Neutrality, Supermajority, and Its Institutional Implementations

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April 29, 2009

1 Introduction

A collective decision-making rule is neutral if this does not privilege any choice on prior grounds. This property distinguishes simple-majority rule from the other decisive, anonymous, and responsive rules (May 1952). In turn, simple-majority rule has an attractive property, namely that it maximizes "autonomy" in the sense of Rousseau, Kant, and Kelsen, that is, the proportion of the collectivity that likes the collective decision (Kelsen 1988 [1929], Rae 1975).

In spite of this attractiveness, neutrality can be rejected on a number of grounds:

(1) **Deontological**. One may maintain that particular choices, singled out as rights, should be privileged by any collective decision-making procedure. To use the example of one of the two basic liberal rights, property should be protected from simple-majorities. Hence, neutrality should not apply to issues that entail property.

(2) **Epistemic**. Some decisions may be known to be "correct" independently of the distribution of individual preferences. "God's will" may be one source of such knowledge; opinion of experts may be another.

(3) **Prudential**. Committing some errors may be thought to be more undesirable than other errors. For example, we may want to maintain the presumption of innocence, meaning that the verdict of innocence should be privileged with regard to that of guilt. More generally, a known state of the world may be privileged with regard to innovations on the ground of risk aversion.

Regardless of the position one takes, however, these reasons identify potential exceptions, that is, they indicate when neutrality should not be applied.

A rule that is decisive, anonymous, and responsive but not neutral is a supermajority rule. In turn, supermajority rule protects the status quo. Now, the relation between supermajority rule and the status quo is not a logical one. One might imagine rules that would state that whenever a choice that qualifies as privileged confronts one that does not, the privileged choice should prevail as long as it has support of some qualified minority, regardless whether or not it

is the status quo. For example, intellectual property rights should be extended or abortion should be curtailed with regard to the status quo unless a two-thirds majority objects. I do not know, however, any examples of such rules. In turn, and this is what this paper is about, supermajority rule indiscriminately protects the status quo, that is, in most democratic political systems altering the status quo requires supermajority support.

2 Bicameralism and supermajority rule

The point I am about to make is so obvious that I am embarrassed to state it. Moreover, it is not even original: see Levmore (1992). But it bears repeating.

Bicameralism[1] is a supermajoritarian device: a motion that would pass under a simple-majority rule in a unicameral legislature need not pass under the same rule separately in two houses of legislature drawn from the same unicameral house. If the sorting into bicameral legislature is not random – so that the houses are "diversely arranged," in the language of Buchanan and Tullock (1962) – then more than a simple majority of a unicameral legislature is required for the motion to pass two houses.

To make the point starkly, I am keeping voters out of the story.[2] All voters do is to elect a unicameral legislature of the size $H = L + U$. I refer to L as the "lower" and to U as the "upper" house, but they are in fact identical in their powers, differing at most in size. The house H consists of Y representatives who support the motion and N who oppose it, $Y + N = H$. Once the house H is elected, its members are sorted into L and U. A motion is passed by the unicameral legislature if $Y > H/2$. It is passed by a bicameral legislature iff $Y_L > L/2$ *and* $Y_U > U/2$, where the subscripts indicate the respective houses.

The key to the story is obviously the sorting process. Let p be the probability that a Y representative from the large house is drawn into the lower house. For a motion to be approved by a bicameral legislature, it is must be true, therefore, that $pY > L/2$ and $(1-p)Y > U/2$.

Note that when $Y = H/2 + \varepsilon$, where ε is an arbitrarily small number, then the only p for which the motion is passed in both houses is $p = p^* = L/H$.[3] In other words, if a bare majority in the joint house supports the motion, the motion will pass a bicameral legislature iff the legislatures are sorted randomly, more narrowly, independently of their positions on issues.

It is more interesting to look at this relation conversely: if the probability of entering either house does not depend on the position of the legislator on the issue, a bare majority in the single house is sufficient to pass the motion in the divided house. Yet suppose that sorting is non-random: there is something

[1] For a brief sketch of the history of bicameralism and of the arguments in favor of it see Muthu and Shepsle (2007).

[2] For the relevance of voters see the Appendix.

[3] This is because $p^*Y = (L/H)(H/2 + \varepsilon) = L/2 + \varepsilon(L/H) > L/2$ and $(1-p^*)Y = (U/H)(H/2 + \varepsilon) = H/2 + \varepsilon(U/H) > H/2$.

about the electoral system, whatever it might be, which allocates representatives to the two houses differently. The preferences of the electorate are fixed: the electorate votes only for the entire house. The division is due entirely to the electoral system. Now the question is this: if the sorting probability is not random, $p > p*$, what is the majority of the entire house required to pass the legislation in both houses?

Because $p > p^*$, a motion that gets a majority in the joint house is certain to pass in the lower house. To pass in the upper house it must be true that $(1-p)Y > U/2$ or $(1-p)(Y/H) > (1-p^*)/2$ or

$$\frac{Y}{H} > \frac{1}{2}\frac{1-p^*}{1-p}$$

Figure 1 shows majorities necessary to pass legislation in two houses depending on their relative sizes (p^*) and the extent to which sorting is non-random. When the two houses are of equal size, $p^* = 0.5$; in the United States $p^* = 0.81$. Think of $p - p^*$ as the bias that consists of sending supporters of Y disproportionately into the lower house. The horizontal line represents a supermajority of two-thirds: you can see that a relatively small bias is needed to make the required supermajority that large.

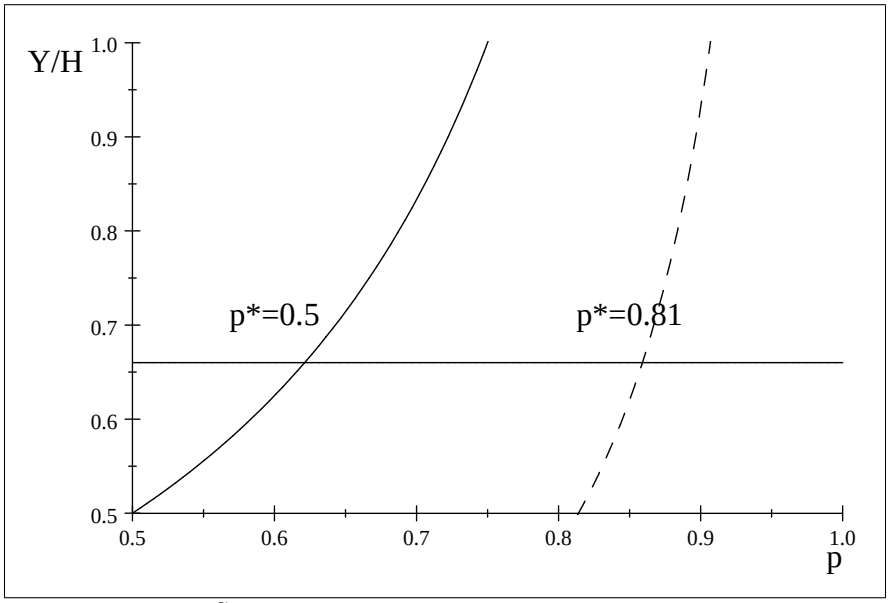

Figure 1: Supermajorities required in bicameral legislatures

Even a small difference in the way the two houses are elected implies that a supermajority is required to assure the passage of legislation in the bicameral legislature.

3 Some facts

Bicameralism is thus a method for protecting the status quo. Another instrument is the veto power of some actor outside the legislature: even if a bicameral legislature passes a law, the change of the status quo can still be prevented by a president, a monarch, or a judicial body.

The frequency of such devices is striking. Table 1 provides information about legislatures for all the years for which we have this information in the world after 1788. Unicameral legislatures prevailed only in slightly over one-half of the total annual observations. In turn, in almost all bicameral legislatures both houses could influence legislation: in about 20 percent of such years one of the houses could only delay or ask for reconsideration ("suspensive" veto) but in the remaining cases both had to agree for legislation to become valid.

Table 1: Composition of legislatures and veto powers (Annual observations).

	Veto	power	second	house	
Houses	Only one	Upper cannot	Suspensive	Derogative	Total
1	7031				7031
2		75	1291	4653	6019
3				28	28
Total	7031	75	1291	4681	13078

Table 2, in turn, shows the frequency with which legislation passed by different types of legislatures could be blocked by some actor outside them, not including the courts. Only in about 25 percent of cases legislation could not be blocked; the remaining cases split almost evenly between those in which the veto was suspensive and those in which it was derogative.

Table 2: Blocker outside the legislature (but not courts)

Veto	power	outside	legislature	
Houses	None	Suspensive	Derogative	Total
1	1184	1990	2984	6158
2	1763	2993	1822	6019
3	5	5	22	32
Total	2952	4928	4828	12708

Finally, Figure 2 shows the frequency of these mechanisms over time. At least one of these two mechanisms was present in almost all representative institutions until the 1950s. "Divided legislatures" – parliaments composed of more than one chamber with power to influence legislation – became less frequent from the

middle of the nineteenth century. Blockers external to legislatures (always not counting courts), in turn, became sharply less frequent after the emergence of new states in post-colonial Africa. Yet even at the end of the past century at least one of these mechanisms was present in about 80 percent of representative institutions.

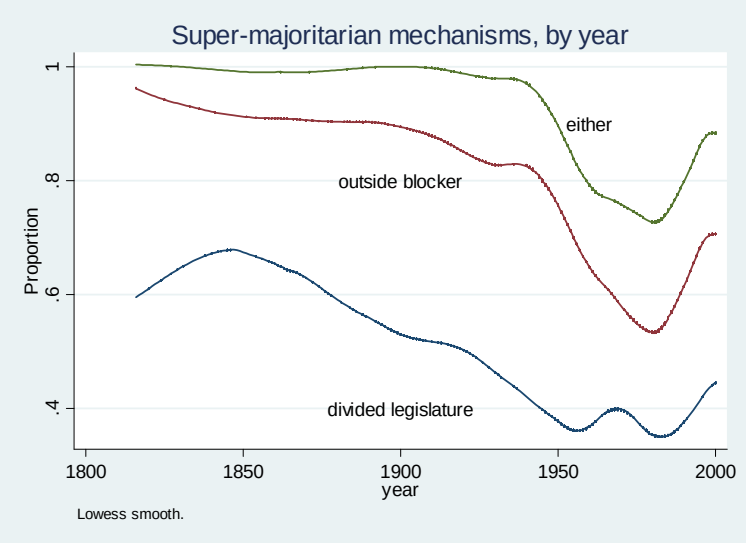

Figure 2

4 Discussion

A simple majority of those elected to a single house is unable to win a two houses if they are "differently arranged." Hence, as Levmore (1962: 151) observed, in such legislative systems "There will almost surely be less government intervention, less hasty legislation, and more preservation of the status quo if proposals must pass two hurdles rather than one."

Democracy is just not a system based on simple-majority rule. Constitutionally qualified majorities, judicial review, bicameralism, independent authorities, autonomous bureaucracies: protections from simple majorities are numerous, complex, and obscure. Bicameralism may not be "the" preferred means of conservatism, as Levmore wants it, but he is right that it "is more subtle, while supramajority requirement appears terrible undemocratic...." (1992: 155).

What I find striking is that these supermajoritarian devices provide a blanket protection for the status quo in all realms, whatever the status quo happens to be. Supermajority rule protects ordinary vested interests. Contrary to the multicultural lament, the minority which has most to fear from majority rule are not women, Blacks, or Native Americans, but the propertied. Moreover, empirical evidence seems to indicate that unicameral systems without external

veto power and even without a constitutional review are not more prone to violations of rights or to capricious policies (McGann 2006). Just think about Sweden.

I am not claiming that a sufficiently large majority cannot get its way under democracy. Neither am I arguing in favor of a pure majority rule: majorities can be foolish, ephemeral, and vicious. But I am sympathetic to the argument that rather than to erect hidden trenches around property, explicit rules should regulate which issues should be decided by which criteria.

5 Appendix: the Buchanan-Tullock defense

The only non-conservative defense of bicameralism I found is by Buchanan and Tullock (1962): because under plurality electoral systems one-fourth of voters can elect a majority of the legislature, bicameralism is just a form of protection from minority rule. Bicameralism is thus an institutional patch designed to plug the hole created by the electoral system. I find this argument peculiar and – given the intensely ideological intention of these authors – I doubt its sincerity: the simplest way to protect from minority rule would be to institute a proportional electoral system.

But while the plurality (single-member first-past-the-post) system is extreme in generating unearned majorities, some bias in favor of the largest party exists in almost all electoral systems. Assume that each member of the Y majority may represent as few as $1/2 < v \leq 1$ voters (On threshold functions, see Penadés 2000, Ruiz Rufino 2006). In the plurality systems $v = 1/2$; in fully proportional ones $v = 1$. The question one may pose is "Given the relative size of the lower house, p^*, and the actual probability that Y types are selected into the lower house, p, what is the majority of voters necessary to pass the bill in both houses?"

The left line for each p^* represents $v = 1$: it is the same as in Figure 1. The right line stands for $v = 1/2$: the extreme case that may occur in a plurality system. Hence, the area in between covers all possible biases in favor of the largest party. Note that even in this extreme case a difference $p^* - p = 0.10$ in the United States is equivalent to the requirement that 2/3 of the voters support a proposal for it to be passed. Hence, the Buchanan-Tullock defense is feeble.

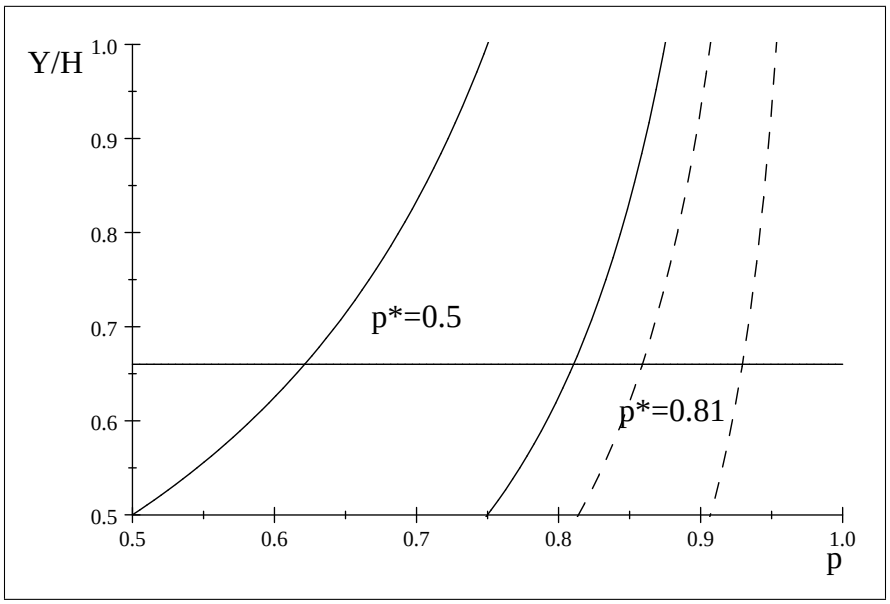

Figure 3: Supermajorities of voters in bicameral legislatures

Iaryczower, Katz, and Saiegh (2009) show that 25 percent of bills that pass the House of Representatives are heavily amended in the Senate, while a "staggering" 45 percent never come up for the vote. They study a model in which the size of the majority in the House informs the members of the Senate about the quality of the bill. They learn that a 4/5 majority in the House is necessary for the Senate to pass a bill originating in the House. Given the sizes of the two bodies, these numbers translate into a supermajority of 74.4 percent.

6 References

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