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## Review

# Counting the many: The origins and limits of supermajority rule

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The American political system is rife with supermajoritarian decision-making procedures. Consider, for example, Article V constitutional change, the Senate filibuster and many state referendums and initiatives. Supermajoritarian thresholds, as opposed to bare majoritarian decision making, have been justified as safeguards against the dangers of democracy. Although many have worried over the practical effects of supermajoritarianism, such as gridlock and the difficulty of legal change, supermajoritarianism had yet to undergo the careful and extended normative critique that Schwartzberg supplies in this excellent volume.

If one takes away only one lesson from her book, Schwartzberg hopes it is this: supermajoritarianism is a poor solution to the problems associated with majoritarian decision making. Schwartzberg identifies three justifications for supermajoritarian rule among modern democrats: the fostering of consensus, increasing institutional stability and providing protection to minorities. Her book engages each, throwing doubt on the assumption that supermajoritarianism is the best method for achieving each of these aims. When supermajoritarianism does achieve one of these goals – such as institutional stability – Schwartzberg compellingly argues there are normatively superior decision-making procedures that achieve these aims, without suffering the normative drawbacks of supermajoritarianism. In almost all cases – except when it is desirable (epistemically or morally) to bias decisions to avoid severe negative consequences, as in criminal trials – Schwartzberg argues supermajoritarianism is simply too ‘blunt’ an instrument for democrats to use (p. 5).

At the heart of Schwartzberg’s argument against supermajoritarianism is her critique of it as an inherently undemocratic decision-making process, one that provides a minority with a veto (and so an unequal vote), and biases the *status quo* (and so weights past judgments more than contemporary ones). Grounding this analysis is a particular understanding of democracy. Her discussion of democracy, on its own, makes this book well worth a read. Schwartzberg argues democratic



decision-making procedures ought to incorporate ‘three key normative values’: equal epistemic respect, fallibility and minimizing coercion (p. 11). In claiming that democracy presumes equal epistemic dignity, Schwartzberg makes explicit an understanding of democracy that too often goes implied and unexamined in contemporary debates. As good democrats, it would seem we must presume an equal capacity for judgment. Yet how can we possibly say that we have an equal capacity to judge, considering the judgments that many make? Take, for example, the unfortunately common judgment that global warming is a scientific conspiracy.

Although Schwartzberg defends and develops this logic of ‘equal epistemic dignity’, I worry that grounding democracy in equal epistemic dignity may distort our theorizing of the relationship between democracy and epistemic validity, and elide the potential tension between the two. It also seems to me unnecessary. We might still respect the judgments of others without presuming equal epistemic dignity, either because we wish to avoid conflict; or because we believe political judgments to be deeply normative, and we either accept or value moral pluralism; or because we differentiate between epistemic and cognitive equality; or because we understand the capacity for epistemic evaluations to be deeply contextual, as well as unjustly dependent on social and economic resources. I do not have epistemic respect for the judgment that global warming is not real, or a person making that judgment, but I may respect both the judgment and the person for other reasons. Wherever one stands on this particular question, the many contributions of this excellent book do not depend on the reader’s acceptance of equal epistemic respect, of which Schwartzberg is of course well aware and explicitly notes.

In addition to her extended analysis of the normative vices and virtues of supermajoritarian rule, and her intriguing account of democratic values, Schwartzberg also provides a history of supermajoritarianism. This history nicely denormalizes the common perception that supermajoritarianism is essentially a procedure to defend against the dangers of democracy. Schwartzberg traces the normative origins of supermajoritarianism from its proto-origins in ancient Greek vote counting, to its actual origins in Rome, to its medieval ‘golden age’ in the papacy and Italian city-republics, to eighteenth-century France and on into the contemporary period (p. 49). As supermajoritarianism is deployed in these various contexts, Schwartzberg excavates the changing justifications for its use, and the changing normative values it displays.

Schwartzberg argues supermajoritarianism was long considered a substitute not for majority rule, but for unanimity rule. In her history, unanimity rule displayed the epistemic respect Schwartzberg identifies as a core democratic value. But because there was also a recognition of fallibility (another core democratic value), and a fear that unanimity would generate coercion (the minimization of which is her third democratic value), unanimity was replaced with supermajoritarianism. It was only later, from Condorcet on, that supermajoritarianism was conceived as a substitute for majoritarianism. And it is only in this most recent era that we see undemocratic



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arguments for supermajoritarianism, such as entrenching the *status quo* and minority veto rights.

Schwartzberg's movement between democratic theory and detailed descriptive accounts of the political practices of ancient Greece, Rome, medieval Europe and eighteenth-century France is a demonstration of both great erudition and great theoretical skill. Schwartzberg also builds on and engages a variety of subfields in order to offer alternatives to supermajoritarianism, alternatives she refers to as 'complex majoritarianism'. Her focus is largely on deliberation and the improvement of judgments. She looks to deliberative assemblies, as well as institutionalized time delays. Here her theorizing is less groundbreaking, but rather a helpful collection of various suggestions for institutionalizing good judgment while treating each individual judgment equally, and a powerful retort to those who turn to supermajoritarianism because it would seem to be the only practical option.

Schwartzberg's remarkable volume will be of interest not only to democratic theorists, but also to constitutional scholars, as well as to empirical scholars with interests in institutional design. As with her previous book on entrenchment, *Democracy and Legal Change* (2007), Schwartzberg's *Counting the Many* does what the best works of political theory do: radically change one's theoretical worldview, while also making one scratch one's head, wondering how one did not see this (that which now seems so obvious and true) before.

## Reference

Schwartzberg, M. (2007) *Democracy and Legal Change*. New York: Cambridge University Press.

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