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Counting Heads or Casting Lots?
The Lottery Challenge to Majority Rule

The suffrage by *lot* is natural to democracy; as that by choice is to aristocracy. The suffrage by *lot* is a method of electing that offends no one; it lets each citizen entertain reasonable hopes of serving his country.

Montesquieu, *The Spirit of Laws*, p. 119

The Common Ground: Individualism

There is nothing new in deciding controversial issues by majority vote, but it is probably not as old as the use of lotteries in matters of distributive, retributive, and ‘elective’ justice. Probably under the influence of Assyrian practices of aleatoric selection, the ancient Israelites used lotteries in a wide range of circumstances as is attested by numerous references in the Old Testament.1 Thus, to take only three random examples: the promised land was distributed between the twelve tribes by means of lot (distributive justice); Akhan, who committed the crime of taking the enemy’s spoils, is identified and then punished through a complex lottery procedure (retributive justice); and Saul, the first king of Israel, is selected by a similar multi-phase lottery (elective justice).2 As a matter of fact, lotteries seem to

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* I am much indebted to members of the philosophy colloquium at the Hebrew University. I cannot acknowledge personally the many incisive comments and critical suggestions but hope to have addressed at least some of them in the present text.

1 For the role of lotteries in the ancient East, see H. Tadmor, “Pur,” in *Biblical Encyclopedia* (Hebrew). For a detailed taxonomy of lotteries in the Old Testament, see Lindblom (1962).

2 See, respectively, Numbers 33:54 and Joshua, chaps. 13–19; Joshua, chap. 7; I Samuel 10: 20–21.

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play a much more prominent role in biblical ‘procedural justice’ than the majority principle. However, the source of their validity for making important decisions is ultimately theological. What seems to be an appeal to chance is actually the most reliable expression of God’s will and the clue to absolute justice (particularly since most lotteries are exercised in obedience to a divine command and their outcome is directly controlled by an omniscient and omnipotent God).³

The metaphysical meaning of lotteries is deeply rooted in all cultures, including our own. Despite the gradual process of secularization, both lotteries and majority vote, which have been institutionalized by Greek political culture, continued to maintain transcendental significance. In the ancient world lotteries were part of sacred rituals and large majorities were considered as expressing divine truth (vox populi, vox Dei). However, the aim of the present paper is to examine the relative merit of majoritarianism and lotteries as two competing procedures for making political choices in a human context free of divine guidance. Historically, the systematic theorizing of both procedures is associated with the rise of individualism, particularly since the early modern period.

By individualism I understand a conception that takes the individual and his or her will as the starting point of any normative justification of political authority. Conceptually linked to this idea of individualism is the irreducible plurality of preferences and beliefs that serves as a background constraint on any political arrangement. Individuals are conceived of as partly independent generators of desires and opinions, a fact that on the one hand creates this unavoidable plurality yet on the other hand requires the political authority to treat each individual with equal concern. Individualism views society as an aggregate of individuals in which each person is equally counted as one and only one.

As is well known, consent plays a particularly important role in the justification of political authority in individualistic theories. Consent as the basis for political decision is manifest on two levels which modern political

³ For a very sensitive and critical analysis of the role of lotteries within a religious framework, see Thomas Aquinas, *Summa Theologiae*, 2.2. q. 95, a. 8. Lotteries that are performed by human rather than divine initiative, in an attempt to force God to reveal his will, are referred to as superstition. But if the outcome of sortilege is not ascribed to a spiritual-divine cause but to pure chance, Thomas sees no problem in using them in certain distributive contexts.
theory was careful to separate. The social contract is the primary basis of all political authority, and hence typically requires *unanimity*, universal consent. Each individual can be regarded as subject to the authority of the sovereign only if he or she gave their personal consent—explicitly or implicitly, actually or hypothetically—to the inauguration of the sovereign. But then, once political society has been established, the resolution of disagreement cannot be expected to be based on unanimity. Both majority rule and lotteries suggest themselves as attractive procedures for conflict resolution, because both seem to be neutral between individuals as well as between beliefs and values. In that they satisfy the fundamental principle of pluralistic individualism, namely, the denial of any *prior* and independent preference based on class, privilege, religious, or moral view. In the absence of substantive, qualitative criteria for judging between competing views and wishes, quantitative procedures of counting heads or casting lots have a compelling force.

The distinction between the two levels of agreement is central to modern political philosophy since it combines the two faces of individualism: the absolute value of the person on whom no political arrangement can be forced against her will, and the full equality of persons in their struggle to have their interests and preferences recognized and satisfied. Furthermore, a persuasive way to justify procedures for resolving conflicts and disagreements in the social state is by appealing to the social contract: the contractors agree in advance and unanimously to decide disputes by either applying the majority rule or by casting lots. In the naturalistic versions of the social contract, the decision procedure seems to the contractors the natural one; in the constructivist-Rawlsian version, it is considered the rational or the fair procedure. The question to which the rest of this paper is devoted is whether majority rule is the natural or rational procedure for sorting out political conflicts, or a lottery, at least under certain circumstances, is a superior alternative. I wish to portray the issue as a family quarrel, that is, as two competing attempts at implementing the basic principles of individualism.

*What’s So Sacred about Majorities?*

In our disenchanted world, majorities fill us with certain awe. Despite the obvious paradox, known to both theoreticians of majority rule and laypeople finding themselves in minority positions, we tend to accept the majority
decision as binding even when we are convinced that it is wrong. Although we often appeal to other methods of conflict resolution, such as charitable concession, compromise, arbitration, or sheer power struggle, counting heads still plays a predominant role, at least in the context of social conflicts involving a large number of people who try to solve their differences through impersonal, institutionalized rules. The reverence in which we hold the majority principle as one of the most fundamental dogmas of our liberal ethos is associated with our commitment to value-neutral politics and to the equality of human beings.

The theoretical attempts at justifying majority rule may be categorized under the four following types, in a descending order: the metaphysical, the constructivist, the epistemological, and the pragmatic.

1. The Metaphysical Justification: Locke. To start (almost) from the beginning, consider one of the classical references to the majoritarian principle. In the first five sections of chapter VIII of his Second Treatise of Government John Locke derives the idea of majority rule from the social contract:

For when any number of Men have, by the consent of every individual, made a Community, they have thereby made that Community one Body, with a Power to Act as one Body, which is only by the will and determination of the majority. (1988, p. 331)

From the radically individualistic existence in the state of nature, ‘any number of Men’ (note the individualistic expression) can move to form a ‘community’, a whole, an individuated entity that is not merely an aggregate of its members. This entity is referred to as ‘one Body’ or ‘the Body Politick’, an entity with a power to act, that is, agency. This power, which transcends that of the aggregated individual members, is expressed in terms of movement:

For that which acts any Community, being only the consent of the individuals of it, and it being necessary to that which is one body to move one way; it is necessary the Body should move that way whither the greater force carries it, which is the consent of the majority: or else it is impossible it should act or continue one Body, one Community, which the consent of every individual that united into it, agreed that it should; and so every one is bound by that consent to be concluded by the majority. (1988, pp. 331–332)

Communities, like bodies, can move only in the direction in which the greater forces are pushing them, and in political communities these forces
lie in the will of the majority. Majority rule is the precondition of any collective action. Without it, states are doomed to be paralyzed.

The analogy between body and community, movement and action, natural force and normative authority, natural as it is for seventeenth-century philosophy, is problematic. It is not clear whether we should understand ‘body’ in the physical or in the biological sense. If we follow the first, mechanistic interpretation, it would seem that the community is merely a random aggregate of individual wills, like an intersection of physical forces, whose unique attribute lies in its being the expression of nothing more than the majority of these wills. In that case, it is not clear what constitutes the unity of the Body Politick that seems to be of much importance to Locke. And if we adopt the second, organic interpretation of the analogy, we will have to view the political community as similar to a human body, in which different forces are organized under an overall unity that makes action, that is, systematic purposive movement, possible. But in that case, it is not clear what makes the majority as such the expression of this unique unity.

It is hard to decide which interpretation does more justice to Locke’s views. Although the text tends to suggest the mechanistic sense, Locke says that ‘the consent of the majority’ should be understood ‘as the act of the whole’ (p. 332). This amounts to denying the will of the minority any influence on the way the community acts. However, Locke knew very well that the way a physical body moves is affected by all the forces that bear on it, including the ‘small’ ones. And in that respect, it seems that the biological reading of the body analogy better suits his purpose: the general needs of the organism determine (according to a certain hierarchy) the movement of the body, while any ‘opposing’ force is silenced or suppressed by that overall interest of the organism.

This ambiguity in the analogy between body and community illustrates the problem of justifying majority rule: can we found political community on a decision procedure that consists of the silencing of the minority, the complete disregard of its voice; or, should the collective action of political

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4 Jeremy Waldron (1999a, chap. 6, esp. pp. 131–132) convincingly points out the unexplained Lockean assumption about the unity of physical bodies under the pressure of ‘external’ forces. He raises the question ‘what keeps bodies together’, a question which is equally pertinent to physics and to politics. What makes bodies move rather than fly apart and what makes minorities accept the majority view rather than secede remain unanswered by Locke.
society be based on an overall weighting of all individual wills in a way which would do proportional justice to everybody, exactly like the effect of all existing forces on a physical body? My argument will be that a lottery system better fits the egalitarian, non-hierarchical conception lying at the basis of the mechanistic analogy. It resembles the way in which physical bodies actually move, that is, in a vector that expresses all the forces that operate on them, large and small.

I call Locke’s justification of majority rule ‘metaphysical’ (or one might say ‘natural’), since despite the individualistic character of the state of nature, the Body Politick created by the universal consent of individuals mysteriously (or naturally) acquires a unity, a life of its own, an independent agency. And in the absence of unanimity (which Locke correctly attributes to human contingencies), political society cannot but resort to majority rule as representing ‘the whole’. Although majority consent is presented as a second best (to unanimity), it enjoys a metaphysical, rather than simply pragmatic status, a kind of transcendental precondition for any political action.

2. The Constructivist Justification: Rawls and Waldron. Many contemporary political philosophers reject the metaphysical or natural assumption about the unity of the body politic, but still insist on justifying majoritarianism as a matter of principle. Although majority rule represents a decision making procedure rather than a metaphysical or natural truth, it is not an arbitrary procedure or a mere convention. Thus, Jeremy Waldron (1996) believes that the rule of the majority is the optimal principled solution of social conflicts in what he calls ‘the circumstances of politics’, namely, the condition in which individuals both disagree on how to act on a specific issue and yet agree on the general necessity to act in concert. Waldron’s claim is that under such circumstances majoritarianism is the just and fair solution due to the equal respect it accords to all individuals concerned, irrespective of status, gender, class, or other social distinction. As a procedure of conflict resolution, majority vote, according to Waldron, lies conceptually half way between purely conventional coordination and purely authoritarian solutions of Prisoner’s Dilemmas.5

5 Waldron (1996), pp. 2199–2200. Unlike in Prisoner’s Dilemma situations, in ‘the circumstances of politics’ each person has no reason to defect from the overall rational choice; but unlike pure coordination situations, people are not indifferent to the particular way in which action-in-concert is achieved, i.e., they let the majority decide (rather than let salient features form a pure convention).
Waldron insists that majority vote is binding only if it follows a public process of deliberation, in which the parties to a disagreement rationally debate the issue and get an opportunity to convince their opponents. Raising hands after such a rational procedure might appear arbitrary at a first sight, but it really expresses the ultimate commitment to individualism, that is, to the equal standing of each person regardless of her views, as well as to pluralism, that is, the conception that leaves room to opposite views which are equally impartial and hence legitimate (1996, p. 2204 and 1999b, chap. 5).

Unlike its metaphysical predecessor, the constructivist conception can support majority rule only in terms of procedural justice, that is, an agreed upon mechanism for making decisions under circumstances in which no agreement as to the substantive outcome can be achieved. However, while Waldron believes majority rule to be based on pure procedural justice, Rawls (the most prominent advocate of constructivism) argues that it must be understood as imperfect procedural justice. In pure procedural justice, the procedure fully constitutes the justice of its outcome (as in games); in imperfect procedural justice the justice of the outcome is partly decided by independent criteria and hence the validity of the procedure is subject to the aim of satisfying these criteria or promoting the probability of arriving at the desired result by following the procedure (as in the legal rules of evidence in criminal proceedings) (Rawls 1971, pp. 85–86).

I tend to take Rawls’ position on that issue rather than Waldron’s. Although the rule of the majority has the advantage of being neutral, that is, not favouring as such any particular political view, it is not clear why people should opt for it as a decision making procedure rather than for another, equally neutral procedure. I am of course thinking of lotteries, though there are numerous other ‘non-perfectionist’ procedures that could serve the same purpose. Rawls insists that the procedure be tested in the light of his non-procedural principles of justice, and I believe he is right in doing so. The reason is that constitutional design is not a game in which the goal (winning) is logically constituted by the rules, but a procedural framework that is aimed at achieving an independently given end, which—in Waldron’s terms—is what makes us want to act ‘in concert’. There must be some non-procedural common goal that would make ‘us’ all want to establish a shared political entity. Waldron refers to majority rule as the only way in which people can together solve their disagreements (while from the point of view of separate individuals there could be alternative
solutions). This ‘togetherness’ is reminiscent of Locke’s unity of the Body Politick, which is mysteriously created by the very choice of individuals to join a social contract. The problem in both Waldron and Locke consists in their putting the cart before the horse: one must first specify what motivates people to act together, to explain why they want to establish a mechanism of conflict resolution in the first place, and only then seek to articulate the nature of this mechanism in a way which would fit the original common motive.6

This leads directly to my second and main disagreement with Waldron. In his attempt to justify the majority principle as a neutral and hence universally accepted means of deciding controversial issues, Waldron (1996) repeatedly slights lotteries as a serious alternative. His analysis suggests three reasons for rejecting lotteries: (1) Not being based on reason and intellect, they are arbitrary (p. 2186). (2) They are appropriate only in specific circumstances of some urgency or dramatic existential choices (p. 2202). (3) They do not give “positive decisional weight to the fact that a given individual member of the group holds a certain view” (p. 2209).

I wish to dispute the three arguments and to open the way to the rehabilitation of lottery as an alternative to majority rule worthy of careful consideration.

First, being procedural in nature, both majority rule and lottery are (equally) arbitrary from the point of view of first-order reasoning, that is, their whole point is to ignore the rational force of the competing reasons—for and against—in the issues that are to be decided. And from the point of view of second-order reasons, viz., which procedure is more rational in cases where first-order reasons cannot resolve conflicts, I will shortly argue that lotteries are often less arbitrary than majority rule, since

6 Waldron (1996), p. 2209. “People do not design or construct constitutions on their own or only among like-minded friends,” says Waldron. This statement should, I believe, be qualified: even if we do not restrict our partners to constitutional design to friends, we choose for this purpose only people with whom we share some fundamental interest or value. And for liberals, the minimal (thin) common starting point is the very idea of justice as fairness. This is what makes Rawls’ view attractive and his point about majority rule as reflecting imperfect (rather than pure) procedural justice convincing. In the later Dignity of Legislation (1999, chap. 6, sec. 3) Waldron gives more weight to the problem of the unity of the acting political body (and the threat of secession) but does not adopt the more organic (biological) interpretation of ‘body’ which I believe makes better sense of Locke’s position.
they can be carefully designed so as to achieve maximal fairness in representing what people want.

Secondly, although I do not wish to argue that political decision-making relates only to issues of existential gravity, it seems that from the individualistic and pluralistic perspective, to which Waldron is also committed, there is a structural analogy between political decisions and dramatic, ‘Nietzschean’ choices. Both share the lack of any relevant first-order reasons that would support a particular outcome. So the difference between existential choices (which are not backed by conclusive reasons) and ordinary choices (which we make on the basis of reasons) is relevant only from the personal point of view. In political decisions in which people vary also in their ordinary, allegedly rational choices, we are left with the same deadlock typical of existential choices in the life of the individual.

Thirdly, the very idea of lottery is to give a ‘positive decisional weight’ to each individual in a way that majority vote cannot do. Whereas in majority vote each individual is counted, only in a lottery can one safely say that each individual counts. This, as we shall see, is especially true of the ‘circumstances of politics’ to which Waldron refers.

Lotteries and majority rule are thus two competing non-substantive procedures for making collective choices in the ‘circumstances of politics’, that is, when there is no agreement on first-order reasons that might decide the issue. Waldron believes that only a purely procedural mechanism can appeal to everybody in a pluralistic group. But then why should people who do not agree on anything adopt majority rule? Why should they not appeal to a Hobbesian authority or to brute force? It seems that the only justification of majority rule can be found in the prior agreement of all individuals about the conditions of fairness that the second-order procedure of conflict resolution must satisfy. This means first that the principle of conflict resolution must, as Rawls argues, reflect imperfect (rather than pure) procedural justice, and secondly that contrary to both Rawls and Waldron, lotteries are superior to majority rule in achieving a fair outcome.

Lotteries are superior to majority rule from a Rawlsian point of view, since they better fit the second principle of justice. It is true that under the veil of ignorance, an individual might think that since the probability of her preferences to belong to the majority is logically greater than to belong to the minority, she should opt for majority vote as the principle of decision making in society. However, Rawls is not a utilitarian, and the ‘difference
principle’ requires us to take into account the worst situation in which we might end up, in our case that of belonging to the over-ruled minority, which may be persistently unrepresented and repressed. Lotteries are exactly the kind of safety net that gives those who are in this context the ‘worst off’ a chance to improve their opportunities. They serve as the expression of the difference principle in the context of the procedure of decision making in a way that majority rule cannot do.

Finally, it should be noted that my critique of majoritarianism goes beyond the widely held view that majority rule should be tempered by constitutional constraints relating to individual rights and fundamental liberties and opportunities. Amy Gutmann and Dennis Thompson (1996) show the incompleteness of proceduralism as a democratic means of resolving disagreements and the shortcomings of majority rule in deciding controversial matters such as policies of organ transplantation or in protecting insular minorities. But their ultimate justification of majority rule is merely negative and in that respect unsatisfactory: “Majorities have a moral right to govern only because minorities do not” (p. 28). My suggestion is that lotteries are more fair than majority rule in issues that do not involve the protection of human rights, and may even serve as the compelling alternative to majority rule in cases like organ transplants, which Gutmann and Thompson too believe should not be left to majority vote.

3. The Epistemological Justification: Condorcet. There is a well-established tradition of justifying the rule of the majority in terms of the higher probability of achieving truth. Although the majority cannot be said to be always right, it has a better chance of doing so than any minority group. As a philosopher of the enlightenment, Condorcet believed that we have an independent concept of reason and reasonableness and that we can characterize individuals as having more or less reason. Thus, we should nominate to our decision-making bodies individuals whose overall chance of knowing truth and justice is higher than .5, and thus guarantee that the larger the majority in any such body, the higher the probability that it will make the right decision (1785, pp. 33–50). Condorcet’s lesson from this abstract reasoning is that we should strive to establish decision-making bodies that are not too large (so as to reduce the probability of selecting people whose judgment does not rise to the minimum .5 threshold) but not too small (so as to make the majority decision statistically significant). When
there is no such statistical justification for the truth and justice of the majority decision, Condorcet boldly advocates abstention from both legislation (no law is better than bad law) or from judicial decision (which amounts to the well-known presumption of innocence).

Jeremy Waldron (1995) has drawn attention also to the Aristotelian version of the epistemological justification. The many, according to Aristotle, have a better judgment than the one, since they complement each other, having access to different aspects of the issue at hand, and are able to synthesize all the particular views on the matter in a way that no single person can do. However, Waldron himself wonders whether Aristotle would use this argument to prefer democracy to aristocracy (and not just aristocracy to monarchy). That is to say, it is not clear whether this argument can serve as a justification of majority vote as such.

The force of the epistemological argument seems to us, modern liberal pluralists, highly suspect. In many issues that are decided by majority vote we do not believe that truth or even justice is involved at all (but merely preferences and interests). In that sense we implement decision-making procedures, such as majority vote, not to reveal truth or any other objective value but to best represent the variety of individual points of view, opinions, interests, and aspirations. And even in those decisions which aim at a true or objectively just answer, we are not as optimistic as Condorcet about our ability to select those enlightened individuals who have the initial higher probability of getting it right. As against the persuasive nature of majorities, we have acquired sensitivity to the risks of herd psychology, conventional adherence to irrational propositions, intellectual laziness, and inclination to bias that often dominate the way the multitude is making its choice. In hard cases in particular (in both science and morals) the majority is often wrong because most people are not creative, original, bold, and independent in their reasoning, and irrational opinions and individuals tend to have a charismatic grip over the majority of people. So even if Condorcet’s approach makes sense in contexts of smaller groups of experts or professionals, it is highly dubious in the democratic sphere of popular vote.

And as for Aristotle’s suggestion, it seems that a group is indeed better grounds for the deliberative process leading to a decision than a single person, but this does not mean that after deliberation is over, the majority should rule. Aristotelian deliberation in a large and varied group is fully compatible with a lottery as a decision-making mechanism. A group of
citizens may engage in serious deliberative process in which each party tries to convince the others of the superiority of its policy (or more typically, candidate); then, after all has been said and argued, the citizens cast their votes, but rather than counting them, one vote is drawn by lot and is considered the winning policy (or candidate).

4. The Pragmatic Justification. A strong case for majoritarianism lies in its simplicity, in its effectiveness, and in the stability it secures. Even where there is no metaphysical, principled, or epistemological reason for preferring the majority to the minority, majority rule has the advantage of raising the least opposition, leaving fewer people unsatisfied, frustrated, and potentially rebellious. Condorcet sees this justification as historically prior to others: anchoring political authority in the majority promotes peace and overall utility (1785, pp. 34–35).

Pragmatic reasons for majority rule should be taken seriously but with critical qualifications. First, we often refuse to act on pragmatic reasons if they turn out to be incompatible with certain principles, such as fairness, individual rights, or truth and justice (that is to say, with competing justifications of the sort we were discussing). Secondly, it is an empirical question whether majority rule is indeed pragmatically the best of all decision-making procedures. On the one hand we might think of a Hobbesian single authority as better serving the interest in social stability. On the other hand we might think of lotteries as leading to a stronger sense of social solidarity and to a reduced measure of bitterness (on the part of those who ‘lose’ in the decision making procedure) than majority decision.

A deeper version of the pragmatic justification of majority vote is the utilitarian. Majorities should rule because they promote the overall satisfaction in society (or the world). The fact that there are more happy people than less is good in itself, not just as a matter of social stability. This is a serious argument, but I am not going to discuss it here, since it goes beyond the individualistic tradition lying at the basis of the social contract theory and the ideal of fair representation in circumstances of ‘structured’ political divisions.7

7 There is a very interesting literature about the question whether numbers count in moral decision making (like saving the one or the five stranded individuals on two separate islands). I have reservations about the application of aggregative principles in deciding such cases and even wish to propose the moral soundness of a lottery in
Representing ALL: The Fairness of Lotteries

The chairperson of the philosophy department is called to choose between Mondays and Thursdays for the weekly colloquium. Realizing that the choice cannot be made in the light of objectively right criteria and reluctant to force her own preferences on her colleagues, she leaves the decision to the group. Three ‘democratic’ procedures suggest themselves for making this collective choice. The conventional way is to hold a vote and act on the majority’s decision. Another way is to toss a coin. A third and more sophisticated method is to let each faculty member cast a slip of paper with his or her preference into a bag, select one of the slips at random and act accordingly.8

The first procedure of majority vote is definitely attractive in its ability to satisfy as many faculty members as possible and leave only few disappointed. The second method, tossing a coin, is attractive if we feel we want to give an equal chance to the two options. However, if the distribution of Monday-people and Thursday-people in the group is not known in advance, it would be equally fair if the chairperson simply made the choice herself, ‘arbitrarily’. The point is that if she knows that her personal preference happens to coincide with that of a particular sub-group (the majority, or the people she personally likes) she might feel that tossing a coin would be a way to block any suspicion of favouritism, as well as an easy relief from personal responsibility.9

these circumstances (giving the solitary individual at least a proportionate \textit{chance} to be rescued rather than none at all). But I cannot pursue this weighty subject here. For a very powerful argument for the aggregative option, see Kamm (1993), chaps. 5–7.

8 Ackerman (1980), pp. 285–289. Ackerman calls this method ‘responsive lotteries’ and shows how it satisfies some basic conditions of liberal neutrality. He correctly points to the tension between the theoretical attraction of lotteries and the practical tendency to majoritarianism, and “[leaving] this question in the air for now,” urges us to “make it the subject of self-conscious reflection,” which is the aim of the present article.

9 The factor that makes lotteries fair might be referred to as ‘causal separation’. It is the appeal to a mechanism that is not genuinely random (since the fall of a coin is governed by non-random laws of physics) but nevertheless totally separated from the causal mechanism that decides the way people form their preferences and make their choices; see Heyd (2000), pp. 58–71.
Now, consider the third process, that of a ‘weighted lottery’. If the choice of day is a one-time decision, then it seems that majority vote is an appealing decision-making procedure, being both fair and promoting overall satisfaction in the group. However, if the circumstances involve a series of iterated choices of the same kind, then majority rule loses its compelling nature, particularly as we can assume that the distinction between the Monday-loving and the Thursday-loving groups is fairly constant. In that case, members belonging to the ‘stable’ minority may develop a justified complaint against the second-order decision to act on majority vote. Their claim would be that in the long run their preferences should be given some weight, optimally a weight proportionate to their relative number in the group (or even to the relative intensity of their preferences). A lottery of the kind mentioned above is the most precise way of expressing the equal chance of individuals of having their interests prevail.

When we move from the artificial, though not completely imaginary, simple cases of this kind to the social and political realm, we often find that the distribution of opinions and interests is associated with class, general ideology, geographical location, gender, race, etc. These are relatively stable factors that make the split between majority and minority ‘structured’, usually leaving little chance to the minority even in the long run. Worse (for the minority), the preferences in question are often systematically related to other preferences in which the majority–minority divide runs on similar lines. In other words, what Waldron calls ‘the circumstances of politics’ are similar to the kind of iterated decision making in a group that is divided according to structural lines.

Waldron’s main argument according to which majority vote expresses in the deepest way the equal standing of and respect for individuals in a democratic society is therefore open to criticism. Waldron argues that in ‘the circumstances of politics’ (that is, when there is a social agreement on the need for some action despite the disagreement on its nature) a lottery is an arbitrary procedure while majority rule is justified as a matter of principle. I am making the opposite proposition: exactly in the circumstances of politics, in which disagreements are usually ‘structured’, majority choices are arbitrary (or even biased), while random selection better respect the right of each individual to be represented, either directly or at least by being given a fair chance. Lotteries are more democratic since they not only count or take into account everybody (which is also done by majority vote), but
also considers the way in which individuals are **grouped** across time.

Structured majorities are the source of the well-known danger of ‘the tyranny of the majority’, the absolute power of the group that happens to be the largest in society.\(^{10}\) A decent democratic system tries to represent the interests of individual citizens as faithfully as possible, and to do so not only on a one-time basis or in a series of discrete independent decisions.\(^{11}\) After all, the life of individuals in a polity lasts a fairly long time and their representation must take that fact seriously. Weighted lotteries are, at least ideally, a more appropriate method of democratic representation and power sharing than the principle of ‘winner takes all’. In circumstances in which it is impossible to divide the cake (though there is a consensus that someone must have it), a situation in which one group repeatedly wins the whole cake should be avoided. Lotteries guarantee that at least from time to time the minority group will get the whole cake. This is a more fine-tuned method of distributing fairly the indivisible good of political power or other indivisible public goods.

Thus, contrary to the common wisdom since Locke, the majority does not **represent** the collective, since the collective, at least in the individualistic conception, is nothing more than an aggregate of individuals. Lotteries better approximate the ideal of optimal representation of individuals *qua* individuals. They substitute equality of *chance* of being actually represented for the actual but non-egalitarian representation by the majority. Obviously the question of the right principle of weighting remains an open (and

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\(^{10}\) Guinier (1994), chap. 1. Iris Young (1990, chap. 7) argues that injustice should be defined primarily in terms of oppression and domination, rather than distribution. Although this proposition serves her in analyzing racism and sexism, I believe it may also be applied to the evil of the tyranny of the majority. The wrongness of the constant rule of a given majority group does not merely lie in the lack of representation of the minority, but often also in the use of political power to actively oppress and exploit the minority.

\(^{11}\) John Stuart Mill was acutely aware of the difference between modern democracy, in which the government represents exclusively the majority, and the original democratic idea of representing all. In modern democracies the minority is completely silenced. Mill (1958, chap. 7) believes that the intermediate solution between granting an equal power to the majority and the minority and the total silencing of the minority lies in election reform that would prevent minority votes from being ‘wasted’ (by either voting on a national rather than regional level or by holding more than one round). Mill, however, does not consider the lottery solution.
controversial) question: for example, should the lots in the above-mentioned Monday/Thursday choice be made by a toss of a coin (giving each option of the two an equal chance), or should it be decided by a lottery in which each individual expresses her wish and one of these wishes is randomly selected (giving the majority a proportionately higher chance of winning)? There are normative reasons for and against these alternatives, which call for a separate discussion. We may note, though, that the question which one of the two better serves the value of individualism is not easy to answer. The first seems to give equal chance to each individual, whereas the second gives each individual a chance which is proportionate to the relative size of the group to which she belongs. This does not necessarily mean the superiority of the first method over the second, since the latter might be interpreted as giving each individual an equal chance, treating the benefit to others of the same group as “moral luck.”

Alexis de Tocqueville, an admirer of majority rule, was also sensitive to its dangers, and his critique of majoritarianism is particularly illustrative for our purpose in being based on a firm commitment to individualism.

A majority taken collectively is only an individual, whose opinions, and frequently whose interests, are opposed to those of another individual, who is styled a minority. (1945, p. 269)

I take it that Tocqueville is concerned here with the danger that the majority reflects group- rather than aggregate-interests. As long as majority rule expresses the interests of the largest number of aggregated individuals it seems that Tocqueville is willing to accept its authority. But often this majority is a group of individuals who have as a group a common interest. In that case the majority should be considered ‘an individual’ having a unified system of opinions and interests, like real individuals whose opinions and interests are not discrete and haphazard but rather have a structure and logic of their own. In a striking way Tocqueville uses the individualistic principle to undermine the validity of majority vote in structured circumstances: if the balance of majority vs. minority is none other but one individual against the other, preferring the one (called ‘majority’) to the other (called ‘minority’) would violate the fundamental individualistic principle of ‘one person, one vote’!

Unfortunately, Tocqueville like Mill did not consider lotteries as a possible remedy for exactly this flaw in majority rule.
The analysis and evaluation of the relative merits of majority rule and lotteries have so far been addressed on the abstract level of a model that ignores empirical constraints and limitations. And that is the way it should be, since political philosophy is primarily seeking an abstract model from which a normatively valid (rational, fair) solution to the problem of collective decision making in circumstances of disagreement can be derived. But after highlighting the theoretical appeal of lotteries, a responsible theorist must proceed to examine the conditions (and problems) of their implementation in real political life. In this article I will only touch upon some of these issues of application, realizing that there is still much empirical work that must be undertaken before the practical viability of lotteries can be assessed.

We should first remind ourselves that despite the outlandish character of lotteries as means of conflict resolution in politics, there is ample historical experience that attests to their feasibility. Both the Athenian polis and some of the early modern city-states made widespread use of lotteries in the selection of public officials. It is indeed true and instructive in studying the limitations of lotteries that these city-states were all much smaller and more homogeneous than modern nation-states. The object to be selected by lot was a person rather than a policy (a view or an ideology). In a politically homogeneous society, in which the basic principles of political action are not widely contested, the question of who should govern can be decided by lot and is naturally seen as the fair way of power sharing. But once political

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12 Aristotle, *The Constitution of Athens*, esp. chap. 30. Aristotle, who had his own reservations about democracy, saw it in his *Politics* as the form of government in which “the appointment to all offices, or to all but those which require experience and skill, should be made by lot” (1317b 21). Aristotle considered selection by lot (together with the “brief term of all offices”) as lending democracy its egalitarian nature. Lottery was introduced in Athens in Solon’s times as a means of reducing the power of the magistrates and securing the sovereignty of the Council. Financial and military affairs of the state were considered matters of expertise and were accordingly excluded from the system of lottery selection.

13 Rousseau, like Montesquieu, believes that in a genuine democracy, in which people are roughly equal in talent, economic status, and moral integrity, public officials should be selected by lottery. Judicial positions should be distributed by lot, but policies should be decided by majority vote. Rousseau’s assumption here is
candidates are running for office in the name of an ideology or a set of values, there is less of a chance that citizens would be willing to subject the selection process to a random procedure. The (alleged) presumption of truth and justice in deciding political differences is incompatible with the idea of casting lots.\textsuperscript{14}

There are many examples of procedures of selecting public officials that are based on rotation rather than on majority vote: chairperson of the U.N. Security Council, President of the Swiss confederation, President of the European Community, even the prime minister in certain coalition governments in Israel and Turkey in the past. Rotation is not much different from lottery in its formal nature, substituting a fair procedure of power sharing for a rational procedure of selecting the objectively best or most deserving candidate. It is when rotation is not efficient (due to the large number of candidates, or due to the nature of the job which requires a relatively long term of service) that lotteries suggest themselves as a plausible alternative. In the long run, by the sheer laws of probability, lotteries amount to a rota system. So even if the President of the U.S. should not be selected by lottery, it is worth considering lotteries for the selection of heads of congressional committees, chairs of university departments, and secretaries of trade unions, as well as officials on the municipal level (which is less marred by ideological rifts than the national).

that majorities are rational since they better approximate unanimity and hence the method which would be agreed upon in the social contract. However, the appeal to the arithmetical proximity of majority to unanimity is based on a fallacy that is due to the conflation of the two levels of agreement to which I referred in the first section of the article. Unanimity in the social contract is a conceptual necessity; majority in the political state is contingent and not necessarily rational. See Rousseau, \textit{The Social Contract}, book 4, chaps. 2, 3.

\textsuperscript{14} John Cooper and Jeremy Waldron have brought to my attention the paradox involved in trying to combine lotteries and deliberation: if the issue on the agenda merits public discussion and a serious attempt to rationally debate its merits, then it seems that the Condorcet axiom should justify a majority method in resolving the remaining differences, which leaves no room for lotteries except in deciding a very narrow scope of issues of personal taste or purely subjective preferences. There is much truth in this general critique of lotteries, but I believe that liberal moral epistemology adheres to a more complex view of human rationality, in which discursive reasoning and rational persuasion are compatible with a neutral view of the outcome of the process, at least in the attempt to accord equal respect to the holders of the competing views even if not to the views themselves.
When we move from the selection of candidates to the selection of policy, lotteries seem to become less appealing; for we tend to accept Condorcet’s axiom according to which the probability of achieving the right policy is enhanced by acting on the majority’s opinion. However, in our epistemologically sceptical culture we are less confident about the scope of application of the Condorcet axiom. We tend to view many of our political opinions as expressing interests and fundamental values rather than as approximations of truth. Condorcet’s axiom can hardly justify majority decision when judges of the Supreme Court are elected as part of the political process and on the basis of value-laden selection procedures, or when members of juries are selected by lot as a means of best reflecting the opinions prevalent in society. So although it seems that casting lots in the Supreme Court would be absurd, we feel uneasy about the often structured 5 to 4 decisions in matters of value (rather than of truth), which leave the interests of a large minority of society completely and persistently unsatisfied.15

There is surely a wide array of contexts in which lotteries would be empirically inferior to majority rule. These of course relate to cases in which truth and justice are sought (even if only, as in the Supreme Court example, for appearance’ sake), cases in which stability requires a long-term policy (or precedent), and cases in which the majority–minority split is not deeply structured and lasting (or at least not known to be so). A further constraint on lotteries is connected with the process of deciding the eligibility conditions (in the case of the selection of officials) or the agenda (in the case of the selection of a policy). These can obviously not be decided by lottery (though at a certain point even majority rule cannot be appealed to as when one sets the agenda or decides eligibility; for how do we select the group itself in which these decisions take place?). And it is also true that majority

15 Theorists like Waldron argue that casting lots in the courts might undermine the courts’ authority. There are however studies that show that individual judges tend to hasten in joining the majority position (or the position articulated by the ‘leading judge’ in his or her written opinion) thereby stripping them from personal responsibility. Although there are good reasons for not using a lottery system in resolving disagreements in the courts, it should be noted that in general a lottery forces each member in a group to consider and commit herself to a particular view (rather than, for instance, passively aligning oneself with the apparent majority), thus enhancing the overall authority of the final outcome.
rule enhances moderation and compromise (due to the need to create coalitions which have a better chance of gaining the upper hand in a vote) and that a pure lottery system might bring to power an extreme person or policy. Nevertheless, lotteries may equally encourage the pooling of votes or policies (thus achieving this desirable moderating effect), since such a method would raise the chances of a particular kind of person or policy to be selected.

A practical middle-way between a pure system of lottery and majority vote is a mixed system, such as the interesting proposal developed in detail by James Fishkin (1991). Seeking to secure political equality, non-tyranny, and deliberation (all of which are not satisfactorily achieved by standard majority vote), Fishkin suggests creating through a lottery-mechanism a representative sample of the population which would convene for a few days in one place where they would engage in an intensive (and televised) discussion of the major issues on the agenda. In the end, a vote will be taken and the choice of the majority would serve as the basis for action. Fishkin is primarily concerned with the election of public officials. This is a kind of a deliberative process that is expected to yield what the electorate would think (rather than actually thinks) under conditions of serious and informed deliberation. I find this proposal attractive, although its main focus is the enhancement of deliberation rather than fair representation. It preserves a decisive role to majority vote (based on a Condorcet-type assumption), thus leaving open the possibility of some form of on-going domination of structured majorities.

Our post-enlightenment culture is still obsessed with rationality and with the belief that every choice and decision can and should be based on reasons. Jon Elster has done more than any other contemporary theorist to challenge this absolute trust in rationality by pointing out its many limitations (Elster 1989). Often the confidence in our ability to make a rational choice is not merely innocuously illusory, but may lead to irrational and non-optimal results. In some of these cases Elster himself recommends resorting to random-based procedures, which can be described as “super-rational.”

16 Fishkin (1991), particularly chaps. 4 and 8. A different version of this idea is Burnheim’s (1985) ‘demarchy’, which is based on samples of the population representing affected interests (thus serving to decide policies rather than elected officials). Athenian council members were selected by lot but their decisions were taken by majority vote, which also amounts to a ‘mixed’ system.
suggest that in deciding which of two competing individuals better deserves to be hired for a job or a fellowship a lottery may be more rational and fair than a decision by a majority vote when the two are very close in their qualifications. The reason is that the closer the two candidates are in their merits, the more susceptible are the choice makers to fall victim to sub-conscious biases and prejudices.

Psychologically we are reluctant to resort to lotteries since they highlight the limits of our rationality, leaving important aspects of our lives to blind chance. The psychology of chance is a very complex phenomenon that has so far been only partially studied. But we may hypothesize that the same ambivalence that characterizes our normative judgment of the relative merit of lotteries and majority rule (fairness vs. aggregation, genuine representation vs. objective truth and justice) applies also to our psychological response. Are we better reconciled with the prospect of losing a political struggle by being (constantly) outvoted by a majority (especially when it is a slight one) or by losing a lottery? I suggest that the latter is not only often the case, but that the sense of fairness (which is better served by lotteries than by majority rule) also promotes the sense of group solidarity, of membership in a community, and consequently the level of participation in the political decision-making process. If every vote counts not only in the formal way of being counted in deciding where the majority lies but in getting a proportional chance of actually winning, then individuals, even knowing that they belong to the minority in the issue on the agenda, will have a direct motivation to take part in the vote.\(^{17}\) And if they lose in the lottery, they will not feel that they were subject to political manipulation, irrational persuasion, herd mentality, or the abuse of power.

Both theoretical and empirical considerations point to the potential advantages of lotteries in decision-making processes: they prevent the

\(^{17}\) Lotteries encourage independent individual choice, that is to say, the expression of one’s own preferences and opinions irrespective of what others (primarily the predicted majority) think. For a theorist like Elaine Spitz (1984, chap. 9) this may seem a defect rather than a virtue, since she believes that political decision making is a group dynamic of mutual influence rather than the aggregated representation of individual interests. Although it seems to me to be a fair description of majority rule, it can hardly serve as a justification, especially from an individualistic point of view. Lotteries in jury decisions may similarly lead jury members to feel free to vote on the basis of their best judgment rather than being swayed by the majority in the group or by an independent desire to either create or avoid a hung jury.
centralization of power in the hands of a self-perpetuating elite, they block the much feared process of democracy ending up in an oligarchy (e.g., of party bosses), they undermine the socially undesirable illusion that the majority is ‘right’, they deny the anti-democratic view that politics is a matter for experts, they are anti-meritocratic in nature breaking class and other group barriers, they create a modest attitude on the part of the elected and a higher commitment to the public interest, and as we have already noticed they might promote social solidarity and reduce alienation. Lotteries also overcome the danger of the rule of money (and its waste) that has become so salient in contemporary democratic elections.

Obviously, it would be absurd to apply the lottery system to the electoral system in a multi-million, ideologically split nation-state. But as mentioned above, the Athenian precedent might be useful in our attempt to rationalize our democratic system. The Greek tribes elected their representatives (by majority vote), but then selected both members of the Council and most public officials by lot. So even if the election of members of Parliament is based on majority vote, some offices, such as chairs of Parliamentary committees, could be selected by lottery among Parliament members. More "local" and homogeneous institutions, such as universities, may benefit from switching from majority vote to lotteries. For instance, governing bodies and committees tend to represent the larger departments and faculties, thus leaving the smaller departments under-represented. A weighted lottery could be a reasonable as well as a practical alternative. Even if Supreme Court justices are nominated by non-random procedures, the allocation of particular cases to individual judges should better be left to a randomized method of selection.

It is difficult to find a hard and fast rule for deciding when lotteries are superior to majority vote or vice versa. We may say that lotteries make sense in contexts of distributive justice, such as the selection of people who are equally deserving of some good (power in the case of representation), or the satisfaction of preferences, personal tastes, and individual interests. However, when the issue at hand is factual, or a matter of objective value (in the realist sense), then the Condorcet axiom inevitably leads us back to some form of majority vote. The problem is that the very distinction between

18 For an excellent discussion of some of these virtues of lotteries, from which I drew much inspiration, see Goodwin (1992), chap. 3. See also, Burnheim (1985), chaps. 3 and 5.
these two spheres in politics is itself controversial and hence the agreement on lotteries is restricted to a narrow scope of cases (such as those artificial ones discussed above). But the suspicion with which we hold lotteries is double-edged: it should be equally applied to majority rule which in many cases seems to lack moral justification.

However, the question when and to what extent the merits of a lottery system override those of its majoritarian competitor remains to be studied in detail. I hope to have shown that the issue is serious and that the alternative to our deeply rooted commitment to majority rule is not as shocking or bizarre as it first seems. Finally, although we have repeatedly appealed to the distinction between matters of objective truth and justice and matters of personal interests and preferences as underlying the respective appeal of majority rule and lotteries, we might consider the philosophical benefit of reversing the methodological order of discussion. The serious study of the comparative merits of lotteries and majority decision forces us to reconsider the traditionally clear distinction between truth and interest, justice and fairness, and maybe adapt it to modern liberal views in political philosophy.

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Bibliography


