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Hobbesian Democracy

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We can characterise modern democracies of the Western type as Hobbesian democracies.¹ In a modern democracy the State is a political Sovereign of the Hobbesian kind, enjoying a constitutional authority that for all practical purposes is absolute, having the potential of reaching every nook and cranny of its subjects' life and work. Its authority is restrained only by the requirement of respect for certain formalities and procedures, and the lingering memory of something called the rule of law.² Hobbesian democracy's peculiar characteristic, of course, is that at least some of the people to whom the sovereign power of the State is entrusted are elected by secret ballot under a rule of universal suffrage.

Winston Churchill said that 'Democracy is the worst form of government, except for all the others'.³ He had a point: democracy is the worst form of *totalitarian* government except for all the others. However, why should we put up with any government that not only has virtually unlimited or absolute constitutional powers (as in an absolutist regime) but also uses them to regulate and tax everything and everybody within the territory under its control (as in a totalitarian regime⁴)? As we shall see, there are good reasons for saying that Hobbesian democracy is among the worst forms of government

¹ The term 'Hobbesian democracy' is used occasionally in the literature, e.g. in Geoffrey M. Vaughan, 'Hobbes's Contempt for Opinions: Manipulation and the Challenge for Mass Democracies', *Critical Review*, XIII (1-2), 1999. However, the argument of this paper relies exclusively on the definition given here.

² Due primarily to the influence of legal positivists such as Hans Kelsen (*The Pure Theory of Law*, 1967) and H.L.A. Hart (*The Concept of Law*, 1961), the notion of respect for the rule of law now virtually coincides with that of respect for legal-constitutional formalities and procedures. However, this means no more than that as long as it is at all possible to describe the current political practices of governing and maintaining order in terms of something resembling a 'system of rules', lawyers should be satisfied that the rule of law is respected. The drift towards a merely formal notion of the rule of law arguably is *not* halted by the now fashionable appeal to so-called human rights (see note 18 below).

³ On this quote, and for an attempt to test it empirically, see Krzysztof Jasiewicz, "The Churchill Hypothesis", *Journal of Democracy*, Volume 10, Number 3, July 1999, pp. 169-173

⁴ Totalitarianism (a political notion) is the political actualization of the power that resides in absolutism (a legal notion) only as a potentiality. Hence, there is no contradiction in the ideas of "liberal absolutism", "democratic absolutism" and "multiparty elective totalitarianism". The fundamental mistake of nineteenth century "political liberalism" was that it embraced "liberal absolutism" and hoped that it would remain satisfied with potential power only. For an interpretation of this political liberalism, see my "Political Liberalism and the Formal Rechtsstaat" (<http://users.ugent.be/~frvandun/Texts/Articles/Godefridi.pdf>)

one can imagine, mainly because it institutionalises irresponsibility on the part of all political actors and thereby removes most restraints on the use of absolute power.

The Hobbesian form of democracy has prevailed in the West for more than a century and still is considered by many the paragon of political legitimacy despite the fact that its history is one of recurrent crises.⁵ One might object to the qualification of irresponsibility by referring to the role of elections, which usually are taken as an index of representative and responsible government. However, the objection does not carry much weight. Elections are merely techniques that derive meaning and significance from the constitutional regime in which they are embedded. Voting in a Beauty Queen Contest is one thing, voting in Political Power Contest is another thing. In this context, then, we should base our appraisal of elections on what they do or fail to do in a Hobbesian democracy. Their role or function in other regimes is beside the point.

Definition

A Hobbesian democracy is a politically organised society, a State, with a clear distinction between ruling positions and non-ruling positions. Its main characteristic is the presence of the position of an Absolute Sovereign, the occupants of which are elected by a substantial part of the subject population and legally empowered to impose any rules and policies they decide to make. Usually, the decisions must be reached in conformity with certain procedures—but that requirement is common to all complex organisations and not at all a characteristic of a Hobbesian democracy.

The rules defining the Sovereign's decisions and the electoral rules defining the size, the composition and the activity of the electorate may vary from one Hobbesian democracy to another. In many cases, a Hobbesian democracy's constitution stipulates that only the members of the legislative branch of the State are to be elected, but some constitutions also require elections for the executive branch (although usually only for its head or president). Moreover, one could have a Hobbesian democracy in which also the [highest ranking] members of the judiciary or the heads of the administrative divisions are elected. In an extreme case, the position of the Sovereign would be reserved for a single elected person who would be the head of the State and whatever subdivisions he might want to organise.

In its presently dominant form, the position of the Sovereign in a Hobbesian democracy is assigned constitutionally to a more or less complex State apparatus with a formal functional 'separation of powers'—a division of the constitutional and legal powers of the State among its legislative, executive, judiciary and administrative branches. Thus, although all sorts of variations

⁵ See H.-H. Hoppe, *Democracy: The God that Failed*, Transaction Publishers, Rutgers, NJ: 2001, for an original framework of analysis and a thoroughgoing criticism that centres on how democratic politics raises the rate of time preference rate and shortens the planning horizon of rulers and subjects.

and exceptions may apply, there typically is a rule that forbids any natural person simultaneously to occupy a position in more than one branch of the State's organisation. However, the general concept of a Hobbesian democracy does not imply a separation of powers. Indeed, the rule (or practice) according to which the parliamentary majority parties are also the governing parties robs the idea of separated powers of political significance.

The Hobbesian background

Before we proceed with our analysis of the role of elections and voting in a Hobbesian democracy, it is useful to remind ourselves of certain aspects of the Hobbesian theory of the State that are particularly relevant for an understanding of the democratic State.⁶

According to Thomas Hobbes, every man has a natural right to do whatever he deems necessary or suitable for his own preservation.⁷ However, Hobbes immediately squashes the idea that 'preservation' is a limiting condition. Human beings and the world they live in being what they are, one's natural right is for all practical purposes a right to everything one can bring under one's control. Evidently, if every man tries to exercise his right to everything (which includes every other person) then every man inevitably is locked in actual or potential conflict with everybody else. Moreover, everybody knows, or soon discovers, that a pre-emptive strike is the best defence.⁸ Thus, according to Hobbes, self-preservation requires aggression. The result is a war of all against all⁹—'the natural condition of mankind'. Consequently, life is solitary, poor, nasty, brutish and short.¹⁰ Hence, it is a dictate of reason that not every man should exercise his right to everything—to be more precise, that not more than one man should exercise that right. However, human nature being what it is and every man being agitated by a desire for power that ceases only in death, one should not expect a man to give up his right to exercise his right to everything unless he finds that it is safe to do so because his rivals do the same.¹¹

In any case, in the war of all against all, unilateral 'disarmament' is folly. It is against reason, because it amounts to exposing oneself as a defenceless easy prey to one's rivals. However, it also is folly to agree to a mutual disarmament unless one intends to be the last to put down one's arms. Thus, the agreement will come to naught because if every sane person waits to do his part until the others have done so then none will make the first move.

⁶ Thomas Hobbes, *Leviathan or The Matter, Forme, & Power of a Common-Wealth Ecclesiasticall and Civill* (1651). References are to *Hobbes's Leviathan*, Reprinted from the edition of 1651 with an essay by the late W.G. Pogson Smith, Oxford, At the Clarendon Press (1909, reprinted many times).

⁷ Hobbes, p. 99

⁸ Hobbes, p. 95

⁹ Hobbes, p. 96

¹⁰ Hobbes, p. 97

¹¹ Hobbes, p.100

Hence, the only outcome one can reasonably hope for is that one man becomes so strong that he can force the others to disarm. If that happens, one can safely give up one's right to exercise one's right to everything because, with the exception of the strongman, others will no longer be in a position to take advantage of one's decision to disarm. The strongman, conscious of his power, will know that he can enforce his will and therefore also his agreement with the weak and defeated to let them live if they will serve and obey him. Thus, while the strongman continues to exercise his right to everything, all the others give up their right to do that because they know or fear that theirs is no match for his power. In short, reason dictates that one submits unconditionally to the strongest power-seeker in the field, whoever he may be.

If there is such a person then the wise immediately will submit to him, thereby indicating that they will do what he commands. A wise man, being no fool, unconditionally supports the powers that be for no other reason than that they are the powers that be. In the face of a stronger power, cowardice is wisdom. Moreover, Hobbes, taking a clue from the ancient Stoics, argued that through wisdom cowardice transforms itself into vicarious symbolic power.¹² Indeed, the cowards' unconditional surrender and submission amount to a declaration that they want their victor to do what he wants. Consequently, by doing what he himself wants, the victor gives effect to the wish of the vanquished. As if by magic, the coward's submission is transformed into a command the strongman cannot but obey.

In Hobbes' words, those who submit to the strongman authorise him to do what he wills, thereby making themselves the authors of his actions.¹³ Henceforth, whatever he does, he does on their authority. He becomes their 'representative actor'. In short, their unconditional submission transforms the power-relations between the strongman and his subjects into a legal relation between an agent and his principals. Consequently, nothing the strongman does can count as an injustice against any of his subjects because legally they themselves are the authors of his acts.¹⁴

The State, in its political aspect, gives us a picture of the rule of the strong over the weak, but also, in its legal aspect, a picture of the vicarious self-rule of the weak through the intermediary of the political sovereign, who legally is their agent or 'representative'. That was a neat argument. As Pascal commented: 'Unable to strengthen justice, they have justified strength; so that the just and the strong should unite, and there should be peace, which is the sovereign good.'¹⁵

The most significant aspect of Hobbes' theory was its brazen affirmation of the right to everything as man's 'natural right'. It meant that every person by

¹² The Stoics had argued that the wise man, who wills the Gods to do what they will, can be sure that the Gods will do what he wills. In that sense, he can see himself as the author of everything the Gods do. The Gods are no more than his agents. Despite his physical weakness, which is the reason why he submits to necessity, his virtue and authority are "second to none, not even to Zeus." (Frederick Copleston S.J., *A history of Philosophy*, Volume I, *Greece and Rome*, Image Books, New York, reprint 1985, p.398)

¹³ Hobbes, Chapter XVI.

¹⁴ Hobbes, p. 101, p. 115

¹⁵ Translated from Blaise Pascal, *Pensées*, number 299 in Brunschvicg editions.

nature has a right to be the sovereign master of the universe if he can overcome the opposition of others. Applying the Stoic argument to his own purposes, Hobbes succeeded in formulating a theory in which every person can achieve that status. The strongman does so de facto, by eliminating or overcoming the opposition of his actual and potential rivals; the latter do so vicariously and de jure by re-interpreting their submission as an act of authorisation, that is by symbolically identifying the ruler's actions as implementations of their own will.

The turn towards Hobbesian democracy

Towards the end of the nineteenth century and in the twentieth century, democratic ideologues gave the Hobbesian argument a new twist. In their interpretation, the State was no longer an alternative to the war of all against all but a ritualised form of it. The war of all against all was to be fought in election campaigns and electoral battles.¹⁶

In the democratic war of all against all, the stakes are high because 'the winner takes all'—he accedes to the sovereign power of legislation. Thus, he gets into a position from which he can impose his will on everybody within the territory of the state for as long as he is not defeated in another ritual enactment of the war of all against all.

In the democratic interpretation, the Hobbesian natural right to everything one can lay one's hands on becomes the citizen's right to everything he can secure by legal-political means. Every man's right to exercise his right to everything becomes the citizen's right to exercise his right to everything in the ritual act of voting. Only the contingencies and vicissitudes of war, in the one case, and of electoral politics, in the other, determine who shall be, for the time being, the repository of the sovereign power to make any laws he wants.

For all practical purposes, the legal competence of a democratic state is no less than that of the Sovereign as Hobbes described it. Depending on the constitutional practices of the moment, the extent of its competence may vary, but history shows that under democratic regimes constitutional limits on the power of the State tend to erode quickly, even in federal regimes.¹⁷

The constitutional provisions that supposedly guarantee to the subjects of the State a sphere of life or a domain of property upon which the state may not intrude are mostly symbolic and easily circumvented. The courts, being organs of the State, apply the laws given by the legislative power, and the government and the administrations or other agencies of the State will enforce, 'execute' and administer the same laws. None of those other powers is formally

¹⁶ Probably the most important source for the emergence of the idea of Hobbesian democracy was the use intellectuals began to make of the Darwinian theory of the origin of species as an explanation of all things human. Reduced to catchy phrases such as 'the struggle for life' and 'the survival of the fittest', the theory seemed to give scientific backing to the notion that war is indeed the natural condition of humankind. Thus, it seemed that, apart from trying to win that war, there was only the Hobbesian strategy of trying to 'manage' it by means of the superior power of the State.

¹⁷ Robert Higgs, *Crisis and Leviathan*, Oxford University Press, New York, 1987.

independent of the legislative power—and the principle of legality shields all of them from public censure as long as they play by the legal rules. In that sense, which is the only relevant one from the point of view of the subjects of the State, those who control the legislative power also control the other powers.

Admittedly, the constitutional provisions that define how the absolute power of the state is to be organised and executed usually are rather effective. That is because they define the institutional powers of politicians, magistrates and administrators, who can be counted upon to defend their turf against attempts to shift the constitutional balance. The career interests of the State's personnel protect that part of the Constitution with reasonable efficacy.

The effective power of the government in a modern democratic state by far exceeds the effective powers of even the most powerful absolutist kings in European history. Most of their subjects were ruled to a far lesser extent than are the citizens of today's democratic regimes. Moreover, underneath the absolutist superstructure there often was considerable room for local government and remnants of medieval local representative bodies. At all times in European history, royal absolutism was more ambition than reality.

Of course, the brazen direct arbitrary interventions by the king himself or his ministers either against their personal enemies and others that had incurred their displeasure or for the benefit of their favourites have disappeared. Such highly visible and well publicised interventions—harassment, confiscation, imprisonment, and even capital punishment; preferment, privileges, immunities, and monopolies—elicited fierce criticism, not the least because courts and other governing bodies were virtually powerless in providing any protection. In the Modern State, arbitrariness is no less endemic but it is less visible in the complex mazes of its policy-making processes and bureaucracy. Moreover, in some cases, courts and administrative boards will hear complaints and occasionally undo or overrule 'abuses'. Thus, arbitrary interventions readily appear to be 'according to law' and therefore legitimate.

The techniques of rule and control—gathering and processing data, registration, administration, tax assessment, surveillance, enforcement, and so on—at the disposal of the absolutist rulers were primitive in comparison to today's standards. Evidence of that fact is readily available from a comparison of the varieties and levels of taxation and regulation, and the proliferation of governmental departments in the Modern State. We now have governmental ministers, departments and agencies for almost any human activity and concern, including family matters, diet, health, the schooling of children, employment, agriculture, industry, trade, culture, and sports.¹⁸ Democratic regimes have proceeded rapidly to various schemes of nationalisation and regulation to gain control of land use, investment and the employment of labour. They have nationalised money, introduced paper money, and manipulated it for purposes of 'policy'. To an extent the autocratic 'absolute

¹⁸ Interestingly, the modern but fallacious conception of human rights makes it possible to view virtually every government intervention as an attempt to enforce respect for fundamental rights. See my "Human dignity: reason or desire?", *The Journal of Libertarian Studies*, Volume 15, Number 4, Fall, p. 1-28.

rulers' could only dream of, democracies have succeeded in turning their subjects into mere human resources, which the State should manage according to its priorities of the day.¹⁹ The resulting loss of freedom and self-respect was dressed up as a gain of 'civic liberty' and 'social responsibility': the subjects were given the right to vote and intimidated with the idea that for whatever the State did to them they had only themselves to blame. After all, the State was merely their 'representative agent'.

However, as Pascal noted, 'Why do we follow the majority? Is it because they have more reason? No, because they have more power.'²⁰ That power resides in the state apparatus, which, like a harlot, will serve whoever has the money to pay it—to be exact, the legal authority to spend the money that the fiscal agents of the state apparatus take from the subjects. Pascal merely echoed the original Hobbesian argument. In the face of a majority backed up by an organised monopoly of the means of violence, staffed by fulltime professionals, cowardice is wisdom and the defeated submit to the winners, thereby authorising them to do what they want. The citizens make themselves the symbolic rulers of the State by allowing themselves to be convinced that the majority rules because they want it to rule. According to the neo-Stoic Hobbesian logic, in so convincing themselves they merely follow the dictate of reason which tells every person that it is if not altogether pointless then at least all too risky to oppose the powers that be.

The Sovereign voter

The image of the citizen as a prospective or potential absolute ruler emerges clearly from the following thought-experiment. It takes us to a modern Western-style democracy in which the legislative power is both formally sovereign and for all practical purposes absolute. Moreover, it is a regime in which the parties of the parliamentary majority also, by custom or law, form the government while still retaining all the rights of a parliamentary party (including voting rights in plenary sessions and commissions). The same party (or coalition of parties) controls the government and the parliament. In other words, the so-called separation of powers is reduced to a sham, at least where the legislative and the executive powers are concerned.

Here is the thought-experiment: Suppose an election is held but that every voter but one stays at home. The one voter who does show up at the ballot box and casts his vote *ex hypothesi* determines which party will occupy all the seats in parliament and therefore form and control the government. His vote, and his vote alone, is decisive. He is in the same position as an absolute king, who would have been able to pick his own ministers and council. Obviously,

¹⁹ As I am writing this, the newsreader on the radio announces that the Belgian Institute for Safety in Traffic wants to gather more data on drinking and driving. To allow it to do so, the police will be authorised to put up roadblocks on any day of the week, at any time of the day, and to compel drivers to submit to a test with a breath-analyzer. This, of course, is now only a *fait divers*.

²⁰ Translated from Blaise Pascal, *Pensées*, number 301 in Brunschvicg editions.

because the legal-constitutional rights of the voting citizen are the same as those of every other citizen, *every* citizen has right to decide who shall rule in such an absolutist way. In reality, of course, no individual citizen has the actual power to do so but *only* because not every other voter stays away on Election Day.

Admittedly, although voter apathy is a familiar phenomenon, the thought experiment posits an extreme hypothesis. However, the point is that if the election is organised in a 'fair' way then the resulting absolute majority is legitimate from the democratic point of view. Its legitimacy, in the strict legal-constitutional sense, is not diminished by the fact that only one voter turned up. The majority of the actual voters not necessarily is a majority of the citizens or subjects with voting rights.

Here is another proof of the Hobbesian character of modern democracy. In a 'classic' Hobbesian absolutist regime, in choosing his government, the vote of the Sovereign decides for 100% of his subjects; every other expression of preference on the matter counts for nothing. The Hobbesian Sovereign 'represents', and makes the laws that are 'authorised' by, all the citizens. In a simple democratic regime with only two parties, up to 50% of the votes count for nothing but $50\%+n$ ($1 \leq n \leq 50\%$) of the votes counts for 100% of the votes. The majority 'represents' the citizens and gets to make the laws that according to the democratic theory are authorised by all of them. The swing voters cast the n decisive votes. In the marginal case, where $n=1$, there is only one swing voter. He determines which party shall get the parliamentary majority and form the government. His vote counts for 100% of the votes, and binds 100% of the subjects of the State, exactly as if he were a classic Hobbesian Sovereign.

Of course, normally, who the swing voter will be is not known in advance. Sometimes, it is possible to identify more or less accurately the group within which the swing voter is to be found. However, whether or not that is the case, it has no effect on the legal-constitutional competence of the government that the swing voter, whoever he may be, puts into power.

Modern multiparty systems are no less absolutist than two-party systems. However, in multiparty systems, the role of the swing voter(s) is less obvious. That is because, usually, the elections merely determine which majority coalitions are possible. Elections may but often do not create a situation in which the parties can form only one majority coalition—that is, only one division between majority and opposition. They may but often do not create a situation in which one party can claim a parliamentary majority and form a one-party government. Consequently, most of the time, an oligarchy of leaders of political parties (and perhaps some other leaders of powerful groups, acting behind the scene) engages in a more or less protracted round of negotiation to form a minimal majority coalition. Indeed, the smaller the majority coalition, the less power the major coalition partner has to share. Of course, the minimal nature of the majority coalition may be hidden from view, if it is a coalition of large factions in various heterogeneous parties. For example, what superficially looks like a large majority of Socialists and Christian-Democrats may be no more than a minimal coalition of the labour wings of the two

parties. Within every party too ‘the winner takes all’. A single member of its political bureau or its general assembly may swing the decision of the party and so commit the whole party to one coalition rather than another. Once a coalition has been formed, the rest is a matter of maintaining party discipline by the skilful application of pressure and incentives (giving or withholding commissions, appointments, promotions, contracts, and the like) to possibly recalcitrant members and officials of the party.

In a way, multiparty systems are less ‘democratic’ than two-party systems. After all, in a two-party system, voters cast the decisive votes, even if it is only a handful of swing voters. In a multiparty system, on the other hand, the voters may shuffle the cards but they may not play. A few oligarchs make the decisive moves. Thus, it sometimes happens that a cabal of oligarchs forms a monster coalition to keep the party that received the largest number of votes from power.²¹

The right to vote

In a Hobbesian democracy, voting is not a procedure for choosing representatives (as we shall see in the last two sections) but for determining who shall occupy the position of the Sovereign. There is an obvious moral problem here.²² Let us return for a while to the thought experiment that we mentioned earlier. The one voter who does show up on Election Day designates the party (or, if the electoral rules allow him to do so, the individuals) that will occupy all the seats in the Parliament. At the same time, he designates the party that will form the government. He knows, or ought to know, that his choice—should it be decisive, as in his case it turns out to be—determines who shall rule not only him but also every other person in the State. Consequently, he ought to know that his right to vote implies the right to determine who shall rule all persons in the State. He also ought to know that his vote will have that effect if the circumstances are favourable. Now, whatever goes for the one actual voter of our hypothetical case also goes for the swing voter in a close election and indeed for any voter whatsoever. That is so because the legal rights of voters are the same regardless of how they or others vote and regardless of whether they or others vote at all. Thus, we see that the legal premise of voting in a Hobbesian democracy is that every person has the right to rule all other persons in the State (even if it is understood that few will succeed in getting to rule all others).

Suppose that a voter asks himself whether he has the right to choose who shall rule the lives of all other subjects of the State. There is no doubt that he has the legal right to make that choice. However, we may suppose that he is

²¹ In recent years, in the Flemish region of Belgium, a coalition of self-styled “democratic” parties has erected a “cordon sanitaire” to isolate the large right-wing populist party VB, (“Vlaams Belang”, formerly “Vlaams Blok”). The cordon inflated the value of votes for the participating parties whose chances of being invited to ruling coalitions at any level of government—and in Belgium there are many levels—increased dramatically by the a priori exclusion of alternative coalitions with the VB.

²² For other critiques of democratic voting, see the anthology selected by Carl Watner & Wendy McElroy, *Dissenting Electorate*, McFarland & Company, 2000.

not a moron who believes that ‘right’ only means ‘legal right’. The concept of rights does not presuppose a reference to any particular system of legal rules. This is as obvious in the case of natural rights as it is in the case of moral rights. Neither the natural nor any moral order need coincide with any legal-political system.

Because natural and moral rights are independent of any particular social or political system, voting is neither a natural nor a moral right. Moreover, because, *pace* Hobbes, respect for natural or moral rights implies respect for other persons, such rights are incompatible with subjecting other people to one’s sovereign rule. Thus, they exclude also the right to authorise another to exercise sovereign rule over people. In short, the right to vote in a Hobbesian democracy is anathema from the points of view of natural and moral rights.

Unlike natural and moral rights, the concept of a legal right makes sense only in the context of an organisation’s system of legal rules. Consequently, while some legal rights may be natural or moral rights that have received legal recognition in a particular legal system, other legal rights are merely favours or ‘powers’ granted by its founders or officials. Voting falls in the latter category of ‘legal rights’. It always takes place in the context of artificial, constructed entities—organisations: clubs, companies, associations, or societies—that are defined by explicit rules and characterised by formal criteria of membership and status in the organisation.

Thus, strictly speaking, voting is at best only a legally created power that is written into, or otherwise based on, the constitution of a particular organisation. The constitution or a constitutionally enacted legal rule directly specifies which positions in the organisation imply voting rights. Indirectly, it also determines which natural persons may vote by specifying the criteria that such persons should meet, if they are to be recognised as, or eligible for, occupying one or more of those positions.

In most constitutions voting is only a ‘legal right’, not a legally enforceable duty.²³ So every citizen reasonably may ask himself whether as a self-respecting conscientious person he has the right to make use of the voting right the State has bestowed on him. The answer obviously must depend on the nature of that particular State, what is at stake in elections or other voting procedures, and on how they are organised.

We have seen already what is the nature of a Hobbesian democracy and what is at stake in its electoral proceedings. What about one’s right to take part in those proceedings?

Clearly, if a person believes that he has the right to choose who shall rule everybody in the State he must believe that *he* has the right to rule everybody. That is obvious if—what is the case for many subjects of the State—the electoral rules allow him to be a candidate in the election. It is also obvious if the rules allow him to write the name of an unlisted person on his ballot. In either case, he has the legal right to choose himself as the ruler of all.

²³ In some countries, such as Belgium, citizenship carries the duty to vote (in reality, a duty to show up at a designated place on Election Day). People who do not show up risk a penalty. Nevertheless, Belgian politicians insist that the country has ‘free elections’.

Obviously, a Hobbesian believes that everybody, and therefore he himself, has the right to rule everybody—the right to deny others the right to live their own life and to turn them into mere tools for satisfying his own lust for power. That, after all, is the belief that makes him a Hobbesian. Right is might; right is success.

However, how many Hobbesians are there? Admittedly, many intellectuals profess to be Hobbesians, perhaps because it sounds cool and gives the impression of being a no-sense realist, but observe how they raise their children. In my experience, few of them teach Hobbesianism to their children. Are they honest Hobbesians and lying parents? Or are they honest parents that merely pretend to be Hobbesians when they enter the safe groves of Academia? True, there is a sufficient number of psychopaths in all walks of life to cause concern, but still they are far too few to warrant the presumption that every person is a Hobbesian. There is no reason for assuming that every voter really believes that he (or anybody else) has the right to rule all others. Consequently, if a voter had given the matter some thought, the chances are good that he would have decided that that it was wrong for him to vote. He still might have reasoned that it was nevertheless permissible for him to vote because ‘everybody else was doing it’. Even so, it would not be surprising to find that most people hold moral views that are incompatible with the notion that voting—authorising some to rule others—is a morally permissible act. After all, ‘because everybody else is doing it’ hardly counts as a convincing moral argument, even if it were true that everybody else is doing it—which usually is not the case.

Most likely, people tend to accept that voting is morally proper behaviour, if they do accept it, because they do not assign to their vote the meaning and significance it has under the electoral rules of a Hobbesian democracy. Perhaps they see voting as a mere ‘expression of one’s opinion’ rather than as an action with far-reaching consequences for the lives and fortunes of real people. In one sense, they would be right to see things that way. Their voting, after all, does not—at any rate, usually is not supposed to—change the constitutional powers of the State or its many organs. In that sense, nothing substantially depends on how or even whether they vote. From the legal-constitutional point of view, they will be subject to the same power as before the election. Perhaps, then, they may be excused for thinking that in voting nothing of real importance is at stake anyway. On the other hand, they must have some idea that their votes are intended to make—and occasionally will make—a difference. If they do not, then what is the point of voting? However, in a Hobbesian democracy, the election is about who shall be the Sovereign rulers and wield the power to make or break the lives of countless individuals and upset the affairs of families, associations and businesses. When that is the case, it is not too much to ask that people take a closer look at the electoral process and their participation in it.

Taking the argument one step further, we can ask whether an institution that allows (indeed invites) people to act on the presumption that they have a right to rule others, is morally permissible or reprehensible. It would seem to be a reprehensible institution, if only because it punishes those who reject the

presumption and do not participate in the institution while providing a spurious legitimacy to those who accept the presumption and thereby help establish the rule of some over others.

Democracy is sometimes characterised as government by consent or, more modestly, the consent of the majority. However, Hobbesian democracy cannot be characterised as government by consent unless one assumes that every subject of the State 'consents' to whatever rules it imposes regardless of how or why he or she votes and regardless of whether he or she votes at all. Obviously, under that assumption, elections and voting have nothing to do with proving consent. Apparently, then, with respect to Hobbesian democracy, consent is not related to its democratic aspects; it must reside in its Hobbesian aspect. The arguments are familiar:

First, some voters only vote for a particular party because they fear being ruled by another. Suppose that other party emerges victorious from the election. In what sense do those voters consent to being ruled by the winners? Admittedly, the usual answer, that they consent because they took part in the election and therefore accepted that they might lose, may be true for some but it is not a universal psychological law. One might as well say that a person who defends himself against an attack, unsuccessfully as it turns out, thereby consented to being overwhelmed.

Second, some of those who do vote, whether for the losers or the winners, may realise that they will be ruled in any case, regardless of how or whether they vote. Consequently, any one of them may reason that by not voting he assuredly gains nothing while by voting he has a remote chance of being the swing voter. Voting for that reason hardly shows consent. In the same way, buying a ticket in a lottery where the prizes are funded by a tax on participants and non-participants alike is not likely to be an endorsement of that lottery. It is more likely to be a somewhat pathetic attempt to minimise the loss imposed by the tax. Here, we see that Hobbesian democracy cannot even claim to be government by consent of the majority. The number of people who vote only because they feel pressured to do so may be large. The swing voters may be among them. That they vote for a particular party does not mean that they consent to being ruled by it.

Third, in what sense do those who do not exercise their voting power consent to being ruled by whoever wins the election? It might be argued that those who say nothing consent, but that argument obviously is fallacious. Some of those who do not vote may do so because they understand, however dimly, that there is something wrong with giving a few ambitious men or women the power to rule others. To interpret their 'abstinence' as an expression of consent is scandalous.

Of course, as we have seen, Hobbesian 'consent' is merely a euphemism for being the underdog. The ruled consent to the rule of the rulers because, according to the Hobbesian logic, being ruled is a sufficient validation of the claim that one authorises the rulers to rule.

Institutionalised irresponsibility

In a Hobbesian democracy, elections are constitutional devices for electing rulers with ‘sovereign power’. Those rulers are not responsible in any meaningful sense of the word. The same is true for the electorate and every individual voter. Admittedly, the elected rulers may be voted out of office—a possibility some cite as proof that in a Hobbesian democracy the rulers are ‘politically responsible’. However, few (if any) constitutions tie elections to any regular or institutionalised form of giving accounts. As Democritus already remarked, the voters may refuse to re-elect the incumbents for good or for bad reasons, or even for no reason at all.²⁴ Moreover, most of the time, ‘political responsibility’ merely means that some agents of the State have to give accounts of their actions to other agents of the State. However, that is common practice in all complex organisations. It is not a peculiar feature of Hobbesian democracy.

More importantly, those who are victimised by the rulers’ laws and policies have no regular way for seeking redress against either the rulers or the voters that put them into the positions of power in the first place. The voters ‘authorise’ the rulers and therefore should be legally responsible for the rulers’ actions. Of course, no one else than the rulers themselves can determine whether or how the voting public can be made to answer and make amends for its choices. As a rule, neither the rulers nor the voters are liable for anything that they do or might do as long as they stay within the legal form of their constitutionally defined powers. However, there is little comfort in that proviso. Whereas the Sovereign’s procedures for reaching decisions usually are well defined, there is virtually no constitutional—and certainly no effective—limit to the things he may regulate, command, forbid, permit, tax, punish, or subsidise. In that respect, his powers typically are constitutionally undefined. Similarly, as far as the voting procedures are concerned, the voters’ constitutional powers are well defined but there is virtually no limit to the sorts of programs for or against which they may vote.

Even if most rulers and voters were decent ‘responsible’ people then that would be no substitute for institutions that put a heavy price on personal irresponsibility. A hereditary monarch too may be a ‘responsible’ person. Moreover, everybody knows the king, and the typical king expects to remain in office for the rest of his life and to be succeeded by an heir. Because he is likely to be blamed for everything that goes wrong, he also has an incentive to legislate and to make policy for the long term. That is also true for his entourage of councillors and ministers, who actually are responsible to their ruler and whom he may hold liable for their deeds (especially if they jeopardise his prestige, let alone his position). Consequently, there is a good chance that he is under strong pressure to be, or at least to appear to be, a decent person. In contrast, none of this is true for the anonymous voters of a Hobbesian democracy. Very little of it is true for its elected rulers, whose

²⁴ “[I]f there is some error or omission in public business the cry of disapproval goes up even though no dishonest or wrongful act is involved.” (As quoted in Eric A. Havelock, *The Liberal Temper in Greek Politics*, Jonathan Cape, London 1957, p.150)

political careers are always open to a challenge in the short term. They are rather like Machiavellian princes, always fearing the competition will sway large groups with demagogic promises and accusations. Accordingly, they have a strong incentive to make public policy for the short term, especially policy with immediate benefits (however small) and delayed costs (however large). At the same time, they have an incentive to plan for the long run of their own future. They can do so by ingratiating themselves to particular organised interests that will reward them with lucrative appointments when their political life is over. Alternatively, they can set up and seek leading positions in permanent State-dependent organisations, agencies and bureaus beyond the pale of electoral censure.

In a Hobbesian democracy, we may conclude, irresponsibility rules virtually unchecked. Only a fortuitous abundance of saintly characters among the voters and the politicians can mitigate that judgement. Surely, if 'responsible government' carries any positive connotation at all, no further argument is necessary to defend the claim that Hobbesian democracy is among the worst forms of government one can imagine.

Democracy, representation and the idea of a lawful constitution

We should keep in mind that democracy did not get its good name from the modern practice of Hobbesian democracy. Democracy is not a well-defined concept. Let us leave aside fashionable question-begging conceptions of democracy as the production of 'democratic values'. Let us concentrate instead on conceptions that stress democratic procedures (elections, voting) to fill certain positions, or to arrive at decisions, within an organisation. Within the latter category, conceptions of democracy oscillate between two extremes.

The prevailing conception of democracy arguably is inspired by the nineteenth and twentieth century's drives toward 'universal suffrage'. Let us call it 'political democracy'. It rests on the mostly implicit assumption that the more people are entitled to vote on any issue the better ('more democratic') the decision regarding that issue is likely to be. Taken to its logical conclusion, it implies that everybody within the organisation should be entitled to vote on any issue. In a Hobbesian democracy, where the subjects supposedly authorise the Sovereign to legislate and make policy on any issue, universal suffrage seeks to substantiate their authorisation as a legal right to take part in the election of the Sovereign.

On the other hand, there is the traditional conception of democracy as an institutionalised defence against tyranny and arbitrary rule. Let us call it 'lawful democracy'. Its basic idea is that in taking care of their own affairs people should not be subjected to the will of others. It implies that there should be a close connection between the set of those entitled to vote on an issue and those likely to bear the costs of the decisions taken (or enabled) by the voters. Thus, from the perspective of 'lawful democracy', a decision-procedure is more 'democratic' if fewer people with no voting rights are affected by it and if fewer of those that are not affected control any voting power.

We can define a simple measure of ‘lawful democracy’.²⁵ With respect to any decision, let $m(V)$ stand for the measure of the set of voters. Let $m(A)$ stand for the measure of the set of people who risk being victimized or, as we shall say, affected by the decision. Then, $m(V+A)$ measures the set-theoretical sum of the sets of voters and affected persons, and $m(VA)$ measures the set-theoretical product of those sets. Complementary sets are designated with an apostrophe: V' (non-voters), A' (non-affected persons). A simple measure of a set is the number of people in it.²⁶ In that case,

$$m(V+A) = m(VA) + m(V'A) + m(VA')$$

The following formula defines a measure of ‘lawful democracy’:

$$D = \frac{m(VA) - [m(VA') + m(V'A)]}{m(V+A)}$$

$D=1$ (‘democracy’ is at a maximum), if every person affected by the decision has a vote in the decision-making process and every voter is a person who is affected by the decision: $m(VA')=m(V'A)=0$ and $m(VA)=m(V+A)$.

At the other extreme, $D=-1$ (‘democracy’ is at a minimum), if no voter is affected by the decision and no affected person has a vote: $m(VA)=0$ and $m(V+A)=m(VA')+m(V'A)$.

In a lawful democracy, steps are taken to ensure that D is as close to 1 as is possible. ‘Lawful democracy’, therefore, is akin to the traditional operations of ordinary courts, which require any persons who were not obviously involved in a case to show why they nevertheless should be admitted or heard. Indeed, this conception of democracy is linked to the idea of the rule of law, which implies that issues should be decided ‘in justice’, according to the rights of all the parties involved in them and not according to the opinions of outsiders.

Hobbesian democracy, in contrast, presupposes that all the subjects of an absolute Sovereign ‘authorise’ all his decisions. It implies that they should have a right to elect the Sovereign, whether or not all, most or only some of his decisions affect them in a relevant way. In this context, political democracy tends to enlarge the set of people that have voting rights even with respect to decisions that do not affect them in any direct or obvious way. Of course, it is possible, in theory, that every subject is similarly and relevantly affected by every decision taken by the Sovereign. Political democracy provides a defence against tyranny if, but only if, that is the case. However, it is the case only if we restrict voting to a very small, and possibly empty, set of

²⁵ See my *Mens, Burger, Fiscus*, Shaker Publishing, Maastricht 2000, p.75-76

²⁶ Obviously, there are other measurements than counting heads. They involve a comparison of the number of votes or the weight of a person’s vote regarding any decision with the severity of the decision’s costs that would affect that person. For the sake of simplicity, we assume that a simple counting of heads gives us an acceptable measure of the relevant sets.

decisions,²⁷ or else use very lax criteria for determining when a decision relevantly affects a person. The more likely outcome is the so-called tyranny of the majority. For any particular decision made by the elected Sovereign, D probably is negative or at best close to zero.

Of course, the idea of universal suffrage need not be linked to a Hobbesian democratic regime. Indeed, historically, it was not. Elections were introduced in the Modern State as part of a constitutional revolution that was intended and designed to institute the rule of law and to safeguard freedom and justice while maintaining the State's effective monopoly on the means of violence. Admittedly, apart perhaps from a desire to find some place for the king in the new constitutional order, there was no obvious reason why one should have such a monopolistic organization of law enforcement. It certainly was not implied in the notion of the rule of law. However, reform of the State proved a much easier sell than replacing it with a network of organizations of self-defence, even if a monopoly of law enforcement invited the obvious question, 'Who shall guard us against our guardians?' The easy but naïve answer was to have an Assembly of Representatives, to be elected by the people, to see to it that the State's executive power did not overstep the boundaries of its legitimate activity of law enforcement. To that effect, the elected Representatives of the People were to formulate legal rules that would bind the State and its agents to respect for the rule of law. How the Representatives or the people they represented should be enabled to enforce those rules against a recalcitrant or ambitious government apparently was not an immediate concern.²⁸ It was hoped that having elected representatives oversee government activities would be a sufficient guarantee in itself. In any case, the election of representatives became a central element in the arguments for a lawful constitution.

Thus, the office of the Representatives of the People was to see to it that the executive power did not use its power to violate or diminish the rights of any individual or lawful association. The representatives would do so by legislative acts, which would not bind the people but would bind only the 'executive' to the performance of its constitutional duties—essentially, maintaining law and order and providing defence against foreign attacks. In short, the Representatives' primary obligation was to make sure that there were no rulers and therefore also no subjects.

Here we have the essence of a lawful constitution. The representatives are mere representatives, not rulers in their own right or supporters or servants of the rulers. They should have no power over the people they represent.²⁹

²⁷ A simple way to 'force' involvement is to have some general scheme of taxation or compulsory insurance that makes everybody equally liable for the costs of any decision. However, such a scheme obviously must have been instituted by a previous decision.

²⁸ A militia that would respond to the Representatives' but not to the government's call might suffice to enforce the requirement of legality on the government. Alternatively, taxation might be banned to keep the government financially dependent on the goodwill of the population.

²⁹ This insight led Rousseau to insist that the legislative power should rest with the people, not with any representatives. He quoted with approval from the Marquis d'Argenson: 'In the

Indeed, the idea of a lawful constitution rests on the presupposition that the people are grown-ups, who need no one else to rule their lives. For their mutual dealings and interactions, the rule of law would suffice—and, of course, the rule of law is not the rule of legislators, whether elected or not. Consequently, the basic requirement of a lawful constitution is that the Representatives of the People be denied the power to subject the daily life and work of the people to a regime of legal rules. Only when people were supposed to act as ‘citizens’—for example, as voters, Representatives or agents of the State—would a legislative definition of their roles and functions be appropriate.

Representation is a triadic relationship: A (the agent) represents B (the principal) before C (the third party), where A, B and C are different persons.³⁰ In its pure form, the agent cannot bind the principal to any agreement with the third party without the principal’s express consent. In political history, representatives of the estates (nobility, clergy, and burghers) started out on this basis. They represented certain classes of people in the assemblies convoked by the king but could not make agreements with him that would bind their principals.

Corruption entered the relationship when the king declared that he would deal only with representatives endowed with *plena potestas*. Then, the principals’ consent to any deal between the representative and the king supposedly was implied in the principals’ choice of the agent. The idea of representation became even more corrupted when the kings succeeded to transfer the representative function from the individual representatives to the representative assembly itself. Then, the consent of a simple majority of the representatives was sufficient to bind all of the representatives and all of the people they represented.

The agents and the king effectively became the rulers of the people represented by the former. Struggles between the king and the representatives led to an elimination of either the representatives (royal absolutism) or the king (parliamentary absolutism) and to the assumption of *plenitudo potestatis* by the victorious party. The notion of ‘plena potestas’ still had presupposed that the representative could act only within the limits of his mandate. ‘Plenitudo potestatis’ went beyond that restriction. It meant that the rulers could act (legislate) as they pleased concerning any matter that was not

Republic, everybody is perfectly free in every matter that does not harm others.’ Rousseau added the comment: ‘Behold, that is the unchangeable boundary [of the right that the Social Contract gives to the Sovereign over the subjects]; one could not say it better.’ Footnote to *Du Contrat Social* (1762), Book IV, chapter VIII. However, Rousseau got trapped in the absolutist logic of Sovereignty, which made the Sovereign People (an artificial person if ever there was one) the judge of everything in ‘the republic’.

³⁰ Under the original American Constitution, an Electoral College elected the President, the head of the executive power. That procedure set him apart from the members of the House of Representatives as well as the members of the Senate. He was neither a Representative of the People nor a Representative of the States. See Randall G. Holcombe, “The Electoral College as a restraint on American democracy: its evolution from Washington to Jackson”, in John V. Denson (ed.), *Reassessing the Presidency: The Rise of the Executive State and the Decline of Freedom*, Mises Institute, Auburn AL 2001, p. 137-168.

effectively put out of bounds by constitutional law or widely shared religious or moral convictions. It signified that the rulers had arrogated to themselves the right to do anything that was not expressly and effectively forbidden to them. Instead of exercising delegated and enumerated powers, they acted on the principle that they were sovereigns who could legislate for their subjects in any way they wanted (or on which they could agree).

Thus, the triadic relationship of genuine representation was reduced to a dyadic relationship of spurious representation, which together with *plena potestas* and *plenitudo potestatis* is a characteristic of absolutism: A represents B before A himself. As we have seen, the Hobbesian theory implied that the king himself represents the subjects before the king. The corruption of the constitutional idea and its implementation in the European States similarly implied that the Representatives of the People represent the people before the Representatives of the People. Hence, Rousseau's famous jibe against 'English liberty'.³¹ Indeed, in its dyadic form, 'representation of A by B' merely is a euphemism for 'B rules A'.

When 'the Assembly decides by majority vote' replaces 'each Representative Agent in the Assembly decides for his principals' as the principle of representative decision-making then the control of voting blocs in the Assembly becomes of paramount importance. Cabals, factions and eventually political parties emerge to make or break coalitions and to gain control of the Representative Assembly.

In a genuine lawful constitutional system, it does not matter very much whether there is no or only one party, or whether there are two or more parties, to represent the people. That is so because the representatives cannot bind the people they represent but only the executive or law-enforcing power in the presence of which they represent the people. There is no need to form a firm and durable majority coalition within the Assembly of Representatives, which is a deliberative body in which all the members are constitutionally committed to the same agenda of protecting the rule of law against abuses and excesses committed by the executive.

In such a lawful constitutional regime, universal suffrage and the presence of numerous parties probably are the best guarantees to ensure that the assembly of elected representatives is as representative of the people as it practically can be. Hence, 'democracy'—interpreted as a constitutional device for electing genuine representatives—appears to be an unqualified good thing and an effective safeguard of the rule of law and the rights and freedoms of people. However, that principle of 'democratic' representation has nothing to do with the Hobbesian democracy that we have today.

³¹ J.-J. Rousseau, *Du Contrat Social* (1762), Book III, Chapter XV. "The English think they are free; they are wrong. They are free only when electing the Members of Parliament. As soon as these have been elected, the people are slaves—they are nothing. In those short moments of liberty, they well deserve to lose it because of the use they make of it."

