

# Is the Majority Always Right?

About: Didier Mineur, *Le Pouvoir de la majorité. Fondements et limites*, Classiques Garnier

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**What justifies majority decision making in democracies? Can we consider that the majority is more likely to be right? Didier Mineur reflects on the philosophical foundations of a rule that has become so self-evident in our societies.**

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“Democracy is two wolves and a lamb voting on what to have for lunch.” This formula whose origins are uncertain (it is often attributed to Benjamin Franklin, but is apparently much more recent) has the merit of illustrating very clearly the limits of majority rule—and of an understanding of democracy reduced to the power of the most numerous. It also vividly expresses the fundamental concern of the founding fathers of modern democracies, namely the risk that a sufficiently broad interest group might form a majority and dominate the minority, depriving it of its rights, its freedom, or—a barely hidden fear among elites of the time—the enjoyment of private property. In this scenario, democratic regimes are no less tyrannical than authoritarian ones; the tyranny of the many simply replaces the tyranny of the one or the few. In the absence of limits to the power of the masses or of appropriate voting ethics—in the words of Benjamin Constant this time—the “prerogative of the majority is that of the strongest. It is unjust.”<sup>1</sup>

What, then, explains the international and intergenerational success of majority rule? This question forms the background to Didier Mineur’s book, *Le Pouvoir de la majorité* (The Power of the Majority), which provides an impressive historical overview of the philosophical debates that have surrounded that matter from Plato and Aristotle to this day. The great merit of this book is that it combines historical erudition with an in-depth knowledge of

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<sup>1</sup> Benjamin Constant, *Principles of Politics Applicable to All Governments*, Translated by Dennis O’Keeffe, Indianapolis, Liberty Fund, 2004 [1806], p. 32.

contemporary debates. This is surely a rare quality, and while it may make the reader somewhat impatient to discover the author's contribution to current normative debates, it also sheds new light on them. The complexity of the question can be measured by the number of renowned philosophers who have tried to answer it, but have failed to do so in a fully convincing way. One can also see the extent to which the two camps opposing each other today (i.e., the two main normative justifications of majority rule) were already well defined at the time of the French Revolution.

## **An Intrinsically Just Principle?**

On the one side there is the *procedural* justification of majority rule. This justification asserted itself in modern jusnaturalism with figures such as Grotius, Hobbes, Locke, and Pufendorf, giving a new and absolutely central role to the notion of people's *consent* in the justification of democracy. The question before them was that of the social contract, namely the transition from natural independence to social order and to a certain submission of individual will to the collective required by this contract. But why would an individual voluntarily agree to submit to the power of the majority?

The answers given by these different authors vary, of course, but all share the same logic: The legitimacy of power rests on the consent of subjects. Ideally, then, the unanimity rule should prevail. But unanimity being too rare, one must find a more convenient substitute for it. As Locke points out, however, the majority expresses the largest number of consents, and this is what gives it its moral force. In other words, it is the best approximation of unanimity, and the latter can prevail only when men are guided strictly by disinterested rationality and concerned only with natural law. Therefore, in Pufendorf's terms, majority rule is an "expedient" whose value comes both from its convenience and from the fact that it respects the fundamental equality of the contracting parties.

The main procedural justifications of democracy still rest on the idea of equality today,<sup>2</sup> but the reasoning has been refined. Not only does everyone have an equal vote, as would be the case if the winning ballot paper was drawn by lot, but above all, in a majority system, everyone has an equal share in collective decision making. According to Mineur, this is what makes majority rule fair.

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<sup>2</sup> Hans Kelsen's argument stands out by its emphasis on *political freedom* rather than equality. However, drawing on Douglas Rae's work, Mineur considers that political freedom, too, ultimately rests on the principle of equal impact, which is the condition whereby majority rule can minimize political heteronomy or the number of people who must submit to a will other than their own (pp. 327-336).

On the other side there is the *instrumental* justification of majority rule, which is based on the quality of decisions rather than on the intrinsic fairness of the procedure. Absent from the conceptual universe of modern jusnaturalists, this justification was in fact developed earlier by Aristotle. The latter considered, from a somewhat aristocratic point of view, that political power should be vested in the best—the most virtuous. He nevertheless suggested that the many sometimes prove better than the few, as each has a share of virtue and practical wisdom which together can increase collective virtue—an intuition to which Condorcet later gave a mathematical formulation that left an astonishing legacy in social choice theories.

It is, however, the conceptual revolution introduced by Rousseau that is the focus of Mineur's attention. For Rousseau, it was no longer a question of justifying majority rule by its formally egalitarian character. It was a question of thinking the fusion of all wills into a general will—i.e., that which would unanimously emerge if every voter took into account the general interest alone. Therefore, as Mineur explains, it is “up to each individual to meet the common interest when determining his or her will,” (p. 114). And if these voting ethics are not respected by citizens, it is because the social body is corrupted and majority rule therefore loses its moral force.

We are thus faced here with an extremely demanding conception of democratic legitimacy, which Rousseau himself cynically considered more appropriate for gods than for humans. Failing to heed this warning, several of Rousseau's successors (Kant, Sieyès, or, to a lesser extent, Madison) took up his argument to limit the power of the many and to pass the popular will through the filter of representatives, even judges, who are deemed more able than the masses to identify the general will. Indeed, the will of the majority is in reality rarely something other than a dominant particular will.

Most current instrumental justifications of majority rule have discarded this elitist aspect.<sup>3</sup> They have also abandoned the fiction of an easily identifiable general will, and generally propose instead to limit the power of the majority through the recognition of fundamental rights or principles of justice that take precedence over the will of the temporary majority. However, in Mineur's view, these approaches come up against the same obstacle as Rousseau: There is no unanimously accepted set of rights or principles of justice, no more than there is an easily identifiable general will that allows for verifying the substantial legitimacy of a decision taken by the majority. We need a decision-making procedure which is acceptable to all *precisely because we do not agree on what is just or unjust*. This is why, in line with Jeremy Waldron's analyses, Mineur considers it impossible to justify majority rule instrumentally.

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<sup>3</sup> Ronald Dworkin may constitute an exception given the confidence he places in constitutional judges.

## Between Procedure and Substance

However, in the last part of the book, the author seeks to distinguish his position from purely procedural justifications of majority rule by articulating procedure with substance, following authors like Charles Beitz, Thomas Christiano, or Corey Brettschneider.<sup>4</sup> While it cannot be said that “majority government has a natural propensity for justice” (p. 257), since justice is an “essentially contested concept” (William Gallie), it is nevertheless true that the choice of majority rule expresses a demand for justice by affirming the equal value of all individuals. And this choice therefore morally constrains the majority. The latter is required to make decisions that respect this fundamental equality between individuals. This assessment is, of course, subject to disagreement. Some majority decisions are nevertheless excluded from the outset because they enter into *clear contradiction* with the ethical foundation of democracy, namely equality. As Mineur specifies, this is the case with decisions that deprive certain categories of the population of civil or political rights granted to others, that renounce the majority principle, or that (a more demanding condition) use majority rule to arbitrate conflicts between fixed interests (for example, a majority ethnic group against a minority ethnic group). In such situations, majority rule loses its moral authority, and citizens are no longer morally bound to obey.

## Justice and Democracy

This book is undoubtedly an excellent contribution to the francophone literature on the moral foundations of democracy and majority rule, not only because of the philosophical overview it offers and the analytical clarity it displays, but also because of the normative contribution it makes to contemporary debates. This does not, of course, prevent us from disagreeing with certain points.

First, one may wonder why it is so important to propose a “unified concept of democracy” (p. 14) that includes a demand for justice, rather than to recognize a tension between two distinct values: democracy and social justice. Though intellectual elegance may not like it, all good things do not always come together.

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<sup>4</sup> Charles Beitz, *Political Equality: An Essay in Democratic Theory*, Princeton, Princeton University Press, 1989; Thomas Christiano, *The Constitution of Equality: Democratic Authority and Its Limits*, Oxford, Oxford University Press, 2008; Corey Brettschneider, *Democratic Rights: The Substance of Self-Government*, Princeton, Princeton University Press, 2007. Despite a rather abundant bibliography, it is surprising to note the absence of Thomas Christiano, an author much discussed in the anglophone literature who defends a position very close to that of Mineur.

The stakes of this debate are interesting. In the background lurks the following question: Might it sometimes be morally desirable to limit or reduce the power of the people for reasons of justice? The position defended by Mineur suggests that this is neither desirable nor necessary. This is not desirable because we are in profound disagreement about what is just or unjust. And this is not necessary because the choice of democracy and majority rule (which is consubstantial to it) contains within itself a demand for justice that is recognized by all. Thus, if a collective decision enters into clear contradiction with the principle of equal value of citizens, it cannot be considered democratic. Indeed, it breaks the democratic social contract which consists in recognizing each other as equal in value. But what should we think when a national majority ostensibly violates the fundamental rights of foreigners who are not present on the national territory, whether through its migration policies or its contribution to global environmental disorder? In denouncing this injustice or justifying the intervention of a court of justice, we cannot invoke the moral contract that binds members of a same political community. We are forced to recognize the existence of a criterion of justice or a set of fundamental rights that are independent of the democratic procedure and of the principle of democratic equality. Rather than emphasizing the intrinsic fairness of majority rule, a results-oriented approach to democracy has the merit of making more apparent the risk of biased and hence unjust democratic decisions against, notably, foreigners and future generations

Moreover, one may ask whether the author gives sufficient chance to epistemic justifications of democracy—a variant of instrumental justifications that consists in evaluating a procedure’s capacity to generate correct decisions. His main argument against them is the lack of objective and observable truth in politics. One cannot disagree with him on this point. This does not mean, however, that the notion of truth loses all meaning in this area. For most people with political convictions, it is clear that some opponents are wrong, mistaken, misguided in thinking as they do. Is this a pure ideological illusion? Not necessarily. It is indeed quite conceivable (even if hardly plausible) that we will one day be able to convince our opponents that they are wrong and we are right, that option A is more just than option B, for example. The fact that in all societies there exist profound disagreements on questions of justice cannot be taken as *evidence* of the “plurivocity of practical rationality” (p. 315), or of the reasonable character of disagreements.<sup>5</sup> It may simply be that some are biased by their interests and that others are wrong in their assessment of certain social facts, such as the impact of personal responsibility on income or that of immigration on the economy and on social cohesion.

The possibility or impossibility of reaching agreement on questions of justice are two postulates of practical reason founded on uncertainty. We do not know if we will ever succeed. It is up to us to decide whether or not we try. The Kantian-Habermasian option then merely

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<sup>5</sup> See Hélène Landemore, “Beyond the Fact of Disagreement? The Epistemic Turn in Deliberative Democracy,” *Social Epistemology*, 2017, 31 (3), pp. 277-295, on the shift made by some authors from “the fact of disagreement” to “the fact of reasonable disagreement.” The reasonableness of existing disagreements is not a fact; it is a hypothesis.

consists in relentlessly trying to reach agreement, in accordance with our usual communication practices, at the risk of being frustrated. The opposite option, which seems to seduce Mineur as it does J. Waldron, is more defeatist. This in itself is not a problem. But it deprives political argumentation of much of its meaning. Why try to convince others if practical reason is plurivocal, if disagreement is “by definition” (p. 258) irreducible? I do not see what moral gain there is in making such an assumption.

Yet even if there were a form of truth in politics distinct from the objective truth of the natural sciences,<sup>6</sup> Mineur would object to epistemic approaches that it is difficult to *agree* on a criterion of justice independent of the decision-making procedure that allows for evaluating its results. It is not necessary, however, to agree on a comprehensive concept of justice such as that proposed, for instance, by J. Rawls. It suffices to agree on the properties of a decision procedure that render it more or less likely to produce quality decisions. Thus, we can easily reach a consensus on the fact that quality political decisions must be *rational*, in the sense that they select the means best suited to the ends being collectively pursued, and that, as far as possible, they must be *impartial*, in the sense that they do not favor certain categories of the population at the expense of others. We can then assess whether a particular mode of government is likely to produce rationality and impartiality, which is much easier than identifying the mode of government most likely to achieve a fully defined ideal of a just society. For instance, in a system where only one party is tolerated, where there is no freedom of expression or accountability of representatives, the risk of bias or partiality is obvious. Similarly, a system in which collective decisions are drawn by lot is unlikely to produce rationality. Thus, with modest but widely shared and operational epistemic criteria, we can evaluate different projects for the reform of our political institutions, and we can debate which ones are most likely to generate quality decisions.<sup>7</sup> This, in my opinion, is not possible under the approach advocated by Mineur.

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<sup>6</sup> This does not imply reducing truth to unanimous agreement, as Mineur does in reference to Habermas (pp. 365-366). Indeed, we can consider that unanimous agreement is still only an *indication* of truth or justice, until proven otherwise.

<sup>7</sup> This argument is developed in “La valeur épistémique de la démocratie, entre faits et normes,” *Revue philosophique de Louvain*, 2016, 114 (1), pp. 95-126. It draws partly on *Securities against Misrule: Juries, Assemblies, Elections*, Cambridge, Cambridge University Press, 2013, by Jon Elster, who proposes even more modestly to strive to minimize bias, prejudice, interest, and passion through institutional *design* in order to reduce the risk of bad government.