy in ethnically divided societies (Chandra 2004). For alternation to be possible, that is, for the chances of victory of particular alternatives to be uncertain, either individual preferences must be changing or the incumbents must err in representing them.

6 Representation and Self-Government

Majority rule does satisfy Kelsen's criterion of maximizing the number of people who live under the laws they like. Kelsen (1988: 19) posits the following theorem:

There is only one idea which leads in a reasonable way to the majoritarian principle: the idea that, if not all individuals, at least the largest possible number of them should be free, said differently that the social order should be in contradiction with the will of the smallest number of people possible.... Absolute majority represents here really the superior limit. If it were not required, it could happen that the number of adversaries of a social rule would be, at the moment when it was proclaimed, larger than the number of its partisans; if one required more, then a minority could, obstructing the modification of a rule, determine social order against the will of a majority.

This theorem was proved formally by Rae (1969) and generalized by Taylor (1969). Rae seems to have been unaware of Kelsen's argument and used a different language: what for Kelsen was "autonomy," for Rae became the criterion of "political individualism." But the intuition is the same: the virtue Rae (1969: 42) claims for majority rule is that it "will optimize the correspondence between individual values and collective policies."

Yet representation is not the same as self-government. Following Rousseau, Kelsen (1949: 284) claimed that "Politically free is he who is subject to a legal order in the creation of which he participates." But as long as I live under a social order which I *would* choose, why does it matter that I *did* choose it, that is, that I did something that caused it to prevail? One could argue, à la Sen (1988), that being an active agent, a chooser, has an autonomous value for us, that a result obtained by my actions is more valuable to me than the same result generated independently of them.³⁶ But why would it matter that I had voted for it rather than just observed that a coin landed on the side I prefer? It cannot be a causal difference: the probability that my vote matters is miniscule

³⁶Sen's classical example is "starving vs. fasting." Whether I starve or fast, I consume the same number of calories. But starving is not a matter of choice, while fasting is, and Sen sees choosing as valuable in itself. On the value of choosing under democracy, see Przeworski (2003).

in any large electorate. From an individual point of view, the outcome of an election is a flip of a coin; it is independent of one's action. A government is representative not when each voter has causal influence on the final result, but when the choice of government is a result of aggregating individual wills.³⁷ The value of voting rests in the ex post correspondence between the laws everyone must obey and the will of a majority: selecting governments by elections does maximize the number of people who live under laws to their liking even if no individual can treat these laws as a consequence of his or her choosing. Thus people may value voting as a procedure for making collective choices while at the same time seeing their own vote as ineffective.

But can people effectively influence government decisions between elections? Can they, in Dahl's (1966: xix) words, embark on "a deliberate course of action intended to modify the conduct of the government."? It is easy to believe that to the extent to which expressions of public opinion portend electoral reactions to the particular policies, anticipating retrospective judgments at the time of elections, incumbents may modify them so as to maximize their chances to be re-elected. To this extent, therefore, sporadic reactions of public opinion, whatever forms they assume, influence government policies (particularly if the polls show majority opposition to these measures). But, other than referendums, our representative systems have no institutional mechanisms to guarantee that the opposition be heard, lest prevail, however intense it might be.

Moreover, governments are not passive listeners: they have and they use an extensive repertoire of instruments to influence opinions, promoting some and stifling others. When a president accuses opponents of the war he initiated of undermining the troops in the field, when he questions the "patriotism" of people who merely oppose his policy, he is claiming that this opposition is not legitimate. The issue is not about rights: at least during the second half of the twentieth century, the rights to speak and associate became axiomatically attached to democracy. But rights are not enough: the right to speak is not sufficient for the effective possibility to speak in public. Public speech is costly; it is not free but always sponsored speech, sponsored either commercially or by the government. And even if the people speak, perhaps by just spilling onto the streets, what compels the government to listen?

Normative issues are also opaque. Does the government elected by a majority have a *general obligation* to be responsive to a minority? Does the government have an obligation not to pursue *particular policies that are opposed by a majority* of public opinion? (as proponents of abrogative referendums would want it). Should governments accommodate objections that are particularly *intense even if minoritarian*? After all, parties propose policies in electoral campaigns and voters choose platforms. Should the parties renege on them whenever some minority, even an intense one, opposes them? Does not a defeat in an election impose an obligation on the minority to accept the policies of the elected government? Should one not think, as did J. McGurk, the Chairman of the Labour Party in 1919, that

³⁷I owe this formulation to Ignacio Sánchez-Cuenca.

We are either constitutionalists or we are not constitutionalists. If we are constitutionalists, if we believe in the efficacy of the political weapon (and we do, or why do we have a Labour Party?) then it is both unwise and undemocratic because we fail to get a majority at the polls to turn around and demand that we should substitute industrial action? (cited in Miliband 1975: 69)

All I can say is that without effective participation in between elections, representation is not the same as self-government. And in modern democracies, Kelsen (1988: 35) was forced to concede, "political rights – which is to say liberty – are reduced in the essential to a simple right to vote."

7 References

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