

Does the principle of majority rule represent a threat to liberty?



ROBERT NEF* • June 2008

For a defence of the principle of majority rule we need look no further than the oath sworn at Rütli by the founding fathers of the Swiss Confederation, as portrayed in "William Tell", a quintessence of the basis for a political philosophy of the collective, its content and form an expression of Schiller's genius.

Wir wollen sein ein einzig Volk von Brüdern,
in keiner Not uns trennen und Gefahr.
Wir wollen frei sein wie die Väter waren,
eher den Tod, als in der Knechtschaft leben.
Wir wollen trauen auf den höchsten Gott
und uns nicht fürchten vor der Macht der Menschen.
Friedrich Schiller, William Tell, Act 2, Scene 2

Or in the translation by Sir Theodore Martin, whose "band of brothers" harks back to Shakespeare's "Henry V":

A band of brothers true we swear to be,
Never to part in danger or in death!
We swear we will be free as were our sires,
And sooner die than live in slavery!
We swear, to put our trust in God Most High,
And not to quail before the might of man!

The indictment of the principle of majority rule is based on my "Schiller for the Modern Age" (see below), which points up the long-term consequences of majoritarianism:

Wir wollen sein ein einzig Volk von Rentnern
Uns zwangsversichern gegen alle Not
Wir wollen Wohlfahrt, selbst auf Kosten unserer Kinder,
eher Taktieren, als eigenständig sich behaupten.
Wir wollen trauen auf den zentralen Staat
Und uns stets beugen vor der Macht der Mehrheit.
Robert Nef, Liberal Institute, Second Last Act, Second Last Scene

Or in translation:

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A band of wealthy pensioners we will be,
Compulsorily insured against all woes.
Give us more welfare, let our children pay,
We've lost the will to stand up for ourselves.
We'll put our trust in central government
And do what the majority tells us to.

What separates these two texts – apart of course from the striking difference in the quality of the verse? 205 years have passed since the publication of Schiller's "William Tell" and 717 years since the historical foundation of the Swiss Confederation in 1291. My parody of the Rütli oath is intended to illustrate what remains of liberty when the principle of majority rule is practised for long enough, with too few restrictions, and in combination with the principle of representation.

Here is the basic question that has been answered in many different ways throughout the course of history: In the final analysis, is it possible to reconcile the principle of majority rule, as a procedure for arriving at collective judgements, with the idea of liberty? As a thoughtful observer of reality with a liberal point of view I must answer "No". As a Swiss citizen with family roots in the Appenzell region, which can look back on 500 years of direct democracy, I tend towards "Yes". Rational scepticism versus emotional attachment: which is stronger?

Given this starting point, the question is not whether the principle of majority rule can be enduringly reconciled with a comprehensive guarantee of liberty, but under which circumstances this combination, which initially appears impossible, can have a chance of success.

Majorities tend to want to live at the expense of productive minorities and to get their way on the basis of the principle of majority rule. As a consequence, productivity falls because redistribution is less productive than investment in technological and economic progress, which is always dependent to some extent on risk capital. When productivity falls, competitiveness declines, a development that makes itself felt in a general drop in prosperity. Redistribution, like revolutions and like Saturn, the God of Time, eats its own children, or – in a modern variant – prevents them from coming into existence in the first place. This is the pessimistic view, as propagated by Bastiat, von Mises and von Hayek (among others).

Schiller's counterproposal to the Jacobins' government by the people

Friedrich Schiller's portrayal of the founding of the Swiss Confederation at Rütli encapsulates this moment for his own time in a mythically exaggerated and emblematic way. One could analyse it sentence by sentence and would find confirmation that Schiller was not primarily concerned with the origins of Switzerland but rather with his examination of the Declaration of the Rights of Man during the French Revolution, whose representatives had made him, the author of "The Robbers", an honorary citizen. Schiller's "William Tell" is also a kind of counterproposal to the later Great Terror instituted by the Jacobins. The play should

not be seen merely as a communitarian paean to the Swiss at Rütli; it also depicts the co-reliance of the small community and the strong individual. In the final analysis Switzerland is the confraternity of the small-scale collective at Rütli combined with Tell, the creatively dissident tyrant-killer.

Aristotle and the primacy of politics

For Aristotle democracy was a decayed form of that "rule by the many" that he called a polity. So the career of the term "democracy", which is generally regarded nowadays as positive, began with radical criticism. Aristotle has accurately identified and described the potential of the principle of majority rule to degenerate. His "Politics" is a plea for a mixed constitution. He differentiates between rule by one, few or many. All three forms of government can be basically positive if they "rule with a view to the common profit" and fail if they serve only to benefit the one or the few or the many. Aristotle regards it as possible for the many to rule virtuously, but he considers it unlikely. His reasoning is entirely empirical: "For while it is possible for one or a few to be outstandingly virtuous, it is difficult for a larger number to be accomplished in every virtue, but it can be so in military virtue in particular. That is precisely why the class of defensive soldiers, the ones who possess the weapons, has the most authority in this constitution. Deviations from these are tyranny from kingship, oligarchy from aristocracy, and democracy from polity. For tyranny is rule by one person for the benefit of the monarch, oligarchy is for the benefit of the rich, and democracy is for the benefit of the poor. But none is for their common profit." (Aristotle "Politics", Book 3, translated with a commentary by C. D. C. Reeve, Clarendon Aristotle Series)

Much as one may admire the clear-sightedness of these observations, one should not shy away from fundamental criticism of Graeco-Roman political philosophy. It has had a pervasive and toxic influence on the history of political thought in Europe.

Although Aristotle showed himself to be a shrewd observer of his contemporaries when he defined man as a political animal (*zoon politikon*), in my opinion he prepared the way for a devastating overestimation of the political and a momentous underestimation of the private, the economic and civil society. For aristocrats like himself and Plato before him and for many leisured aesthetes who came after him, *homo oeconomicus* – the farmer, the tradesman, the service provider and the merchant – was nothing but a philistine. These people – on the back of an army of slaves and other disenfranchised persons – concerned themselves with such banal activities as making a living.

In continental Europe this kind of division of labour between economics and politics has led to a widespread contempt for *homo oeconomicus* and for the economy as such, in both the broad and narrow sense of the word.

The intellectual preference for *homo politicus* over *homo oeconomicus* is alive and well. The "primacy of politics", as a fundamental principle of a grey-haired

generation of believers in co-determination and grassroots democracy, still haunts the literature of social sciences.

Appenzell as the counterpart of ancient Athens

Direct democracy as embodied in the Appenzell "Landsgemeinde" differs markedly from the democracy of the Athenians (Karl Mittermaier/ Meinhard Mair, *Demokratie, Geschichte einer politischen Idee von Platon bis heute* [Democracy, the History of a Political Idea from Plato to Today], Wiss. Buchgesellschaft, Darmstadt 1995). In Athens the popular assemblies were convened three or four times a month and those who attended received a per diem payment. The assembly of the people controlled the civil service, supervised the state-regulated distribution of grain, decided whether to go to war or make peace, passed verdicts in cases of treason, ostracised citizens considered a danger to the state, listened to petitions, and selected the key functionaries for military matters, for whom war then became crucial to their survival. The Council of 500 met practically every day! The Convention, which was established during the French Revolution and became the model for many contemporary parliamentary systems, took many of its ideas from this system. In this way politics itself becomes the disease that it is supposed to cure.

A marked contrast is provided by the political system of the two Appenzells, which have managed to compete peacefully for centuries with politically comparable but religiously and culturally differing ways of governing and living.

This political system, which was practised consistently for more than 500 years, was in fact direct democracy. This refutes all assertions, including those of Aristotle, that rule by the many must collapse eventually under the weight of its internal deficiencies because it would inevitably lead to exploitation of the minority of rich citizens by the majority of the non-rich.

At the "Landsgemeinde", a kind of open-air general assembly, elections were held and laws passed – or thrown out if there is no consensus. The chief magistrate, who was mandated by the people to act in a part-time capacity as head of the government, was entrusted for one year with the state seal with which contracts were officially sealed and was required to render public account to the effect that any action taken had been "for the good of the country".

All posts in government and the judiciary were – and in some cases still are – part-time, unsalaried and restricted to one year. There is no such thing as a professional politician; politics is merely a part of the function of each citizen. Those in positions of responsibility were elected and dismissed directly by the people. Their powers have always been severely restricted. These involved, in particular, foreign policy, the legal system and cantonal road construction. There was almost nothing to distribute apart from burdens. The decision to embark on a military campaign was taken by those who then made up the army. This co-identity of those taking the decision with those who had to implement it is crucial, especially in the

area of military service where the collective demands that the individual put his life in jeopardy. In this case Aristotle got it right. Where it is a matter of choosing war or peace – a fundamental political question – the many, who bear the consequences of the decision, are in fact more competent to decide than the few who may benefit from it.

This is the essential difference between the slave-owners and politicking idlers of Athens and the hard-working small farmers of Appenzell, who not only laboured on their own land but also formed the militia that protected it. The importance of public and private issues – *res publica* and *res privata* – was fundamentally different.

Generally the minimum consensus was found at the "Landsgemeinde" through the procedures of direct democracy, often with very substantial majorities. Sometimes the assemblies would end in dispute, but although all those present were armed, the disputes did not lead to bloodshed. For one day in the year each man was a *zoon politikon*. The other 364 days belonged to the "Häämetli" (i.e. the home farm), its private economy, the community of one's family and the locally anchored culture. In summary, therefore, the process of building consensus within a democracy on the basis of the principle of majority rule is possible if it is limited in terms of scope, timeframe and finance to the smallest possible portion of the life of a civil society, and if co-determination remains the exception to the rule of self-determination.

The practice of direct democracy in the two Appenzells has been presented here in a simplified and – admittedly – idealized way. It is regrettable that the open assembly, which had been an institution in Canton Appenzell Außerrhoden, a heavily industrialized area since the 19th century, was discontinued about 10 years ago. However, it proved possible to retain the militia principle and the relatively lean political apparatus.

“Good judgement has always been confined to the few”

This is the central statement of the Polish Prince Leo Sapieha in Schiller's uncompleted drama "Demetrius", a statement that criticises democracy as such. It has been surmised that in "Demetrius" Schiller wanted to qualify his communitarian avowal of democracy as expressed in "William Tell". In "Tell" the collective at Rütli recognises the right moment to make its bid for liberty and works together with Tell as a strong individual to achieve its goal. Demetrius on the other hand is located in the aristocratic environment of Czarist Russia. As far as we can tell from the surviving fragments, Schiller's "Demetrius" is not a political drama and cannot therefore represent the aristocratic response to the democratic William Tell. Essentially, Schiller is interested in psychology, in appearance versus reality, in truth as it is formed in the tension between one's own perception and the perception of others. One can interpret this as an indication that for writers and historians it is psychology and not politics that plays the crucial role in world history.

Die Mehrheit?

Was ist die Mehrheit? Mehrheit ist der Unsinn,
Verstand ist stets bei wen'gen nur gewesen.
Bekümmert sich ums Ganze, wer nichts hat?
Hat der Bettler eine Freiheit, eine Wahl?
Er muss den Mächtigen, der ihn bezahlt.
Um Brot und Stiefel seine Stimm verkaufen.
Man soll die Stimmen wägen, und nicht zählen;
Der Staat muss untergehn, früh oder spät,
Wo Mehrheit siegt und Unverstand entscheidet.

The majority?

What is the majority? The majority is nonsense,
Good judgement has always been confined to the few.
Do those who have nothing consider the whole picture?
Does the beggar have a liberty, a choice?
He must sell his voice to the powerful,
Who pay him, to buy bread and boots.
One must weigh the votes, not count them;
The state must perish, sooner or later,
Where the majority wins and lack of judgement rules.

Friedrich Schiller, Demetrius, Act I

“The voice of the people is the voice of God”

Despite all counterarguments the principle of majority rule enjoys almost unlimited acceptance because it allegedly provides at least half of those involved and affected with what they want and because it is assumed that majorities tend to excel at deciding what is best for everyone. *Vox populi, vox Dei*. The voice of the people is the voice of God. This formulation is attributed to Alcuin who – albeit critically – includes it in a letter to Charlemagne. Lichtenberg, perhaps Germany's most famous aphorist, praised it and noted that it was rare to see so much wisdom in so few words.

The classic principle of majority rule counts votes per head or per person, even if the person in question doesn't actually use his head but relies instead on "gut feeling". If one follows the principle of majority rule, which remains astonishingly popular, one also has to accept that in the worst case almost half of those involved – often "the better half" – will have to be content to be ruled by the opinions of others. After all, just under one half.

So, is the majority rule glass half full or half empty? In a dictatorship – in the worst case – everyone is permanently forced against their will to do or not to do specific things. But this can also be case under majority rule. If the principle of majority rule is used as a means of excluding a multiplicity of potential options, the proportion of those disenfranchised rises from election to election. In a pluralistically

constituted group it is even likely that, if a knockout process based on the principle of majority rule is used, nobody at all ends up with the solution that he or she spontaneously regards as the best.

Democracy as a derogation or abolition of personal responsibility

In his famous essay "Vom Wesen und Wert der Demokratie" ["The Nature and Value of Democracy"] (1929) Hans Kelsen refers to the question asked by Pilate in the Gospel according to John. What is truth? He poses the question in the context of Jesus' statement – "I am the King of the Jews" – and then subjects the question to a kind of spontaneous plebiscite in which the majority is recognised as the group that shouts loudest. (Incidentally, in the history of political institutions this is a trusted and archaic voting procedure that is frequently used to determine majorities).

The result is clear-cut: the mob wants Jesus to be crucified and Barabbas set free – a momentous death sentence based on a questionable majority.

I will leave unanswered the difficult question of whether the majority on that occasion arrived at a right or wrong decision from the point of view of law or in the light of the history of redemption and whether the central story speaks for or against the principle of majority rule as a procedure for relieving the individual of personal responsibility.

Conditions that ought to be attached to the principle of majority rule

So, does majority rule protect or undermine liberty – where is the truth in this issue? The answer cannot be a simple yes or no because, as Hayek has pointed out, it depends on the circumstances. So in the first place the principle of majority rule (one person, one vote) is ambivalent as regards liberty and has the potential to pose a substantial threat to liberty.

However, the principle of majority rule may be compatible with liberty under the following conditions:

First: The principle of majority rule may expressly not be applied to distribution and redistribution processes.

Second: The principle of majority rule should be restricted first of all to the agreement on rules for selecting and deselecting those responsible for issues affecting the community. This responsibility by its nature should be restricted in both time and scope.

Third: The principle of majority rule is suitable in addition as the basis for a veto on new burdens and regulations. It enables often paradoxical but effective coalitions of those who reject the notion of "more state". Although there are no psychological reasons for the fact that it is easier to assemble a majority against a proposal than one in its favour, there are reasons that spring from the logic of

decision-making itself, because the reasons for a rejection are always more broadly based than those for an approval. (Of course, political questions in referendums can always be formulated in such a way that opponents are forced to vote in favour and proponents against, but this does not alter the fact that there are often more reasons for groups to vote against a new proposal than for it).

Fourth: The principle of majority rule enables people to agree on common defences against dangers that are perceived as a threat to the community. It is easier to achieve consensus on what people regard as bad for everyone than on what they regard as good. Wilhelm Busch expresses this perfectly in "Die fromme Helene" ["Pious Helen"] (1872): "The good – and this is surely true – is merely the evil that we do not do". This is why it is easier for a group of people to achieve consensus regarding what they as a group should not do rather than what they should do.

These then, in outline, are the preconditions under which the principle of majority rule may be compatible with liberty.

But there are other preconditions, based on history and psychology. There has to be a traditional and institutional linkage with a kind of pre-existing love of liberty and a deeply felt restraint on the part of the majority against oppressing minorities. Without the instinct against all kinds of power the principle of majority rule is in danger of doing away with that creative dissidence on which majorities too have to rely over the longer term. In the final analysis, protection for minorities protects the majority from collective stupefaction, but a great deal of nonsense is also propagated on the back of protection for minorities. It is often used to introduce group privileges of all kinds. "The most important minority is the individual." (Ayn Rand)

Co-determination in accordance with the principle of majority rule is not an end in itself. It enjoys a subsidiary position vis-à-vis acts of individual self-determination. I remind readers of the priority enjoyed by the "home farm" over the wider community in Appenzell, namely 364 to 1. The burden of proof as regards long-term practicability and common benefit is borne by those who want to replace personal autonomy based on the principle of self-determination with collective autonomy based on the principle of majority rule.

One should not make it too easy for them to provide this proof before the intellectual forum that assesses political power in theory at first and then also in practice. Despite Alcuin's and Lichtenberg's formulation (*vox populi vox Dei*) and consonant with Hans Hoppe, the principle of majority rule is "a god that is none". (Hans Hoppe, "Democracy – The God That Failed" Transaction Publishers 2001).

The compulsion to do good and, above all, the compulsion to do what the majority holds to be good, turns diversity into uniformity and has a destructive impact on the community overall. Every creative community is based on peaceful competition, and if the principle of majority rule is misused to get rid of unpopular

alternative solutions, it degenerates into rule by those populists who happen to have the ear of the majority at the time.

But how is it possible to arrive not just at a majority but at a comprehensive and lasting consensus? This is nothing other than the rejection by a community of a development that the community opposes; it is never the creation of a future circumstance that is wished for by the community.

My political philosophy, which is based on historical observation and personal experience, criticises the massive over-valuation of politics and hence of the state; and I ask myself quite seriously whether it would not be a blessing from a long-term perspective if Aristotle's homo politicus were to be replaced by the homo oeconomicus cultivatus (see Gebhard Kirchgässner, Homo oeconomicus, 2nd Edition Tübingen 2000) in the global scheme of things – not precipitately, but in the sense of an orderly retreat from the myth of the state. (See also Ernst Cassirer, The Myth of the State, Yale University Press 1946).

Democracy can only succeed in the long term as self-restricting democracy. Germany, which Edgar Wolfrum chooses to call the "successful democracy" in his recent book "Die Geglückte Demokratie" ["The Successful Democracy"] (Stuttgart 2006), does not endure because it "dares to introduce more democracy" in all areas. On the contrary, one has to dare to place strict limits on the principle of majority rule, limits that do not inhibit the economic or cultural development of a spontaneous order. What is needed is what Hayek posited in his Zurich lecture 30 years ago, namely "the dethronement of politics".

„Wenn die Sozialisten ehrlich glauben, dass (...) die Demokratie ein höherer Wert sei als der Sozialismus, dann müssen sie eben auf ihren Sozialismus verzichten. Denn wenn auch die heute bestehende Form der Demokratie zu Sozialismus treibt, so sind sie im Ergebnis doch unvereinbar. Politik unter diesen Bedingungen führt uns in einen Abgrund. Es ist hohe Zeit, dass wir ihr die Flügel beschneiden und Vorkehrungen treffen, die den gemeinen Mann in die Lage versetzen, „Nein“ zu sagen. Die schweizerische Einrichtung der Volksabstimmung hat viel dazu beigetragen, sie vor den schlimmsten Auswüchsen der sogenannten repräsentativen Demokratie zu schützen. Aber wenn die Schweizer ein freies Volk bleiben wollen, müssen wohl auch sie in der Einschränkung der Regierungsmacht noch weiter gehen als sie schon gegangen sind.“

„Eine unbeschränkte Demokratie zerstört sich notwendigerweise selbst, und die einzige Beschränkung, die mit Demokratie vereinbar ist, ist die Beschränkung aller Zwangsgewalt auf die Durchsetzung allgemeiner, für alle gleicher Regeln. Das bedeutet aber, dass alle Eingriffe in den Markt zur Korrektur der Einkommensverteilung unmöglich werden.“ (Friedrich August von Hayek, In: Überforderte Demokratie? Sozialwissenschaftliche Studien des Schweizerischen Instituts für Auslandsforschung Bd. 7, Zürich 1978, S. 29.f.)

If politics is dethroned, the path becomes clear for the strictly liberal view that the state is nothing more than an alliance of the many to protect the freedom of the

individual. Nothing more and nothing less. If only it had stayed that way! Humanity could have been spared most of the devastating wars of the 19th and particularly the 20th century, orgies of annihilation that destroyed people and values, if it had tolerated the use of force solely for collective defence, for the protection of personal property in the narrow sense of the phrase. The nationalistic wars among nation states and alliances provoked by unfettered homines politici in the name of a "higher justice" sprang from a different understanding of the state: the myth of the state as an economic and social partnership in the spirit of conquest, lust for power and craving for national glory.

Does the principle of majority rule really pass muster as the refuge of liberty? Should the principle of majority rule itself be judged using the principle of majority rule, or should each person decide for himself? My own personal decision is that every day, by scrutinising, communicating and empathising, I try to discover what is good for me, my family, those close to me, my neighbours, friends and colleagues. I don't know what's good or what's best for everyone. But I seriously doubt that majorities know any better.



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