



Part 1 of 2

MAJORITY RULE AND MISRULE

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I. INTRODUCTION

The principle of majority rule is operative in any form of government in which suffrage is held and exercised by a number of men, whether they are few in number, many, or all.

It is operative in a republic the constitution of which is oligarchical, in which citizenship with suffrage is restricted to the few—a minority of the population. That minority rules the disfranchised population as despotically as an absolute monarch rules his subjects. But within that restricted ruling class, decisions are

reached and policies adopted through the operation of majority rule.

Since our interest in the problem of majority misrule arises from our interest in seeing that justice is done and injustices rectified, and since the establishment of democracy by the extension of the franchise corrects the injustice of oligarchy, we shall concentrate on the problem of majority rule and misrule in constitutional democracies. As they exist today, such governments are representative in character, not direct democracies.

Misrule by a majority is no different from any other form of misrule—misrule by an aristocratic or oligarchical minority, or misrule by a despot or absolute monarch.

The essence of misrule lies in the fact that those who exercise the power of ruling use it to serve their own interests and in doing so encroach upon the interests of others.

The classical definition of the injustice of the tyrant is that he rules for his own good and not for the good of the ruled: not for the common good of all. A ruling minority elite can misrule in exactly the same way—for their own good, not for the common good of all.

This is no less true of a ruling majority than it is of a ruling minority. Wherever you have a ruling majority, you can have an adversely affected—and unjustly treated—minority, or minorities. This was recognized with the advent or emergence of democracies in the 19th century—first by Tocqueville, then, by Mill, both of whom used the phrase “the tyranny of the majority” to signify measures adopted by the majority which the minority thought encroached upon their rights. In all three cases, misrule by a single despot, misrule by a privileged minority (in an aristocracy or oligarchy), and misrule by a popular majority (in a democracy), the injustice that is done is essentially the same: a violation of human rights. I would expect disagreement on this point only from those who commit the Jacobin error of thinking that the voice of the people is the voice of God.

At the time that that slogan was broadcast as a revolutionary rallying cry, “the people” were a rebelling, oppressed majority, struggling for their rights against king and aristocracy. The phrase clearly did not mean *all* the people—all in *unanimous accord*. It referred to the lower classes who were rebelling against the ruling despot and the nobles surrounding the throne: hence a majority against a minority. Even if we grant that, in many important respects, the rebelling masses in the French Revolution had justice on their side, it does not follow that what the people—the majority—want is always right.

To see this, we need only change the picture by substituting a ruling, privileged majority for a rebelling subjugated majority.

That is precisely the change which has been brought about by the establishment of democracy and the welfare state. With that change, we cannot avoid asking whether majority rule tends to favor the interests of the majority and to run roughshod over the rights of adversely affected minorities. In that case the voice of the people (i.e., the ruling majority) is hardly the voice of God.

I have so far been proceeding on the assumption that in our contemporary constitutional democracies, such as England and the United States, majority rule is in fact operative. To this it may be objected, as it has been by critics of our established institutions, that majority rule is only an appearance, not the reality. In reality, even though universal suffrage is operative, the government is in fact controlled by a privileged minority—a concealed oligarchy of wealthy elite. If that is the case, as it very well may be, then we are confronted with a different problem—the problem of how to make what is only nominally majority rule into an effective reality. Only after we have succeeded in doing that, are we obliged to face the problem of majority misrule.

Such devices as initiative and referendum may be the constitutional measures needed to give political power to the majority of the citizens. Other measures may be needed to safeguard that power from encroachments upon it by the undue influence of corporate or individual wealth.

However, for the purpose of our discussion, I am going to ask you to assume with me that democracy can be made to work as it was intended to—namely, with effective political power in the hands of the majority of the citizens, and with that power neither impeded nor frustrated by overwhelming power in the hands of the few, whoever they may be. It is on this assumption that I would like to consider the problem of majority rule and misrule. I would like to lay the ground for what I have to say on the subject by a number of preliminary observations and clarifications,

II. PRELIMINARY OBSERVATIONS AND CLARIFICATIONS

I proposed at the outset that we should consider the problem of majority rule and misrule in constitutional democracies as they exist today—in the form of representative not direct democracies.

I hope we can agree that constitutional government in any of its forms—oligarchical or democratic—is superior in justice because the ruled are not subjects but citizens with suffrage and with the political liberty that results from their having a voice in their own government.

If we agree about that, I hope we can also agree that, since the right to political liberty and self-government is a human or natural right, it is a right that belongs to all men equally (i. e., all human beings, male and female). Hence, among constitutional governments, those with democratic constitutions, admitting all to citizenship with suffrage, are superior in justice to those with oligarchical constitutions that restrict suffrage to considerably less than all.

From this it follows that majority rule, i.e., rule by a majority of the citizens in a constitutional democracy, is preferable to any alternative, even if we cannot find effective safeguards against misrule by the majority.

It is certainly preferable, in terms of justice, to any form of absolute or non-constitutional government—rule by a single despot or by a powerful elite.

It is, for the same reason, preferable to rule by a privileged minority in constitutional oligarchies in which citizenship is restricted by criteria of wealth, birth, race, or sex.

I have not mentioned what I regard as a utopian rather than a practicable alternative—rule by a philosopher king, or by a wise, virtuous, and benevolent despot. Even if this alternative were not utopian, I would still think that majority rule in a constitutional democracy is preferable, on the ground that a benevolent despot relegates the ruled to the status of children being well taken care of, but not treated as adults with a right to exercise a voice in their own affairs.

Just as majority rule in a constitutional democracy is better than any practicable alternative, so also, I think, majority misrule is better than any other kind of misrule—misrule by a privileged minority in a constitutional oligarchy, or misrule by an absolute monarch or a despotic elite.

In every other case of misrule in which injustice is done, the misrule results in an oppressed majority—a majority suffering grievous injustices, the violation of their human rights.

It is only in the case of majority misrule that the result is an oppressed minority, or oppressed minorities, rather than an unjustly treated majority.

Consequently, under majority misrule, the number of individuals who are impeded in their pursuit of happiness or deprived of the conditions requisite for a good life is much smaller than under any other type of misrule; and the number who are facilitated in their pursuit of happiness and who are provided with the conditions for leading decent human lives is much larger.

It seems to me that this change—this shift from an oppressed majority to a privileged majority, and from a privileged minority to an oppressed minority—is probably the single greatest

advance in the last hundred years, and may prove to be one of the great divides in human history.

(Digression: Professor Barrington Moore of Harvard, in a recent book, *Reflections on the Causes of Human Misery and Upon Certain Proposals to Eliminate Them*, regards this revolutionary change as most dramatically exemplified in the constitutional reforms, as well as the changes in economic and social arrangements, which occurred in Great Britain between 1832 and 1932).

I have referred to a privileged minority and a privileged majority; and I have also spoken of oppressed or unjustly treated majorities and minorities. It is necessary to clarify the notion of privilege in its relation to the notion of rights.

In a constitutional democracy, two things can be said about the majority: first, that they enjoy the rights to which they are humanly entitled, and to that extent they are justly treated; second, that they may have certain goods in excess of their human rights, and to that extent, they are privileged. In a constitutional oligarchy, it is the minority of which these two things can be said.

The injustice done the majority In a constitutional oligarchy has two causes, not one: it results in part from the fact that the majority is deprived of rights enjoyed by the minority, to which they are equally entitled; but it also results from the privileges possessed by the minority, which they regard as rights and which they seek to safeguard as if they were rights. It is precisely this which leads the minority to oppose changes which would give the majority the human rights to which they are entitled. Doing that would, in the minority's view, encroach upon their privileges or seriously attenuate them.

What has just been said about a constitutional oligarchy can be said without alteration of a constitutional democracy.

Here the majority not only enjoys the rights to which all men are humanly entitled, but they also have certain privileges in excess of those rights—privileges to which they have become accustomed and which they regard as rights.

It is their possession of these privileges in addition to their genuine rights which tends to make the majority resistant to reforms that would rectify the injustice done to the minority. Granting the minority the rights to which they are entitled would cut into the majority's privileges, or so they seem to think.

With this understanding of the causes of majority misrule, let us now ask ourselves three questions.

First, can the problem of majority misrule in a constitutional democracy be solved in principle, even if it cannot be solved in fact? Is majority misrule inseparable, in the very nature of the case,

from majority rule? Or is it possible to have majority rule without also having an adversely affected or unjustly treated minority?

Second, if the problem can be solved in principle (i.e., if there is no necessary connection between majority rule and majority misrule), what obstacles must be overcome or what changes must take place in order to solve the problem in fact, in actual practice, as well as in principle?

If the actual solution of the problem is not immediately forthcoming, what, if anything, can be done about majority misrule in the interim?

I am going to try to answer these three questions, though—let me say at once—I do not think I will be able to answer all of them satisfactorily. If an adequate or complete solution of the problem calls for a satisfactory answer to all three questions, then I am not sure that the problem is completely solvable.

In attempting to answer the three questions I have posed for myself, I will proceed in the following order.

First, I propose to review early attempts to solve the problem in principle, all of which I regard as misguided—for reasons that I hope to make clear.

Second, I will attempt to state the conditions which the minority can, in principle at least, be safeguarded against majority misrule without abolishing majority rule.

Third, I will then try to examine the changes that should take place in order to make the foregoing solution of the problem actually operative.

Since those changes either may not take place in the immediate future or, even if they do occur, may not overcome all the obstacles which stand in the way of a complete solution of the problem, I will conclude by asking what can be done in the interim by or for oppressed minorities under majority misrule.

III. EARLY ATTEMPTS TO SOLVE THE PROBLEM BY CONSTITUTIONAL OR LEGAL MEASURES

There are a number of points to be noted about all these early attempts, beginning with the proposals of James Madison, in his essay on factions in Federalist Paper #10 (1787-1789), and running through the 19th century with the proposals of John C. Calhoun in his *Disquisition on Constitutional Government*, in 1831, and John Stuart Mill's proposals in his essay on *Representative Government* in 1863.

During this period, both in England and in the United States, a constitutional oligarchy was in the saddle and was unseated only by a long series of reforms which gradually put constitutional democracy in its place.

Of the three authors whom I am now about to consider—Madison, Calhoun, and Mill—only Mill was, both in mind and heart, a democrat, dedicated to the proposition that the ideal polity is representative government with universal suffrage, without any restriction based on race, sex, color, creed, or property. Yet even Mill, as we shall see, was reluctant to accept majority rule, under conditions of universal suffrage, without some attempt to put a bridle on it.

In each of the political documents mentioned, the overriding concern is the protection of the privileged class or classes in society—the relatively few who are the propertied, the well-born, the educated—against the misuse of political power in the hands of the many who are the working classes, the common herd, the uneducated, and so on.

All three writers are motivated by the fear expressed by Colonel Ireton, Cromwell's son-in-law, when in his debate with the Levelers a century earlier, he predicted that extension of the suffrage to the unpropertied masses would inevitably lead to radical changes in the distribution of wealth, in the rights enjoyed by the owners of property, and in the privileges they possessed which they regarded as legally established rights.

Stated in terms that they themselves did not use, the problem these writers faced was how to protect the privileges enjoyed by the few (mainly economic and social, though also in part political) in a society in which the many were to be given some voice in public affairs.

Since the many is the majority, the problem thus became for these writers of the problem of the tyranny of the majority—misrule by the majority that takes the form of encroaching upon the privileges of the few, which the few regard as theirs by legitimate right,

Now let us briefly examine the constitutional measures proposed by Madison, Calhoun, and Mill to overcome or prevent the tyranny of the majority; and let us note, in each case, the result they hoped to achieve.

Madison

The problem of factions viewed mainly in terms of the rich and the poor, the propertied and unpropertied, the few and the many.

Madison's position involved two main points:

No way of eliminating factions from society: class conflicts

Only remedy, then, is to overcome their consequences, and mitigate their effects.

Madison's solution: a system of representative government, as contrasted with direct democracy, in which the voice of the representatives might not be the voice of the popular majority.

Madison's dislike of direct democracy: no way to prevent a popular majority from prevailing.

Madison's conception of a republic, as contrasted with direct democracy: the power of the upper house, the role of the electoral college, the indirect election of senators, the selection of representatives from the more educated (and wealthier) class in the population, etc.

Perfectly clear that what Madison sought was the nullification of majority rule.

Calhoun

The principle of the concurrent majority, which gave a veto power to a dissenting minority—a power which Calhoun called the power of interposition or nullification.

Clearly, Calhoun's aim, like Madison's, was to undercut or contravene simple majority rule.

J. S. Mill

For our present purpose, I am going to pass over Mill's argument for proportional representation as a means of giving power to minorities, and concentrate on his proposal of plural voting.

This scheme would give one vote to the recently enfranchised members of the working class, and two or more votes, in ascending order, to members of the upper classes ("upper" is my term, not Mill's) based on degrees of education, intelligence, political competence and experience, etc.

Now, either the plural votes assigned to the upper classes would predominate over the single votes of the much more numerous working class, or they would not.

If they did not, the numerical majority would prevail, and there would be no safeguard against misrule by that unintelligent, uneducated numerical majority.

On the other hand, if plural votes gave the desired predominance to the numerical minority, Mill's proposal, if put into practise, would effectively nullify majority rule.

What is to be learned from the consideration of these three classic attempts to set up legal or constitutional safeguards against majority misrule, or the tyranny of the majority?

The first lesson to be learned, I submit, is the following. When the minority is deemed to have certain rights, which are in

fact privileges not rights and which it does not wish to share with the majority, it is impossible to safeguard those minority privileges against majority encroachments upon them without at the same time curtailing or abolishing majority rule.

We must then ask about the opposite case—the case in which the majority has, in addition to its legitimate rights, privileges which it regards as if they were legitimate rights and which it does not wish to share with the minority.

In this case, is it possible to safeguard the rights of the minority—rights to which they are legally entitled, but which they do not yet enjoy—without at the same time curtailing or abolishing majority rule?

Were the answer to this question negative, we would be compelled to adopt the conclusion that there can be no legal or constitutional safeguards against majority misrule which do not, in effect, abolish or nullify majority rule.

It is certainly the case that there cannot be legal or constitutional safeguards against the tyranny of a despot or of an absolute monarch, because at the first introduction of such measures, he would cease to be a despot or absolute ruler.

However, to reach the same conclusion about the tyranny of the majority in a constitutional democracy is to forget the fundamental difference between constitutional and despotic government, between limited and absolute government.

It is the essential genius of constitutional government as we understand it in the modern world that it provides us, in principle at least, with a solution of the problem of majority misrule.

I turn now to a brief statement of that solution.



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