
Review

Counting the many: The origins and limits of supermajority rule

Melissa Schwartzberg

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Supermajority rule occupies the indeterminate region between unanimity rule and majority rule. The supermajority winner requires the votes of not quite all, but more than half-plus-one of the electorate. Melissa Schwartzberg's *Counting the Many – The Origins and Limits of Supermajority Rule* provides both a history of the use of supermajority rule, and an analysis of the rule from a normative perspective. While the history of the use of supermajority rule is fascinating in its own right, it also has relevance for the normative analysis of supermajority rule. Supermajority rule was not, as often assumed, historically used as a remedy for the deficiencies of simple majority rule but rather for the deficiencies of unanimity rule. As such, supermajority rule is an unlikely candidate to solve the problems with majority rule we face today.

The book consists of two parts. The first part outlines the history of the use of supermajority rule as an alternative to unanimity rule. Before any vote aggregation procedure can get off the ground, there needs to be an acknowledgement that at least some individuals have votes worth counting. Acclamation (shouting and hand-waving), rather than voting, was the default decision procedure in ancient Homeric assemblies. With acclamation, it is impossible to weigh the judgements of individuals since it is impossible to separate the voice of an individual from the roar of the crowd. A counted vote has its origins in the epistemically elite councils of archaic Greece. Membership of such elite councils presupposes that such individuals have judgements worth considering in isolation. Acclamation has an advantage in that it seems as if the group speaks with one voice. But once votes are counted, this illusion of consensus disappears.

Supermajority rule has its origins in Papal elections, the Italian City-Republics, and in the criminal proceeding and legislative assemblies of eighteenth-century France. Unanimity and consensus would be especially valuable for matters such as the election of the Pope. However, in practice consensus was difficult to achieve, and

so supermajority rule fills the role of a second-best decision procedure. Supermajority rule, like unanimity rule, ensures some degree of concord. Supermajority rule, unlike unanimity rule, can prevent morally or epistemically fallible cardinals from disrupting the consensus, and reduces the incentive for the majority to attempt to coerce the dissenters into line.

Once we move from unanimity rule to supermajority rule, we also need to defend supermajority rule from a move all the way to majority rule. For Rousseau, supermajority rule introduces some institutional stability, which is valuable not for its own sake, but allows for the exercise of sovereignty. For Condorcet, supermajority rule might be justified for preserving fundamental liberties, for biasing against outcomes believed to be unjust. The most obvious example is requiring more than a simple majority for criminal convictions.

The second part of the book challenges the claim that supermajority rule is a solution to the problems of majority rule. Schwartzberg identifies three such problems: institutional instability, a lack of incentives to generate consensus and a lack of protections afforded to vulnerable minorities. But supermajority rule is not sufficient for dealing with these problems. It is impossible to ensure that supermajority rule protects only those institutions worth protecting. For example, supermajority rule generates a bias towards the *status quo*, and as such provides greater weight to the judgements of previous generations; we require further argument as to why the judgements of previous generations should be privileged over our own. Supermajority rule only indirectly encourages deliberation and consensus building, as a means to securing sufficient votes. And it is impossible to ensure that *vulnerable* minority interests will be protected by supermajority rule. Supermajority rule has been used, for example, to thwart the advancement of civil rights legislation.

Not only is supermajority rule not sufficient for dealing with the three purported problems with majority rule, supermajority rule introduces its own problems. Unlike unanimity rule or majority rule, supermajority rule involves an arbitrary threshold. It follows that those on the losing side of a social choice have no justification for their defeat, other than they failed to meet this arbitrary threshold.

Schwartzberg also argues that supermajority rule is not necessary for addressing the three problems with majority rule, again: institutional instability, a lack of incentives to generate consensus and a lack of protections afforded to vulnerable minorities. Schwartzberg's own solution to these problems is 'complex majoritarianism'. The suggestion is to introduce time delays and deliberative assemblies into important constitutional decisions. A constitutional amendment would first require a majority vote of the legislature. This would be followed by a second stage involving deliberative assemblies and public education. The final stage is a popular majority referendum. The time delays generated by introducing these three stages ensure institutional stability by ensuring that important decisions are not made on a whim. At a minimum, the deliberative assemblies provide an opportunity for vulnerable minorities to raise concerns about threats to their interests. Ideally the deliberative

assemblies would also be conducive to the formation of a genuine consensus. This complex majoritarianism preserves the democratic norm of equal respect afforded by majority rule. Moreover, complex majoritarianism *enhances* this norm since the deliberation helps inform voters and ensure their judgments are worth counting.

Let me focus on two points where Schwartzberg's arguments might be vulnerable. First, Schwartzberg explicitly runs together the common distinction between votes as expressions of belief and votes as expressions of interests. But some of her conclusions become more or less plausible depending on this distinction. If voters themselves fail to make the distinction between what they believe to be the correct decision (perhaps what they believe to be the common good), and what is their personal interests, then we face the risk of what Jo Wolff has termed the 'mixed-motivation' problem: the majority verdict may be neither in the interests of the majority, nor believed by the majority to be correct (to be the common good). Furthermore, Schwartzberg rightly points out (following Christian List's analysis of Condorcet) that supermajority rule is not supported on epistemic grounds. Schwartzberg also suggests that supermajority rule does ensure that decisions have widespread support (and thus a certain amount of stability). It would seem to follow that supermajority rule might have some justification if agents vote on their preferences, but not if agents vote on their beliefs. Finally, one of the three democratic norms stressed by Schwartzberg is consensus building. It might be reasonable to expect a consensus if agents are voting on some factual matter. Even if the initial vote does not generate a consensus, the judgement of the majority (or supermajority) might provide evidence for the minority voters to change their views. But a consensus might be too much to expect if people are voting on matters of preferences and interests, and these preferences or interests conflict.

A second area in which Schwartzberg's arguments may be vulnerable is in the importance placed on deliberation. Deliberative assemblies are proposed by Schwartzberg as one of the recommended institutions to overcome problems with simple majority rule. The process of deliberation is intended to support the democratic norm of equal epistemic respect by developing reflective, well-informed individual judgments. But group deliberation can, in some circumstances, lead to *less* reliable individual judgements. The problem is more than just the group polarization identified by Schwartzberg. Later work by Cass Sunstein summarized some of the most pernicious mechanisms. For example, informational and reputational cascades can occur when judgements are expressed in a sequence, and later individuals express judgements consistent with the views already expressed, instead of expressing judgements based on their private evidence. Hidden profiles and common knowledge effects occur when different members of a group possess different pieces of information which when combined are indicative of the true state of the world. However, the dynamics of group deliberation mean groups favour information already held in common at the expense of privately held information. Further thought



would need to be given as to how complex majoritarianism would overcome these epistemic failings of deliberation.

But these two criticisms are minor, and do not detract from what is a fascinating historical study of supermajority rule, and an important contribution to democratic theory.

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