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Who Wins When the Majority Rules?

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Introduction

It is often difficult to engage in critical discussions of fundamental democratic principles. Basic questions of democratic praxis are assumed to be easily answered or are thought to have been answered declaratively by the “founding fathers.” Thus, the question of *how* we ought to go about enacting systems of governance by, for, and of the people seems to have a simple answer: majoritarianism. Decision making, according to the will of the majority, appeals to a sense of fairness. Majoritarianism was a radical aspect of modern democratic revolutions. Ancient Greek elite philosophers such as Plato and Aristotle connected the dangers and instability of democracy to its base in mob rule, or rule by the majority class. The colonists, in what was to become the United States, strove to break away from rule by a minority aristocratic regime. (U.S.) Americans have, thus, grown to believe fervently in majoritarianism as the core of their democratic ideals.

More recently, many minorities and allies have begun to question a democratic system organized structurally to guarantee that the majority always wins. U.S. Supreme Court Justice Brennan wrote that “in pluralistic societies such as ours, institutions dominated by a majority are inevitably, if inadvertently, insensitive to the needs and values of minorities when these needs and values differ from those of the majority.” One can argue that strict proponents of majoritarianism are being, rather than democratic, too often anti-democratic. A strict interpretation of majority rule as the foundational answer to the “how” question of democratic practice tends to serve and protect the interests of those already privileged.

We thus must remember why majoritarianism was at times considered a radical technique of democracy, and therefore, or perhaps even more importantly, that it is *a technique of democracy* and not to be simply equated with democracy itself. The practice must serve the principle. If there are times when democracy will be better served by other means, then we ought to employ those other means. In fact, popular rhetoric in the United

States notwithstanding, democratic theorists have long questioned majority rule, myriad institutions, and governing bodies, and organizations in democracies have employed methods that run counter to the majoritarian principle, specifically in the interest of promoting democratic egalitarianism.

Madison's Majoritarianism

Many consider majoritarianism to be a founding U.S. principle and, therefore, attribute it to James Madison. Madison, however, was neither a democrat nor a majoritarian precisely, because he sought to promote minority elite interests. In *Federalist 10*, Madison tells us that he knows what a democracy is... and he is not interested. Instead, he argues for a republic. As described in *Federalist 10*, democracies are smaller, with more people participating, and are less guided by the rights of individual property. Republics can be larger, relying on representation of the people, and are better protectors of property.

Madison can be confusing for contemporary (U.S.) Americans because: 1) he was a thinker afraid of both minority rule and majority abuse, 2) he devised a system to protect minorities but used a version of majoritarianism to do so, 3) he did none of this in the service of democracy. His method is less straightforward, therefore, than it might first appear. One of the central benefits of a republic is that, relying on representation, it has the capacity to cover large geographical distances. This was essential to Madison as he knew that differences “are sown in the nature of man” and that the more diverse the geographical landscape, the more diverse the people. Madison thought that by structurally encouraging diversity in a vast geographical area, it would be almost impossible for any one idea or interest to be taken up by a majority. Although he designed the system to utilize a winner-take-all style of majority rule voting, the winning party would, of necessity, always be constituted by a temporary coalition of minorities. Due to the diversity structurally secured, Madison felt it was unlikely that any two issues would attract the same con-

figuration of minorities for and against. Thus, afraid of the tyrannical potential of majorities, Madison utilized a specific form of majority rule as a mechanism to prevent their formation and sustenance.

The persuasiveness of Madison's theory for *democratic* thinkers rests on the assumption that there are numerous and shifting factional interests and the dimension of time. Madison's logic suggests that each of us will find ourselves in the minority at some points, but not permanently. Similarly, no one group will persistently win political battles, nor will any lose so often that they are effectively disenfranchised. In a nation of myriad minority groups, your group might lose on this turn in politics, but the system remains fair and democratic, because it is sure that you will win in another turn. Losers are soothed by the promise of time.

Canonical Theorists and the U.S. Experiment

In *On Liberty*, British political theorist John Stuart Mill writes that "in political and philosophical theories as well as in persons, success discloses faults and infirmities which failure might have concealed from observation" (1984,61). Writing almost a century after the (U.S.) American Revolution, Mill looks back on this democratic experiment in practice, and he must face some of the "faults and infirmities," which have transpired since the actualization of the grand theoretical proposal. He tells us that "self-government and the power of the people over themselves" have not exactly turned out to be true. In a government "of each by all the rest," he considers "the will of the people, moreover, practically means the will of the most numerous or the most active *part* of the people—the majority, or those who succeed in making themselves accepted as the majority; the people, consequently, *may* desire to oppress a part of their number, and precautions are as much needed against this as against any other abuse of power" (1984,62).

We find a similar wariness on the part of de Tocqueville. De Tocqueville was a Frenchman who came to the United States in the 1800s to study the new form of democracy developing here. He was impressed in many ways with what he saw. But he also noticed something unusual. In its own ways, majority practices had so come to dominate U.S. culture that de Tocqueville thought the U.S. form of democracy had created a form of majority tyranny as yet unseen in any despotic form of government.

U.S. Democratic Theorists

In the contemporary U. S. context, scholars such as Schattschneider have also taken issue with the Madisonian formulation as a *democratic* formulation. He argues that there is an inherent class bias in understanding our system as made up of an array of groups competing in the political marketplace. Looking through another lens of diversity, Feldman argues that the freedom of religion clause found in the Bill of Rights served to bolster and protect majority Christian hegemony at the expense of non-Christian minorities. What is often seen as diversity protected by these clauses is merely a multiplicity of groups belonging to the dominant Christian majority.

One of the major thinkers exposing the gaps in the U.S. reliance on majoritarianism for a democracy characterized with tremendous racial diversity is Lani Guinier. Early in his first term, President Clinton nominated Guinier for the position of Civil Rights Enforcement Chief. Within a few months—marked by great dissension—though, Clinton withdrew his nomination. At the heart of the controversy were Guinier's legal writings on race, which analyzed the relationship between democratic values and (U.S.) American one-person-one-vote, winner-take-all majority rule. The roots of her ideas may be found in early, second-wave feminist concerns with democratic praxis. The anti-democratic manifestations of Madisonian style majoritarianism not only kept certain minorities disenfranchised, but also women, a numerical majority of the population. Since Mill, we have seen that in this system certain groups can "succeed in making themselves accepted as the majority." Feminists and queer theorists and activists clarified the limitations in a majority rule system that can legally over-rule disempowered minority group concerns, such as those emerging from LGBT communities, while also protecting already enfranchised minorities (e.g., men) over and against numerical, though disenfranchised, majorities (e.g., women).

In sum, we may note that one of the central flaws in the founders' majoritarianism is that in a heterogeneous society with relatively permanent minorities, certain groups will continuously end up on the outside. Our experiences in a country where minorities bear the brunt of the failures of liberal democracy illuminate how the consequences of substituting *majoritarianism* for *democracy* are fatal. Replacing the principled goal of democracy with a particular strategy for running institutions has enabled—sometimes even well-meaning—people to use a culturally and historically specific

procedural method for anti-democratic purposes (i.e., the continued exclusion of many minorities). As the historical experiences of Jews, queers, women, Japanese, and African-Americans have demonstrated, minorities can be consistently ignored through perfectly legal means when the technique of majoritarianism is substituted for the principle of democracy.

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