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Self-Government of the People

The ideal that justified the founding of modern representative institutions was "self-government of the people." The problem to be solved, as posed by Rousseau (1964 [1762]: 182), was to "find a form of association which defends and protects with all the shared force the person and the goods of each associate, and through which each, uniting with all, still obeys but himself, remaining as free as before." Self-government of the people was the solution to this problem. Self-government, in turn, was desirable because it was the best system to advance liberty, understood in a particular way as 'autonomy': We are free when we are bound only by laws we choose. As Dunn (1993: vi) observes, the idea of autonomy is the source of "the power and appeal of democracy." "In sharp contrast to the autocratic alternative," writes another contemporary theorist, "democracy aims to empower all citizens in equal measure. However short of this claim democracies may fall, it is this goal – the goal of autonomy – that characterizes them most centrally in normative and empirical terms" (Lakoff 1996: 155).

As formulated originally, this ideal is neither coherent logically nor feasible practically. When we are governed collectively, each of us cannot obey but oneself. Choosing freely for oneself is not a reasonable criterion for evaluating real democracies. But if the original ideal of self-government cannot be realized, what is the best possible?

Here is a sketch of the answer. The logical premise of the original conception of self-government was that everyone has the same preferences about the legal order under which each and all want to live. This

assumption of homogeneity collapsed in the manifest ubiquity of conflicts over values, interests, or norms. Nevertheless, a weaker notion of self-government is logically coherent: A collectivity governs itself when decisions implemented on its behalf reflect the preferences of its members. Although this understanding is far from new, it is important to specify the second best: the best self-government possible under the constraint that some people have to live under laws they do not like because these laws are preferred by others.

Let me preview the argument in different language. J. S. Mill (1989 [1859]: 7–8) was perhaps the first to observe that all cannot govern at the same time, a point developed forcefully by Kelsen (1988 [1929]). Moreover, in the presence of heterogeneity, it matters to all who does govern. The classical Greek remedy was for everyone to take turns at ruling and obeying. Rotation, however, cannot be implemented in large societies because most people would never get to rule. What can be realized is a mechanism through which people who never govern themselves select their rulers and at different times can select different rulers if they so wish. Democracy as we know it today is this mechanism.

To provide evidence that the founders of representative government could not even imagine what democracy would become, this chapter begins with a history of ideas. Section 1 analyzes the original conception of self-government. Section 2 highlights the issues inherent in understanding democracy as a mechanism for processing conflicts. Section 3 makes a brief detour to Athens, showing an alternative to the modern conception of self-government. With this historical background, I discuss the conditions under which self-government can be said to occur in large societies with heterogeneous preferences.

2.2 "self-government of the people"

The ideal of self-government emerged gradually. Here is the briefest possible historical sketch, without any nuances.

1. People, "man" it would be said at the time, cannot live outside society, in the "state of nature." Particular thinkers developed different reasons the state of nature would be unfeasible or undesirable: People would physically aggress one another, seeking to take away property, or they would forego the benefits of cooperation. The state of nature is a state of anarchy and people can live better

under some kind of order. One cannot live outside society, be independent of others; this is not a feasible world. Although the phrase "as before" (*q'aupauravant*) appears repeatedly in Rousseau's comparisons of the state of nature and society, this is a counterfactual reference, serving only as a normative benchmark.

2. Because this natural liberty is infeasible, the only way in which we can be free is living under laws: "Only the force of the State makes the liberty of its members" (Derathé 1964: 48). The only issue is whether one can be free in society: Is there an order in which everyone is free?

3. Order entails compulsion: People are prevented from doing some things they want to do and forced to do some things they do not want to do. The authority that exercises compulsion can be an individual, who is then the guardian of order. This solution, however, raises the issue that Hobbes confronted, namely, who would prevent the sovereign from abusing power. As Dunn (1999) put it, the Hobbesian solution transposes a "horizontal" into a "vertical" danger.

4. An alternative solution is to place authority in the hands of all those over whom this authority is to be exercised: the people itself.

But what could it mean that "the people governs itself"?[1] Note that "the people" always appears in this phrase in the singular, as *le peuple, el pueblo, das Volk, lud,* and so on. "We, the People" is a single entity. This people in the singular is the only authority that can enact laws to which it would be subject. As Montesquieu (1995: 104) observed, it is "a fundamental law in democracies, that the people should have the sole power to enact laws." Democracy, said Rousseau (Letter to D'Alambert, quoted in Derathé 1964: 47) is a state "where the subjects and the sovereign are but the same men considered under different relations." Clearly, not all commands constitute laws; to qualify as laws, commands must satisfy certain substantive criteria, such as those listed by Fuller (1964). Moreover, ruling entails commands other than laws; it is not limited to legislating. Still, if only the people can enact laws, the people is always bound only by laws of its own making. Furthermore, because the laws by which the people is bound are of its own making, the people is free. Hence, at the end of

[1] For an enlightening linguistic analysis of reflexive propositions, of the form "I [insert verb] myself," where the politically relevant verbs are "command," "obey," or, more generally "govern," see Descombes (2004).

this cascade of tautologies, the people is free, subject only to those laws it chose, when the people governs itself. In Kant's (1891: 43) rendering, "it is only when all determine all about all that each one in consequence determines about itself."

Yet the people in the singular cannot act. As the Demiurge, the people is an apathetic one. This is why Rousseau (1964 [1762]: 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." Kant (1891: 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. Nevertheless, how is the will of the people in the singular to be determined by people in the plural? One is free when one rules oneself, but is one free when the people rules?

Clearly, these questions do not arise if all individuals are in some way identical, if the subjects who choose the order they are to obey are but copies of a species. 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." In Kant's view, guided by universal reason, each and all individuals will to live under the same laws, "For Reason itself wills this." And 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 as I command myself, I obey none 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. Finally, this decision evokes spontaneous compliance: If each individual lives under the laws of his or her choice, no one needs to be coerced to follow them.

Hence, the condition under which the people would be free in plural when they rule themselves, collectively autonomous, is that each and all want to live under the same laws. Representative government was born under an ideology that postulated a basic harmony of interests in society.

This is not to say that the founders of representative institutions were blind to conflicts, to the manifest fact that not everyone would agree to everything. Some social divisions were seen as inevitable. As Madison, educated in Hume, observed 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. Not even Sieyes 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" (quoted 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 or, in Rousseau's (1964 [1762]: 66) words, "some point in which all interests agree."

Yet even those who recognized the inevitability of social divisions saw parties or factions as spurious divisions of a naturally integral body, products of ambitions of politicians, rather than reflections of any prepolitical differences or conflicts.[2] 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 was widely utilized until recently. 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. Proponents of representative government thought that because the people were naturally 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." "The 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." His successor, John Adams, remarked, "There is nothing I dread so much as a division of the republic into two great parties, each arranged under its

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[2] Rosenblum (2008, Part I) distinguishes two traditions of antipartyism: holyism, which assumes a harmony of interests, and pluralist antipartyism, which recognizes divisions but sees them as nefarious. She provides extentive evidence of antipartisan views.

leader, and concerting measures in opposition to each other" (quoted in Dunn 2004: 39). Ironically, 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." However unity was to be attained, unity had to prevail.

Partisan divisions had to be moderated and mitigated by a proper design of representative institutions. "If separate interests 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." Among the virtues of the United States Constitution that Madison vaunted in the *Federalist #10*, "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; moreover, their most common and durable source is the "various and unequal distribution of property." Such differences, however, must not enter into the realm of politics. Nevertheless, the cost of prohibiting them would be the loss of liberty. Thus, Madison concluded that "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" of the time were exactly what we would understand today as "parties."[3] "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." Factions would be controlled, Madison asserts (still in *Federalist #10*), by discussion among representatives as well as by the fact that in sufficiently large districts each representative would respond to heterogeneous interests. Indeed, the role of the legislatures is to

to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well

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[3] "Faction," however, had a more clearly offensive connotation: as Bolingbroke would 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).

happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose.

The French were less concerned about liberty. The last decree of the French Constituent Assembly of 1791 stated that "No society, club, association of citizens can have, in any 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" (quoted in Rosanvallon 2004: 59). This principle seems to have traveled: the 1830 Constitution of Uruguay also made it illegal for citizens to organize into associations (López-Alves 2000: 55).

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. When Burke defended parties in 1770, he reverted to what everyone else considered 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).[4] Henry Peter, Lord Brougham (2002: 52), 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." "Party government" was a negative term, connoting conflicts motivated by personal ambitions of politicians, "obsession with winning power by winning elections,"[5] and the 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 1824 Brazilian Constitution or the President in the Weimar Constitution.[6] Yet, as Schmitt (1993) observes, even this solution was devoured by partisan

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

[5] This quote is from the German President Richard von Weizsäker, in Scarrow (2002: 1).

[6] The connection between the emergence of parties and the need for a moderating power was the theme of Henry Saint-John, Viscount Bolingbroke (2002: 29), in 1738: "To espouse no party but 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." Washington, in the Farewell Address, thought that parties have virtues under monarchy, where the king can arbitrate between them, but not under democracy.

politics; in the end, presidents were elected by parties. When this solution failed, constitutional review by independent courts emerged to constrain party government (Pasquino 1998: 153).

Although representative government meant that 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 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" (*Federalist #63*). 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 [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 "The conceptions of democracies that emerged from the tradition of the *Social Contract* do not necessarily treat the role of the minority as that of the opposition. Democracy conceived as identity of the rulers and the ruled does not leave room for recognizing the right of 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."[7]

2.3 SELF-GOVERNMENT IN THE PRESENCE OF HETEROGENEITY

2.3.1 Democracy as a Method of Processing Conflicts

Already J. S. Mill (1859) observed that all citizens cannot rule simultaneously. Following Kelsen (1988: 27), this observation became the point of

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[7] Sukarno, the first president of Indonesia, thought that parliamentary democracy was a Western import because it "incorporates the concept of an active opposition, and it is precisely the addition of this concept that has given rise to the difficulties we have experiences in the last eleven years" (cited in Goh Cheng Teik 1972: 231).

departure of democratic theory: "It 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, 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 formation of general will; they exist politically only through parties (Kelsen 1988: 29).

No other aspect of democratic theory experienced a turnabout as sharp as 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 with no purpose other than to create a party.[8] Although 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 Dunn 2004: 53). Soon he used a label, "Republican," to identify its programmatic orientation. 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).

The first partisan divisions emerged in England in 1679–80.[9] In Sweden, two parties were organized to function not only in the Estates but also between elections as of 1740 (Metcalf 1977). Polarization over the policy toward France led to the rise of parties in the United States in 1794, even if the Federalist Party dissipated after the defeat of 1800 and a two-party system crystallized only a quarter of a century later. In France parties became recognizable in 1828. In some Latin American countries,

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[8] This account is based on Dunn (2004: 47–61).

[9] Laslett (1988: 31) considers the 1681 "Instructions to the Knights of the Country – for their Conduct in Parliament," perhaps written by Locke, as the first party document in history.

notably Colombia and Uruguay, parties emerged from the wars of independence even before the formation of the state (López-Alves 2000).

By 1929 Kelsen (1988: 29) would observe that "Modern democracy rests entirely on political parties." Several post-1945 constitutions recognized parties as institutions essential to democracy (Lavaux 1998: 67–8).[10] Moreover, parties developed the capacity to discipline the behavior of their members in legislatures, so that individual representatives could no longer exercise their own reason. 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.

Parties, in turn, have followers and leaders, who become representatives through elections. Representatives will for the people. "Parliamentarism," says Kelsen (1988: 38), "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 the thought: "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." Although 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," in fact the democratic method is one in which the individuals who are to assemble to will for the people are selected through elections (1942: 250).

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, Schumpeter, Bobbio, Dahl, and Downs all agree that nobody and no body can represent the will of all the people. In sharp contradistinction to the classical view, these theorists maintain that political parties represent distinct interests. The theory of democracy based on the assumption of the common good is

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[10] 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.

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."

Kelsen (1988: 25–6) was perhaps the first to systematically challenge the theory of self-government based on the assumption of consensus: "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 dub "the classical conception" with an equal vigor: "Moreover, the ideal of a general interest superior to 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: 32–3).

Schumpeter (1942: 250 ff.) 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,[11] 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 could know the common good, there would still be controversies about how to implement it.

If no body, parliament or government, can represent all the people, is democracy just 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 asserts the positive answer. "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 [1929]: 60–3) – tried to solve the problem by various plans for proportional representation. He finds this

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

system unworkable, because "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."

Kelsen (1988: 34) did offer a solution: a compromise among parties. He argued 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." "The application of the majority principle," Kelsen (1988: 65) maintained, "contains quasi-natural limits. Majority and minority must understand each other if they are to agree." However, 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 – erroneously so in the light of recent research (Gandhi 2008) – that autocracies do not compromise.[12] The only reason Kelsen could adduce was 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.

Bobbio (1989: 116), attributing this view to Max Weber, observes that the normal procedure for making decisions under democracy is one in which collective decisions are the fruit of negotiation and agreements between groups that represent social forces (unions) and political forces (parties) rather than an assembly where majority voting operates. Furthermore, 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."

Compromise among party leaders, subject to periodic ratification by voters, is as much as Kelsen or Bobbio can salvage from the classical conception of self-government. Self-government now means the government of parties in the parliament. Parties do not pursue the common good but

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[12] The 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. Dictators, however, also combine repression with cooptation to maintain their rule (Gandhi and Przeworski 2006).

search for compromises among conflicting 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 from time to time these bargains must be approved by voters. Nonetheless, all voters can do is either approve the deals negotiated by party leaders or throw the rascals out – in the language of the recent Argentine outburst against the political class, "fuera todos!," everyone out. And then?

In what follows, I offer an alternative view. Even if at each time a government can represent only some people, it represents as many as possible. If majorities so wish, governments can change, so that most people are represented some of the time. Although the people does not govern itself, it can be governed by different others in turn.

2.3.2 Self-Government and Rotation in Office

To understand the modern conception of self-government, it is enlightening to take a detour to classical Greece. The following is based on Hansen (1991). For Artistotle, the mechanism connecting democracy and liberty was that everyone "would rule and be ruled in turn." Here is his crucial passage (quoted in Hansen 1991: 74):

A basic principle of the democratic constitution is liberty. That is commonly said, and those who say it imply that only in this constitution do men share in liberty; for that, they say, is what every democracy aims at. Now, one aspect of liberty is being ruled and ruling in turn. . . . Another element is to live as you like. . . . So this is the second defining principle of democracy, and from it has come the ideal of not being ruled, not by anybody if possible, or at least only in turn.

The difference between the Greek and the modern conceptions of self-government is striking. Commenting on a passage by Castoriadis – "I give here the term human being, anthropos, the sense . . . of a being that is autonomous. One can say as well, remembering Aristotle, a being capable of ruling and being ruled" – Descombes (2004: 327) observes, "It is remarkable that Castoriadis did not say, as would only naturally a partisan of autonomy in the modern sense, 'a being capable of ruling himself.' . . . The good citizen is someone who is as capable to command as to obey." In Manin's (1997: 28) rendering, "democratic freedom consisted not in obeying only oneself but in obeying today someone in whose place one would be tomorrow."

The institutional feature that implemented taking turns in Athens was rotation in office: a combination of selection by lot with short terms and restrictions on reeligibility. Thus 6,000 jurors were picked by lot at the beginning of each year and from those as many as needed were picked by lot on a given day. About 540 magistrates, who had to prepare decisions of the Council and implement them, were picked by lot for a year and could not hold the office more than once (or at most a few times). Members of the Council of 500 were chosen by lot for one year from among those who presented themselves and could hold the office at most twice in their life, but not in consecutive years.[13] Finally, the ceremonial office of the *epistates*, who held the seal of Athens and the keys of the treasuries and represented Athens in relation to other states, could be held for only one night and one day in one's life. Here is Hansen's (1991: 313) summary of these arrangements:

The rule that a man could be a councillor no more than twice in a lifetime means that every second citizen above thirty . . . served at least once as a member of the Council; and three quarters of all councillors in any one year had to serve for a night and a day as *epistates ton prytaneon* (and never again). Simple calculation leads to this astonishing result: every fourth adult male Athenian citizen could say. "I have been for twenty-four hours President of Athens" – but no Athenian citizen could ever boast having been so for more than twenty-four hours.

Rotation could not have become the institutional form of taking turns in modern democracies because of their large size. The 1776 Constitution of Pennsylvania, under which legislators, sheriffs, coroners, tax assessors, and justices of the peace were elected for one year and executive councillors for three, all with limitations on reeligibility, came closest to the ideal of rotation in the modern era. Nonetheless, even if we assume that no one ever served twice, at most one person in thirteen could serve ever.[14]

One can contrast Athenian and the modern democracy in several ways. The standard distinction is that Greek democracy was direct, whereas the modern one is representative. Manin (1997) highlights the method

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[13] According to Finley (1983: 74), in any decade between one fourth and one third of citizens over the age of thirty would have been Council members and fewer that 3 percent served a second term.

[14] I assume that 1,000 people were elected. The population of Pennsylvania was 434,373 in 1790 and I use 400,000 for 1776. I also assume that adult life lasted thirty years.

   In the United States, there were 511,039 popularly elected local officials in 1992 (www.census.gov), 7,382 state legislators, and 535 federal legislators, for a total of 518,956. If everyone served only one year and could not serve ever again, about one in seven citizens would ever rule and only during one year (if adult life lasts fifty years).

for selection to public offices: in Athens it was predominantly by lot, whereas elections characterize modern democracies. However, the power of lot stemmed not from "simple political equality" in the sense of Beitz (1989), an equal procedural chance, but from short terms in office and prohibitions of reeligibility, rotation. After all, we could use lot to choose even a hereditary monarch. The sharpest contrast, in my view, is that the Athenian democracy ensured that most citizens would rule and be ruled in turn, while nothing of the sort would enter the minds of modern democrats. Even short terms in office and restrictions on reelection, wherever they were introduced, were intended to prevent entrenchment by the incumbents, rather than to give everyone a chance to rule. For the Greeks – Rousseau (1964 [1762]) had it right – "democracy was a state in which there are more citizens who are magistrates than ordinary citizens who are not." Although Paine (1989: 170) described the American system of government as "representation ingrafted upon Democracy," the graft transformed the entire body. All the elaborate constructions about the common good, ideal preferences, and collective will mask the basic fact that nothing in the modern conception of democracy precludes the possibility that some people could rule always and others never.[15] George Washington could say, "I have been for eight years President of the United States" and almost no one else could say that they were president even for a day.

2.4 SECOND-BEST SELF-GOVERNMENT

The original conception of self-government was based on an assumption that rendered it incoherent and infeasible, namely that everyone has the same preference for the legal order under which all would want to live. The classical Greek conception did not assume homogeneity but it was implemented by a mechanism that is not feasible in large collectivities. To define the ideal of self-government in large societies with heterogeneous preferences, therefore, we need to find a second-best option, which is still a system of collective decision making that best reflects individual preferences and that makes as many of us as free as possible. It is a

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[15] Indeed, Sieyes justified representation by claiming that the people would want those who make laws to have specialized knowledge. Having observed that, in modern society, individuals must have specialized skills, he concluded that "The common interest, the improvement of the state of society itself cries out for us to make Government a special profession (cited after Manin 1997: 3; a more extensive discussion of Sieyes's view is in Pasquino 1998).

second best because it is constrained by the fact that, given heterogeneous preferences, some people must live at least some of the time under laws they do not like.

In turn, a system of collective decision making that best reflects individual preferences and makes as many of us as free as possible must satisfy four conditions: every participant must have equal influence over collective decisions (equality); every participant must have some effective influence over collective decisions (participation); collective decisions must be implemented by those selected to implement them (representation); and the legal order must enable secure cooperation without undue interference (liberty).

In analyzing these conditions we are aided by two theorems of social choice theory. May's (1952) theorem states that simple-majority rule is the only rule of collective decision making that satisfies four axioms: equality, neutrality, responsiveness, and decisiveness. Hence, if these axioms are desirable, so is this rule. Moreover, the normative importance of these axioms extends beyond simple-majority rule, because this rule implies in turn that as many people as possible live under a legal order they prefer (Kelsen 1929; Rae 1969). Hence, if these axioms are satisfied, collective decisions reflect individual preferences and as many people as possible live under laws they like. Social choice theory, however, is mute about the conditions for equality to be real and for participation to be effective, about the agency problems inherent in the fact that we are governed by others, and about the scope of issues that should be decided collectively.

2.4.1 Two Theorems

Consider first May's (1952) four axioms.

Equality–Anonymity. Equality means that *all* individuals have an equal weight in influencing the decision of the collectivity. Anonymity requires a collective decision to remain the same if *any* two individuals interchange their preferences. If anonymity is to apply to all possible pairs of individuals ("open domain"), then it can be satisfied only if everyone has an equal weight. Hence, equality and anonymity are equivalent over open domain.[16] Note, however, that equality must be effective, not only formal.

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[16] David Austen-Smith alerted me to the importance of the open domain assumption.

Neutrality. The essence of the neutrality condition is that no choice should be favored independently of individual preferences. This condition is often formulated as saying that decisions should not depend on the names attached to alternatives. If a majority prefers "S" to "A" and their labels are reversed, then as long as preferences remain the same "A" should prevail. This condition may seem innocuous but it is not, for its target is the status quo. Say the law authorizing the death penalty is the status quo, abolishing it is the alternative, and a majority prefers the death penalty. Now suppose that the labels are reversed. Neutrality requires that the death penalty should prevail whether or not it is the status quo. Note that it may well be that changing the status quo alters people's preferences, which seems to be the case with regard to the death penalty. If collective decisions change when preferences change, then neutrality is not violated. It is violated only if decisions change as a consequence of relabelling when preferences remain the same.

Decisiveness. A collective decision rule is decisive if, having applied it, the community knows what to do. Somewhat more carefully, it is decisive if it picks one among all the feasible choices for each combination of individual preferences. This axiom is a can of worms and it is discussed at greater length below.

Responsiveness. Technically, this is the most complicated condition, and it comes in variants (see McGann 2006: 18). To keep things simple, think that a change of (at least) one individual preference either maintains the same collective preference or it breaks the tie in the direction preferred by the pivotal voter ("positive responsiveness," according to Austen-Smith and Banks 2000: 87). This condition, however, applies to committees, so agency problems have to be considered if it is to be applied in a representative framework.

These axioms imply two theorems.

Majority Rule. May's theorem is fairly obvious and well known, so it does not need to be restated. Just note that this theorem applies when there are only two choices and voters either prefer one of them or are indifferent between them. Because a tie is theoretically possible, some kind of a tie-breaking procedure is required, but this point is trivial when the number of decision makers is large.

May's is not the only justification of simple-majority rule. A brief historical excursion elucidates what is entailed.[17]

According to the classical conception, the role of representatives was to find the true common interest of all. 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." 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?

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."[18] 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." Because 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. As recently as in 1962, Buchanan and Tullock assumed that deliberation would lead to unanimity if not for the pressure of time. 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 because 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."

Yet "consensus" is not the same as unanimity (Urfalino 2007). As a signal that a decision has been reached, consensus occurs when no one objects against the presumptive decision – but silence need not indicate agreement, only recognition that further opposition would be futile. If unanimity cannot be reached, however, truth is in doubt. As Simmel

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[17] Konopczyński (1918), in his classical treatise on the origins of majority rule, emphasizes that this rule was nowhere decreed, it did not result from imitation, and it was not subject to sustained arguments. It seems to have emerged spontaneously, independently in different countries.

[18] This and the subsequent quotes are from Holmes (1995: 169–70).

(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 truth is not manifest, that any decision may be erroneous. Hence, Condorcet (1986) required unanimity in situations when ascertaining the truth was a matter of life and death, although he was willing to accept less consensus in other situations. A hung jury, that is, a body that cannot reach unanimity even after all possible 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 antisocial interests. How can one tell whether it is not reached because the truth is not manifest or because of these illegitimate reasons? One solution is to distinguish persons and their reasons. Both the early German legal theories and the canon law held that in addition to numbers (*numerus*), we can distinguish authority (*auctorita*), merit (*meritus*), and intensity (*zelum*). In the early medieval English theory, these would become rank, repute, and judgment. Decisions should be based on opinions 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 the thirteenth-century Italian communes: While Genoa typically demanded unanimity, Brescia, Ivrea, and Bologna required two-thirds, and several other cities four-sevenths. In turn, although 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.

All these accounts assume that the rule sought was one that would make decisions persuasive to reason, that would establish their epistemic validity as the reading of the common interest of a collectivity. Nevertheless, rules for collective decision making must also be operative in situations in which there is no interest in common, when interests only divide.[19] Unanimous decisions not only indicate that the truth is established; they are also self-implementing. If everyone agrees what is best for

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[19] A fascinating example is offered by the use of majority voting during the sixteenth century to decide whether a community should remain Catholic or become Protestant. See Christin (1997).

each and all of us, each and all of us will follow the course of action that has been decided. Short of unanimity, though, compliance becomes problematic. Thus, the early German tribes did not feel obligated to follow decisions for which they did not vote. Sixteenth-century English nobles did not consider that they should pay taxes either when they voted against raising them or when they were absent when the decision was made. However, when collective bodies make decisions, they do not make them only for those who agree. As Simmel (1950 [1908]: 240) observed, "The significance, therefore, of voting, of voting to the result of which the minority, too, agrees to yield – is the idea that the unity of the whole must, under all circumstances, remain master over the antagonism of conviction and interest." Why would a minority comply with decisions of a majority?

Thus another line of historical research interprets the majority rule as a device for avoiding violent conflict by taking a reading of the physical strength. According to Bryce (1921: 25–6; italics added), Herodotus used the concept of democracy "in its old and strict sense, as denoting a government in which the will of the majority of qualified citizens rules, . . . *so that physical force of the citizens coincides (broadly speaking) with their voting power*." According to von Gierke, German tribes used this rule but with no implication that the decision of the numerical majority would legally or morally bind the numerical minority. Only if the numerical majority could physically enforce its will did it prevail. Condorcet (1986: 11) as well, while interpreting voting in modern times as a reading of reason, observed that in the ancient, brutal times, "for the good of peace and general utility, it was necessary to place authority where the force was." This was also the view of Simmel (1950: 241–2), who reasoned that "because the voting individuals are considered to be equals, the majority has the physical power to coerce the minority. . . . The voting serves the purpose of avoiding the immediate contest of forces and finding out its potential result by counting votes, so that the minority can convince itself that its actual resistance would be of no avail."

Whether majorities indicated the true common interest or because disobeying would be futile, majority rule was thought to be at best an expedient substitute for consensus. Divisions were a sign of a malady, either incomplete knowledge or particularistic interests. The contribution of May's theorem was to justify simple-majority rule in terms of properties that we may find normatively attractive independently of the consequences of applying the rule, whether for truth or for civil peace. Simple-majority rule is not the only collective decision-making rule that

makes collective decisions reflect individual preferences. If, however, self-government means that all should have the same influence over these decisions and if no alternative should be favored independently of individual preferences, then this is the rule that implements self-government.

Autonomy. Rae's (1969) theorem, in turn, asserts that simple-majority rule maximizes the number of people who live under the laws they like. It is noteworthy that the idea was presaged already in Kelsen's 1929 essay. In his words (1988: 19), "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." Indeed, in another passage, Kelsen (1988: 58) formulated the relation between simple-majority rule and autonomy almost as a theorem:

When the number of individual wills with which the societal will is in agreement is larger than the number of those with which it is in contradiction – and this is the case, we have seen, when the majoritarian principle is applied – the maximum of liberty – understood as autonomy – possible is reached.

Kelsen's reasoning goes as follows. Suppose that there is a status quo social order, as there always is. There are n people. Now, if the rule for changing the status quo is unanimity, $n - 1$ may want to alter it and cannot. Hence, $n - 1$ will live under an order not to their liking. Assume now the rule is that the status quo is altered if at least $n/2 + 2$ people support a change. Then $n/2 + 1$ still suffer under a status quo they do not like. In turn, assume that the qualifying number is $n/2 - 1$. Then the status quo can be altered, leaving $n - (n/2 - 1) = n/2 + 1$ people unhappy. However, under simple-majority rule the decisive number is $n/2 + 1$, which leaves at most $n - (n/2 + 1) = n/2 - 1$ dissatisfied. Hence, majority rule minimizes the proportion of people who are unhappy about the laws under which they live.

Rae conceptualized the problem from the point of view of an individual who wants to select a collective decision-making rule that would maximize the probability that she or he would be on the winning side as often as possible given uncertainty about the preferences of everyone else. Because simple-majority rule "is the one decision-rule that precludes the possibility that more people would be outvoted by less people," it constitutes the solution to the original problem (1969: 52). Rae seemed to have been unaware of Kelsen's argument and used a different language.

What for Kelsen was "autonomy," for Rae is "political individualism." The intuition, though, is the same: The virtue Rae (1969: 42) claims for simple-majority rule is that it "will optimize the correspondence between individual values and collective policies."[20]

Simple-majority rule maximizes autonomy because it is responsive to the contingency that individuals change preferences: The incumbent party can be dethroned and the status quo can be altered if enough individuals change their preferences. Self-government must allow partisan alternation in office. To make this, perhaps redundantly, clear, consider the role of alternation in maximizing autonomy. Suppose that the society faces two alternative legal orders, A and B, advocated respectively by parties A and B. Let $v(t)$ be the proportion of citizens who support A at time t, and suppose that $v(t) = 1/2 + \varepsilon(t)$ while $v(t + 1) = 1/2 - \varepsilon(t + 1)$, where $\varepsilon(t), \varepsilon(t + 1) > 0$. If there were no alternation at $t + 1$, the extent of autonomy over two electoral periods would have been $[1/2 + \varepsilon(t)] + [1/2 - \varepsilon(t + 1)] = 1 + \varepsilon(t) - \varepsilon(t + 1)$, while with alternation it would have been $[1/2 + \varepsilon(t)] + [1/2 + \varepsilon(t + 1)] = 1 + \varepsilon(t) + \varepsilon(t + 1)$. Conversely, suppose that alternation occurs even if $v(t) = v(t + 1) = 1/2 + \varepsilon > 1/2$. Then the extent of autonomy would have been $(1/2 + \varepsilon) + (1/2 - \varepsilon) = 1 < 1 + 2\varepsilon$, which would have been the case without alternation. All this much is obvious but important, because it shows that autonomy is maximized if partisan control alternates according to current majorities.

In contrast to rotation, however, the mere possibility of alternation does not guarantee that different people would rule in turn. The Greeks ensured that everyone would have an equal chance to rule by using lot and arranged that the chance would materialize by keeping the terms in office short. Representative government offers no such assurances. Some people may have to wait indefinitely. Indeed, in an electorate in which grandchildren inherit the preferences of their forefathers, a perfectly representative party would remain in office for ever. This possibility haunts democracy in ethnically divided societies. 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

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[20] Note that Kelsen uses the language of "social order" or "societal will," while Rae speaks of "collective policies." It is not clear whether these terms are intended to cover only the laws a collectivity adopts or also other aspects of political decisions, including the composition of the government.

incumbents must err in representing them.[21] Even then, people who are unlucky enough to have unpopular preferences will never see them implemented. Simple-majority rule nevertheless maximizes the probability of partisan alternation in office. The winner can say to the loser, "Change the mind of the smallest possible number of people, and you will prevail."

2.4.2 A Caveat

The most banal definition of democracy is one according to which decisions implemented by governments reflect, correspond to, respond, or bear some other relation of proximity to preferences of citizens. The metric of proximity also underlies the conception of self-government proposed here. However, any conception of this kind, considered "populist" by Riker (1972), hurls itself against the theorem of Arrow (1951), which in our context implies that the very language of proximity between individual preferences and collective decisions is meaningless.

As has been observed innumerable times, Arrow's theorem has radical implications for our understanding of democracy. Suppose we were to abandon the language of proximity. How could we distinguish democracy from other political arrangements? If we identify it solely by the institutional procedures – competitive elections – how are we to evaluate it? Freedom still remains as a potential criterion, but no longer freedom understood as autonomy, or living under laws of one's choosing. The metric of autonomy goes together with the metric of proximity. Pareto efficiency is too weak to serve as a criterion: A dictator would be worse off if he were to live under democracy, while other people may be better off, so that these two regimes cannot be compared by this criterion. Civil peace might be another candidate but, without freedom, peace can be maintained by the threat of force, and many dictatorships are peaceful. In the end, all we could use as criteria are some indices of material welfare: economic growth, income inequality, infant mortality, and the like. Our normative apparatus would be greatly impoverished.

The implications of Arrow's theorem are so unpalatable that there have been numerous attempts to get around it (a representative one is

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[21] Following Miller (1983), there is now a line of argument that claims that policies change as a virtuous consequence of cycling. This seems to me to be a misinterpretation of Arrow's theorem. This theorem asserts nothing about the occurrence of cycling; it says only that collective decisions are indeterminate (Austen-Smith and Banks 2000: 184). Cycling may or may not occur and I am not persuaded by McGann (2006) that it often does.

by Mackie 2004). Arrow's theorem is based on assumptions, axioms, and these axioms can be questioned. The axiom of unrestricted domain – people can hold any kind of (transitive) preference – is vulnerable to the observation that societies structure individual preferences and thus restrict their variety. When the domain of preferences is restricted in some particular ways, decisiveness is restored and with it the metric of proximity. For example, if we confront only two choices, majority rule is decisive and the proximity metric is valid: The choice supported by the majority is closer than the one supported by a minority. The same is true if all the choices can be arranged along one dimension (more or less of something) and preferences are single peaked (Black 1958; Downs 1957). There are also good arguments for abandoning Arrow's axiom of the independence of irrelevant alternatives. Finally, one can attack the theorem by pointing out that individuals confront the same difficulty as collectivities yet, in the end, individuals order their preferences, which is Arrow's point of departure. For example, Bird (2000) argues that deciding what one wants to do is not any less problematic at the individual level, yet we assume that individuals know what they want.

The alternative I pursue is to relax and reinterpret the axiom of decisiveness. Since social choice theory is highly technical – and I am not an expert – we are on slippery ground. But here is the argument, couched in intuitive terms.

There are three voters who decide on one among five choices. Three girls are given money by their parents to buy one flavor of ice cream. The girls are $\{i, j, k\}$ and the flavors $\{D, C, S, T, V\}$, for dulce de leche, chocolate, strawberry, tea, and vanilla. Suppose first that they all like chocolate above anything else. Then any procedure and any rule will generate the same decision, which will be chocolate. Indeed, if any one of them takes command and orders what they should buy, no one will object. Even dictatorship picks up the most preferred choice when preferences are identical. Now assume, though, that the preferences are as follows ($\succ$ stands for "strictly prefers"):

Decider	Prefers
i	$C \succ S \succ D \succ T \succ V$
j	$D \succ T \succ S \succ V \succ C$
k	$C \succ D \succ V \succ S \succ M$

They decide by voting on two flavors at a time and using a simple-majority rule (Condorcet tournament). One can easily see that chocolate still beats all the other choices by a vote of 2:1 and that it cannot be beaten

by any other choice by a majority rule. Chocolate is thus the Condorcet winner.

Note that the decision will be different if we use a different procedure. Suppose each decider gives 5 points to her first choice, 4 to the second, and so on, and that the collective decision is the choice that obtains the most points (Borda count). It turns out that dulce de leche gets 12 points, while Chocolate only 11.

Which of these procedures is better has been the subject of polemics that originated in the second half of the eighteenth century, and these are not the only ways to reveal ordinal preferences. Nonetheless, we have enough of an apparatus to enter into our problem. Suppose that the preference profiles are as follows:

Decider	Prefers
i	$C \succ S \succ V \succ T \succ D$
j	$S \succ V \succ C \succ D \succ T$
k	$V \succ C \succ S \succ D \succ T$

These preferences illustrate the Condorcet paradox, of which Arrow's theorem is a generalization. As one can see, now chocolate defeats strawberry, strawberry defeats vanilla, and vanilla defeats chocolate by pairwise majority vote. Hence, this procedure is not decisive. Moreover, the first three choice are equally close to individual preferences, so the proximity metric does not work. The Borda count does not do better: Chocolate, strawberry, and vanilla all get 12 points. We still do not know what the collectivity would decide. Arrow's theorem says that this situation is possible under all nondictatorial decision rules of collective decision making.

Let us therefore relax the decisiveness criterion. Note that although neither procedure uniquely identifies the collective decision, both at least lead to the conclusion that this collectivity prefers any element in $\{C, S, V\}$ to any element in $\{T, D\}$. Democracy now looks better than dictatorship by the proximity metric: It ensures that the collective choice will an element in the first set, while dictators may have a proclivity for dulce de leche or tea. Now, with at least as many decision makers as choices, there is some probability, increasing in both numbers (Ordeshook 1986), that any nondictatorial collective decision-making rule will be indecisive. But this means that there is also some probability that it is at least weakly decisive, in the sense illustrated by the example. In the language of proximity, any collective decision in the "top cycle" $\{C, S, V\}$ is closer to individual preferences than would be any other choice, so that any decision-making

rule that is sure to pick an element of the top cycle is superior to any that may fail to do so.

One can go further. Think now that the procedure of decision making is sequential and that it uses a so-called closed rule, meaning that a choice that was once proposed and defeated cannot be proposed again. Decisions are still made by simple-majority rule. Then the outcome in $\{C, S, V\}$ will be uniquely determined by the sequence of proposals. If V is first paired with S and then S with C, then the winner will be C; if S is first paired with C and then C with V, then it will be V, and so on. In this way, whoever sets the agenda can orchestrate the pairings in such a way as to get her or his first choice as the choice of the collectivity (McKelvey 1976). Now we have a unique decision. This decision may seem arbitrary, accidental. But it is not accidental who gets to set the agendas in democracies: We elect presidents, prime ministers, chairs of parliamentary committees, or floor leaders. Moreover, if we do not like the outcomes they orchestrate, we can elect someone else.

This argument can be and has been contested by arguments that it constitutes *regressus ad infinitum*. After all, the same intransitivities can arise when we choose procedures by which decisions are made and, if they are just holders of particular preference profiles, presidents or prime ministers. Nevertheless, these choices may still be weakly decisive, so the same counterargument applies. Moreover, they are more likely to be dichotomous, and then simple-majority rule is decisive.

The fact is that voters vote and elect, and that legislatures adopt laws. These laws constitute collective decisions. The decisions may have been different, but they are what they are. Ordinary citizens do not say "Oh! But given the preferences of the individuals the decision may have been different." It takes a Riker (1972) to claim that this fact undermines the validity or the legitimacy of the results generated by the democratic process. The issue is only whether we can tell that one decision is closer to individual preferences than would have been another. The answer is that we do know that no other decision would have been closer, and that some, in the extreme all, other decisions may have been farther. Hence, the proximity metric does weakly order all the collective decisions.

2.4.3 Beyond Social Choice Theory

May's axioms are satisfied when everyone has equal influence over collective decisions, no choice is favored ex ante, and the collective decision is responsive to individual preferences. Moreover, when this is true,

the resulting decision maximizes the number of people who are free in the sense of living under laws they prefer. Unfortunately, neither these axioms, nor social choice theory in general, provide sufficient conditions for second-best self-government as defined above. Social choice theory has nothing to say about the conditions under which effective equality of influence over collective decisions obtains or about the conditions under which individual participation in the process of deciding is causally effective. Moreover, the axioms of social choice concern decision making by committees, while self-government must be analyzed within a context of institutions that are representative, in which the implementation of collective decisions is a prerogative of specialized agents, the government. Finally, the axiom of decisiveness says nothing about the scope of collective decision making, about the extent to which private lives need to be regulated by laws at all. Hence, to understand self-government and its limits, we must venture beyond social choice theory. We do this best by considering the four conditions of second-best self-government – again, equality, participation, representation, and liberty – one at a time. Because these conditions are complex, each is the subject of a separate chapter.