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Voting the General Will

Rousseau on Decision Rules

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Scholars exploring the logic of Rousseau's voting rules have typically turned to the connection between Rousseau and the Marquis de Condorcet. Though Condorcet could not have had a direct influence on Rousseau's arguments about the choice of decision rules in *Social Contract*, the possibility of a connection has encouraged the view that Rousseau's selection of voting rules was based on epistemic reasons. By turning to alternative sources of influence on Rousseau—the work of Hugo Grotius and particularly that of Samuel Pufendorf—a moral, and not purely epistemic, logic of rules governing collective decision making emerges. For Rousseau, as for Pufendorf, the proper choice of voting rule can elicit the appropriate attitude of an individual with respect to the decision of the whole, and can support the morally significant activity of acknowledging error upon discovering that one has voted against the general will.

Keywords: *Rousseau; Condorcet; Pufendorf; majority rule; general will*

Although Rousseau held that the general will should be evident in a well-ordered society, a vote is nonetheless required to identify it. Since the exercise of sovereignty depends upon the proper determination of the general will, Rousseau carefully specified the structure of the voting procedure by which the general will may be discovered. In particular, Rousseau considered the appropriate proportion of the vote necessary for confidence that the general will has been correctly determined. Although these institutional features of Rousseau's political writings may be thought to be epiphenomenal at best and trivial at worst, Rousseau was sharply attuned to

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the challenges facing an assembly tasked with creating law for the good of the whole. Both in his political theory and in his constitutional writings, Rousseau provided detailed accounts of the mechanisms by which the abstract general will could be transformed into positive law. This was not magical, of course, but distinctly political: only through attention to voting rules could we ensure that an assembly had indeed identified the general will, as opposed to the private will of some of its members.

In *Social Contract*, Rousseau argued that though in most cases the vote of a simple majority could suffice to discern the general will, a qualified-majority threshold might be necessary for more important matters, such as the creation or abrogation of fundamental law. To contemporary readers, the reasons for requiring a qualified majority threshold for especially significant decisions may seem obvious: such a rule may ensure that the choice to enact or alter a rule has widespread support or may reduce the risk that changes will occur with destabilizing frequency. Yet the use of qualified majorities in Rousseau's work is paradoxical. If law is not a genuine expression of the general will, it is illegitimate; that is, it does not oblige us. However, if law is in fact a product of the general will, the number of votes in the majority should be irrelevant. Once the process of discerning the general will amounts to the counting of particular individuals' votes, the outcome appears to become simply aggregative: in Rousseau's language, the general will seems to have slipped into the will of all.¹ As such, Rousseau's defense of supermajority rules is counterintuitive and provocative, requiring explanation. Focusing attention on the way in which specifying particular vote thresholds can be made reconcilable with the overarching moral logic of the general will enable us to gain new insights into the normative foundations of collective decision rules.

The move from simple-majority to supermajority rule in Rousseau's thought is usually thought to be on epistemic grounds: the vote of a supermajority is more likely to be correct—that is, to accurately capture the objective content of the general will—than is the vote of a simple majority.² Yet the epistemic story does not adequately explain the move in the opposite direction, i.e., from unanimity to a weaker threshold. In contrast to a strictly epistemic view of Rousseau on voting rules, I argue here that Rousseau weakened the vote threshold from unanimity to a majority or supermajority not merely because these lower thresholds had an extremely high probability of capturing the general will and were pragmatically achievable. He did so because he recognized that there are moral benefits to shifting from unanimity to majority and to qualified-majority rule. By weakening the vote threshold, we reduce the incentive for an individual to vote on the basis of their particular

interest—the single vote of an individual cannot derail an outcome—and instead encourage voting in accord with the common interest. Furthermore, should the individual be outvoted, such a voting scheme encourages her to acknowledge that she has probably erred.³ Non-unanimous voting thresholds thus enhance the moral motivation of a voter, both *ex ante*, by reducing the incentive to derail an outcome, and *ex post*, by inducing the voter to accept that her judgment of the general will is fallible. As such, qualified-majority rule may induce unanimous outcomes for the right reasons.

This moral, and not merely epistemic, dimension of Rousseau's work on voting rules emerges once we read him in light of Hugo Grotius and Samuel Pufendorf rather than the Marquis de Condorcet, as has become common today. Brian Barry's 1965 *Political Argument* may have been the first to note the parallels between Rousseau's account of majority decision-making and Condorcet's jury theorem.⁴ Although Barry did not provide a historical account of the connection between the two, he did highlight the commonalities between Rousseau and Condorcet and provided the grounding for an epistemic understanding of the general will.⁵ Grofman and Feld developed Barry's intuition, demonstrating that reading Rousseau through Condorcet explained some of the more cryptic passages in Rousseau's account of the general will. Grofman and Feld noted that the Condorcet jury theorem holds that if the average competence (measured in terms of the probability of an individual reaching the correct decision) is greater than .5, as the group expands in size, the probability that the majority will reach the correct decision increases to 1. Furthermore, Grofman and Feld held that the Condorcet jury theorem could illuminate Rousseau's use of supermajority decision rules. For particularly salient matters, or those which are especially prone to errors in judgment, "we might wish to require more than a bare majority vote, since this will reduce the error level since it can be shown that the more votes there are in favor, the more likely is the group judgment to be correct."⁶

This epistemic account, in my view, accurately characterizes in large part the nature of the vote to determine the general will,⁷ although it is worth noting that a voting rule that privileges the minority may subvert the Condorcetian account.⁸ Yet Condorcet could not have influenced Rousseau's thinking on decision rules, at least not in the *Social Contract*. Although Grofman and Feld suggested that Rousseau might have learned of Condorcet's work from Diderot, who in turn might have been introduced to it by d'Alembert, Estlund demonstrated that the causal arrow more plausibly pointed in the opposite direction. Following Baker, Estlund pointed out that Condorcet and d'Alembert did not become acquainted until after the publication of the *Social Contract*, whereas Condorcet would certainly have known of Rousseau's work by the time he

wrote the *Essai sur l'application de l'analyse à la probabilité des décisions rendues à la pluralité des voix*.⁹ As Baker noted, the earliest possible date of an initial (and likely unfavorable) encounter would have been 1761, but their relationship probably did not develop prior to 1763; by 1765, d'Alembert had become Condorcet's patron.¹⁰ One possibility is to say, with Grofman and Feld, is that these ideas were "in the wind."¹¹ Alternatively, Paul Weirich has suggested, "An early, intuitive appreciation of the theorem led him to advance majority rule as a method of estimating the general will in cases where voters express opinions of the general will."¹²

Yet once we examine Rousseau's response to Grotius and to the influence of Pufendorf rather than of Condorcet on Rousseau's discussion of voting rules, Rousseau's reasons for the adoption of majority and supermajority voting rules become clearer. The outcome of these votes under these rules would indeed have epistemic significance—they would be quite likely correct—but they would also possess moral force insofar as they induced outvoted minorities to recognize that they had likely erred. The reason for Rousseau's general aversion to unanimous voting rules—though in a well-ordered society the outcome of the vote should indeed approach unanimity—is thus not simply on pragmatic but on moral grounds. A supermajority rule, perhaps paradoxically, actually enhances the likelihood of a unanimous vote by eliciting the appropriate attitude of an individual with respect to the decision of the whole; further, it helps to support the morally significant activity of acknowledging error upon discovering that one has voted against the general will.

Grotius and Rousseau on the Unanimous Basis of Majority Rule

In Judith Shklar's words, Rousseau held Grotius in "open contempt."¹³ In the early chapters of *Social Contract*, Rousseau targeted Grotius' theory of consent, famously criticizing Grotius' defense of the ability to willingly alienate one's freedom to a master, which in turn generated a duty to remain a slave and a right of command for the master, both among private individuals and among people and their rulers. Perhaps surprisingly, it is in this context that Rousseau argued that the substitution of majority rule for unanimity required a unanimous decision.¹⁴

Book I, chapter V, is densely written and at points opaque. Rousseau had demonstrated in the previous chapter the incoherence of the supposed ability

to renounce one's freedom, and that neither slavery nor political authority could legitimately derive from the right to kill the vanquished. He began chapter V by arguing that even if it were permissible to rule a subjected multitude, this would still not create a genuine ruler and a people. Instead, it would simply be the might of one private individual master over an aggregation of slaves, which would cease upon the death of the master. Continuing, Rousseau then cited Grotius' claim that a people could willingly submit to a king and argued that this meant that: "So that according to Grotius, a people is a people before giving itself to a king. That very gift is a civil act; it presupposes a public deliberation" (I, v, 2).¹⁵ Now, nothing in the account of Grotius that Rousseau had replied to thus far suggested that there could not have been a prior collective decision to form a people ("the true basis of society") and then a second agreement to surrender its freedom to a monarch: moreover, even if such a decision had occurred, as Rousseau had just argued, it would be illegitimate, underscoring the apparent peculiarity of this claim. The argument in chapter V then took a turn toward what might seem to be a wholly irrelevant issue in the context of his argument against the right of slavery, the obligation of a minority to obey the decisions of a majority:

Indeed, if there were no prior convention, then, unless the election were unanimous, why would the minority be obliged to submit to the choice of the majority, and why would a hundred who want a master have the right to vote on behalf of ten who do not want one? The law of majority rule is itself something established by convention, and presupposes unanimity at least once. (I, v, 3)

Why would Rousseau have argued this point in this context? He seems to have meant that an (illegitimate) decision by a majority vote to alienate freedom to a monarch would have first required a unanimous decision in which a simple majority vote was selected as the decision rule—unless, of course, the decision to alienate the people's freedom had been unanimous. Yet even if the decision were unanimous, it could not have been legitimate: Rousseau had just argued repeatedly that a man could not alienate his freedom, period. Among the many claims: "such an act is illegitimate and null, for the simple reason that whoever does so is not in his right mind. To say the same of a whole people is to assume of people of madmen" (I, iv, 4); "To renounce one's freedom is to renounce one's quality as man, the rights of humanity, and even its duties. . . . Such a renunciation is incompatible with the nature of man, and to deprive one's will of all freedom is to deprive one's actions of all morality." (I, iv, 6)

So why would Rousseau devote an entire chapter at the beginning of *Social Contract* to explaining the logic of political decision-making in an illegitimate context and to discussing the origins of majority rule in these circumstances? Let us turn to the passage of Grotius' *On the Law of War and Peace* to which Rousseau was apparently responding. In "On the acquisition of rights over persons," Book II, ch. V—the chapter in which he also discusses voluntary slavery, the target of Rousseau's wrath in *Social Contract* I, iv—Grotius defended the right of the "major Part" to make decisions obliging all of the members of the society (II, v, 17) and in the sections that followed the legitimacy of majority rule more generally.¹⁶ Grotius had claimed that in any society, "in Matters for which each Association was instituted, the whole Body, or the major Part in the Name of the whole Body, oblige all and every the particular Members of the society" (II, v, 17). This move, from unanimity to majority, was made in part for pragmatic reasons—the need for an efficient means of conducting business ("some Method fixed of deciding Affairs") and because it would be "altogether unreasonable" that the minority should decide for the majority. He affirmed that "naturally" the majority "has the same right as the entire body," citing Thucydides, Appian, Dionysius Halicarnassensis, Aristotle, Curtius, Prudentius, and Xenophon in support.

In light of this passage, the surprising context of Rousseau's argument in Book I, chapter V becomes explicable: his aim there was to identify a tension in Grotius' argument. Grotius' claim that the majority of the people had the right to subject the whole would have required a prior unanimous vote on the part of the people to enable the majority to act on their behalf. The capacity to enact such a rule thus presupposed that the people had a will, i.e., the capacity to make binding political decisions. Even subjection of a conquered people required either express or tacit consent (III, ix, 1), which thus presupposed a body capable of granting such consent. In Rousseau's view, once a people possessed a will, such a will could not be alienated: he had thus demonstrated that the existence of majority rule signified the prior existence of a popular will and that the choice to subject such a will was incoherent.

Although Rousseau's critical response to Grotius may clarify the presence of this argument in the surprising context of Book I, chapter V, there are good reasons why Rousseau would not have wished to empower a majority to discern the general will. Given Rousseau's explicit focus on autonomy, majority rule would have seemed an unattractive recourse: would we not have expected a unanimous decision rule?¹⁷ Since legislation was to be a rare act (IV, i), it would also seem that pragmatic reasons for substituting majority for unanimity would not weigh heavily: the government would

resolve matters requiring haste, after all. So what could have led Rousseau to defend majority rule in the first place? To begin to understand Rousseau's argument, we should first turn to Grotius' great follower, Samuel Pufendorf.

Pufendorf and Rousseau on Majority Rule

Whereas Rousseau famously called Grotius an "enfant de mauvaise foi," he is quite likely to have recommended Pufendorf's Law of Nature and of Nations to Diderot. Diderot in turn drew heavily on Barbeyrac's translation of Pufendorf for several articles (e.g., *autorité politique*, *cit *, *citoyen*) in the *Encyclop die*.¹⁸ Rousseau, as Robert Derath  noted, criticized Pufendorf in the *Second Discourse*, rejecting Pufendorf's arguments on the ability to alienate freedom in *Law of Nature and of Nations* (VII, iii, 1).¹⁹ He implicitly does so as well in *Social Contract* in Book I, ch. 4, "On Slavery," in which he cited "Grotius and others" who "derive from war another origin of the alleged right of slavery." Affirming Ren  Hubert, Derath  wrote that "*Rousseau . . . a eu presque constamment pr sentes   l'esprit les theories de Pufendorf et s'est propos  de les r futer*."²⁰ Yet in asking why Rousseau—who was not inclined to pull his punches in criticizing Grotius and Hobbes—seemed to have treated Pufendorf with a considerable degree of moderation, Derath  argued that Rousseau was so indebted to Pufendorf's ideas that he felt for him something like "les sentiments d'un  l ve pour son premier ma tre."²⁰ Such influence is clear in Rousseau's discussion of voting rules.

In "On the Law of Nature and of Nations," Pufendorf took up the question of how and under what circumstances a unanimous vote, the vote of a majority or the vote of a supermajority could bind the whole. Here, we see most clearly a possible source of Rousseau's argument that the legitimacy of majority rule was predicated on a prior unanimous vote: Pufendorf, who both followed and criticized Grotius' arguments in his account of the creation of political society. According to Pufendorf, to constitute a civil state requires a covenant forming the commonwealth, a decree specifying the form of government, and a second covenant conferring sovereignty on the rulers. The first covenant joins a "multitude" into a "Commonwealth": "Here it will be necessary, first of all, that they covenant each with each in particular, to join into one lasting society, and to concert the measures of their welfare and safety, by the publick vote." (VII, ii, 7) One can make either an absolute or a conditional covenant. In the former case, a person obligates himself to "stick to this society, whatever form of government shall afterwards be approved by the major part." (VII, ii, 7) In the latter

case, one joins only conditional on the selection of a form of government that is “agreeable to his private judgment.” If a regime is selected that he does not endorse, he “shall not become members of the new state, nor be concluded by the vote of the majority.” (VII, ii, 7) To form a commonwealth, then, requires unanimous consent, although one may choose *ex ante* to remove oneself if one disagrees with the decision of the majority.

In discussing the implications of conferring “supreme authority” on a council, Pufendorf took up the question: “What number of these persons, agreeing in the same resolution, shall represent the will of the council, and, by consequence, of the state?” (VII, ii, 15) A council may be governed by a unanimity rule, wherein each member expressly reserves to himself the right of veto (a “bod[y] incorporate”): unless a person has “subjected his will to the will of the other party,” he is under no obligation to follow another’s judgment and to submit himself to any decision to which he has not consented. Under these circumstances, the “decrees of the majority shall not, in the least, affect him, or force his compliance” (VII, ii, 15). Note, then, that an individual, in choosing to join society, may elect whether or not he wished to be bound by the common vote: he may expressly specify “that he will not be obliged by anything to which he doth not give his consent” (VII, ii, 15). Similarly, Rousseau held in IV, ii, that those who opposed the contract at the time of the pact were simply not bound by it and could remain “foreigners among the citizens” (although once the state was adopted, they were obliged via residency to obey). “Except for this primitive contract,” Rousseau argued, “the vote of the majority always obligates the rest; this is a consequence of the contract itself” (IV, ii, 7). Thus: the obligation to abide by a majority decision (on the decree specifying the form of government) requires a prior unanimous decision.²¹ This, then, may suggest that Rousseau’s anti-Grotian argument—that a unanimous vote was required to adopt majority rule—was in part traceable to Pufendorf.

For Pufendorf, a significant reason for adopting majority rule was pragmatic: although there is no “necessity of this, by the appointment of nature” to accept that the “votes of the majority in assemblies have the force and virtue of a general decree . . . there is hardly any other possible means of transacting business amongst numbers” (VII, ii, 15). More significantly, Pufendorf also offers a moral defense of majority rule here, one that does not simply consist in an argument that unanimity is simply impractical. Pufendorf suggested that there is a positive virtue in acquiescing to the majority. Although the obstinate member of an assembly may retain the right of veto, to exercise such a right without good reason would be to

violate “the obligation of a general law, to which commands him to shew himself friendly and easy to others, and, as a Part, to conform himself to the Good of the whole” (VII, ii, 15).

Pufendorf repeatedly expressed concern that people would cling to their own opinions out of arrogance or obstinacy. In this context, he argued that in meetings of large groups, business often “falls and comes to nothing, by reason of the difference of men’s judgments, and the impregnable obstinacy of some tempers” (II, ii, 15). Even ostracism may be necessary: in cases in which a person “absolutely refuseth to hearken to reason, and out of meer stubbornness opposeth who are in the right opinion, he may be expell’d the society as a nuisance, or, in some cases, may be brought to farther punishment” (VII, ii, 153). It seems that although Pufendorf clearly had grave concerns that even in society, people would be obstinate and quarrelsome, he viewed an appropriate decision rule as a potentially effective means of countering this tendency.

Pufendorf argued that people were obliged to accommodate the views of others, and not to stubbornly insist on their own views, lest they face exile or worse. An assembly, for Pufendorf, served as a forum in which the human inclination to quarrelsomeness could do its worst, but decision-making bodies also could, with the proper incentives and decision rules, elicit and enforce the recognition of one’s own fallibility. Previously in Book VII, Pufendorf had argued that the law of nature would be insufficient to ensure peace, because “Few there are of so happy and noble a temper as to have, at the same time, that piercing sagacity, which may discern what is for the lasting advantage of all men in general, and of each in particular” (VII, i, x). This was on two grounds: first, “the greater number are, on account of their natural dullness, imposed upon by gross error in the likeness of reason”; second, “violence of their passions,” lust, and “false appearance of advantage.” He continued: “Now in so endless a diversity of opinions, what hopes can there be of peace and agreement, whilst every fool is as strongly conceited of his own way, as the wisest man is convinced of *his*, and the former will no more submit to the latter than the latter will condescend to be instructed by the former” (VII, i, x, italics *his*).

In light of these arguments, we might expect an elitist account of political rule, or perhaps a Millian decision rule that would maximize the votes of the wisest. Yet we have no such argument in Pufendorf. Instead, Pufendorf offered a moral defense, grounded on an epistemic conception of collective decision-making, of why an individual ought to submit to the majority decision: because to do otherwise would be to suggest that he

“think[s] himself wiser than all his fellows.”²² Pufendorf wrote that some would argue that the “weaker opinion of many” should not “outweigh the wiser opinion of the few”—and that “in determining speculative truths, opinions are not passed by number, but by weight: and the multitude of patrons is itself looked on as a mark of error” (LNN, VII, ii, 15). But he replied that this was a singularly mistaken view of the “business in an assembly, the members of which have all an equal right to influence the proceedings. For who shall be the judge here where the opinion is wiser?” (VII, ii, 15) The members are divided by self-interest and belief in their own intelligence and take a malicious interest in rejecting others’ suggestions. Appeal to an arbitrator will just lead to infinite regress. Thus, “It hath been therefore thought most proper to enter upon a method as should be the least exposed either to difficulty or uncertainty: and none can be invented which should answer this character better than the counting of voices” (VII, ii, 15).

This is the case especially because of the assumption that the members of the assembly will be competent. On this point, Pufendorf was careful and emphatic.

Besides, whoever is allow’d the privilege to vote in a council is presumed of sufficient ability to penetrate and comprehend all affairs that shall fall under their deliberation. Which must be allow’d to be true of those Councils, at least, into which persons are not admitted without some kind of choice and approbation of others. Neither would it be always expedient to give any one man in the council . . . the power of controlling the whole matter by his vote, and declaring which of the opinions is the better. For if the prerogative should be granted to him, he might prefer the judgment of the smaller party to that of the greater; nay he might reject both Proposals on pretence that neither was good; and thus he would, to all intents and purposes, be the sole and arbitrary governor of the state. (VII, ii, 15)

The very ability to engage in collective decision-making thus presupposed competence. In the absence of the belief both that the individuals were of “sufficient ability”—despite the possibility of error—and that the assembly or council as a whole was collectively capable of acting rightly, no decision could have epistemic validity. Once the rightness of collective decisions could be called into question by one with the ability to judge and without a healthy suspicion of his own competence, tyranny was not far off: “absolute princes,” Pufendorf wrote, can take the advice of the “fewest of their counselors, or may take such measures as are contrary to the opinion of them all”

(VII, ii, 15). According to Pufendorf, since no one can serve as a judge of the wisdom of the outcome, and since each person “think[s] his own parts and wisdom more considerable than his neighbors,” the only option is to deem correct the outcome of a decision by a presumptively competent majority. The absence of such a belief in the ability of the assembly or council would lead both to the breakdown of society and the end of non-arbitrary government, Pufendorf suggested.

Such language is evocative of Rousseau’s claim that when the characteristics of the general will are no longer in the majority, “regardless of which side one takes there no longer is any freedom” (IV, ii, 9). Indeed, Pufendorf’s view that an individual must approach collective decision-making from the perspective of humility and confidence in the judgment of others is closely related to Rousseau’s own. In the chapter on voting at Book IV, ch. ii, of *Social Contract*, Rousseau famously argues that an individual’s vote that does not accord with the general will is necessarily wrong. “The tally of the votes yields the declaration of the general will,” Rousseau wrote “Therefore when the opinion contrary to mine prevails, it proves nothing more than I made a mistake and that what I took to be the general will was not” (IV, ii, 8). Drawing on Pufendorf, Rousseau held that the ability to replace unanimity with majority rule requires an assumption in the capacity of the assembly to reach a correct outcome. There is indeed no loss of autonomy in substituting majority rule for unanimity if the majority is capable of identifying the general will—which, lest all be lost, it must be able to do.

As in Pufendorf’s work, for Rousseau, it is not simply that majority rule constitutes a more efficient means by which the general will could be identified. Majority rule instead possesses distinctive moral benefits. The process by which an outvoted minority comes to acknowledge error—the infamous “forcing to be free” requirement—encourages us to transcend our amour propre.²³ Unanimous rule, with its emphasis on the absolute and unerring value of each individual’s judgment, does not induce voters in even the slimmest of minorities to acknowledge that they might have misidentified the general will. Furthermore, whereas a unanimity rule, as we shall now see, might generate an unbearable temptation for a prideful individual to veto the choice of the overwhelming majority, majority rule properly acknowledges the likelihood of error, or the distorting effects of particular wills. In this regard, although the votes as a whole ought optimally to approach unanimity, the means by which that might be accomplished is through majoritarian and supermajoritarian rather than unanimous voting rules.

The Choice of Qualified Majority Rule

As we have seen, for Pufendorf, the legitimacy of collective decision-making depends upon the members approaching the question under consideration from a perspective of both individual humility and confidence in the wisdom of the many. Can such a view help to explain the apparently paradoxical nature of Rousseau's defense of supermajorities?

In *Social Contract*, Rousseau suggested that between simple majority and unanimity are "various uneven divisions, at any one of which this proportion can be fixed, taking the state and the needs of the body politic into account" (IV, ii, 11). The adoption of supermajority thresholds, as I have argued, emphasizes the peculiarly aggregative dimension of Rousseau's mechanism for discerning the general will: although voting is the means by which the general will is recognized, the will exists independently of the votes and is not constituted by them. As such, the particular number of votes necessary to discern the will, at best, ought to be immaterial. At worst, since a supermajority rule empowers a minority to veto the majority's determination of the will, the shift in power from a majority to a minority may imply that something is seriously disordered in the society either because the majority is unable to enact the general will or is incapable of properly identifying it. In either case, "there no longer is any freedom."

The purely "Condorcetian" account of the use of supermajorities falls victim to this same argument. Although it may be true that the likelihood of correctness increases with the relative proportion of the votes in favor of a given alternative, a decision rule that empowers a minority to block the vote of a majority allows a proportion of the population less likely to be correct to prevail. So a purely epistemic defense of the shift from majority voting rules to supermajority voting rules is weak, although we might have greater confidence in a decision that in fact received a supermajority or a unanimous share of the votes.

Other salient arguments on behalf of the move from majority to supermajority rule likewise fail. Consent-based arguments, for instance, suppose that for truly important matters it is essential to ensure that a very large proportion of the population support a policy change. Rousseau does seem at points to argue for this: "[T]he more important and serious the deliberations are, the more nearly unanimous should be the opinion that prevails" (IV, ii, 11). Yet Rousseau's solution to those who would challenge the adoption of a majority decision rule—"How are the opponents both free and subject to laws to which they have not consented?"—is that "The Citizen consents to all the laws, even to those passed in spite of him" (IV, ii, 8). The entire logic of

majority rule, then, depends upon the view that the outvoted citizen recognizes that if he had prevailed, he would not have been autonomous: as a consequence, a citizen's consent to law cannot depend upon his actually voting in favor of it, as the "consent" justification of supermajority rule would hold. The defense of supermajorities on the grounds of stability—that supermajority rules attractively slow down the rate of change—is also vulnerable. Rousseau does not defend stability for its own sake. He repeatedly rejects the view that fundamental law constrains the sovereign,²⁴ and his defense of "ancient law" in *Social Contract* is not on the grounds that stability is intrinsically desirable but because of its capacity to write itself on the hearts of the citizens and the goodness implicit in its durability (III, xi, 5). But if Rousseau does not defend supermajority rules for epistemic, consent, or stability reasons, on what grounds does he recommend their adoption?

Like Grotius and Pufendorf before him, Rousseau turned in his discussions of voting rules from the general logic of majority rule to the circumstances under which supermajorities might be defensible. Pufendorf had noted that a two-thirds majority of cardinals is necessary to elect a pope, as it was in Rome to elect the orders of the Decuriones and in Venice to banish the Jesuits. In this discussion, Pufendorf likely followed Grotius, who acknowledged that under some circumstances the minority did possess the capacity to constrain the whole through a supermajority rule: exceptions were granted for "agreements and laws which prescribe the form of conducting business," such as, Grotius added in a note, "those laws which require a two-thirds vote, such as Decretals, l.vi. 6" (LWP II, xvii, 249). Grotius and Pufendorf both turned to the jury for another example of a quasi-supermajority: both noted that the jury did not condemn in case of an even split, but more importantly, both highlighted that "amongst the Jews, the criminal was not condemned, though there happened to be one more vote against him than for him" (LNN, VII, ii, 17; LWP, II, v, 18, f. 1).²⁵ This was, in Pufendorf's view at least, an epistemic justification: we ought not have sufficient confidence in the view of a single witness or judge in the case of a split to condemn a criminal, which would suggest serious epistemic uncertainty. In the presence of a supermajority, however, we can indeed have greater confidence in our verdict. But note that the language remains moral: in Grotius, this is on the grounds of mercy (II, v, 18, f. 1), and in Pufendorf, "There is no less *religion and conscience* to be observed in what is pronounced by a judge, than in what is deposed by a witness" (VII, ii, 17, italics mine).

Rousseau took up the question of supermajorities in depth in *Considerations on the Government of Poland*. Rousseau regarded the

liberum veto—the unanimity principle governing decision-making in the Sejm—as a principal cause of anarchy but did not reject the liberum veto wholeheartedly, viewing it as rightly applied to fundamental laws: “This way the constitution will be made as solid and these laws as irrevocable as they can be” (Poland, IX, 8). However, since the diet foolishly failed to distinguish between acts of sovereignty and acts of government, administrative decisions were also governed by the liberum veto. The unanimity rule hindered change of these acts of government, which Rousseau argued would always be necessary, especially in a “great State surrounded by powerful and ambitious neighbors” (Poland, IX, 4). Thus, the liberum veto would be applied to fundamental law, whereas administrative decisions would require only a simple majority (Poland, IX, 9). In between, however, “depending upon the importance of the matters” under consideration, any “number of proportions” for the requisite majority would be possible (Poland, IX, 10). “When it comes to legislation, one might require at least a three quarters majority, two thirds in matters of state, no more than a bare majority for elections and other business of routine and immediate interest” (Poland, IX, 10).

Rousseau held that the real source of pathology of the liberum veto was individual members’ motivation to exercise their veto power, which he located in their attachment to “personal privilege more than to greater and more general advantages” (Poland, IX, 4). Indeed, he thought that one who used the veto should “be answerable for his opposition with his head, not only to his constituents in the post-session Dietine, but also subsequently to the entire nation whose misfortune he brought on” (Poland, IX, 12). Once the vote is tallied, if one did indeed exercise a veto, Rousseau suggests, six months after the vote, a special court composed of the “wisest, most illustrious, and most respected persons,” would have to vote not only on his guilt or innocence but “would either have to condemn him to death without possible pardon, or bestow upon him a reward and public honors for life. . . .” (Poland, IX, 12).

The choice of a decision rule, then, had distinctive moral implications for Rousseau. The original purpose of the liberum veto, Rousseau acknowledged, was to serve as the “guarantee of public freedom”: that is, to ensure equality among the members of the diet. When the matter was of such grave importance that political equality truly was at stake, as for fundamental laws, Rousseau did not reject the use of unanimity. But in general, Rousseau feared that a unanimity rule would enable people to easily pursue their private advantage without having to account for one’s choice. (Indeed, any member could dissolve the assembly under the liberum veto.)

A citizen is thus obliged to take into account other perspectives and even, perhaps, calculate the probability that he will be the sole veto in rendering his decision. If he knows that he faces overwhelming opposition—and here, Rousseau followed Pufendorf—the citizen is obliged to consider very carefully, and from a perspective of humility and awareness of his own fallibility, the rightness of his decision. One must be specially concerned to ensure that *amour propre* has not blinded oneself to the general will; in the face of almost universal opposition, except in the most extreme of circumstances (in which case the society is at the brink of collapse), the prospective voter ought to recognize that one is very likely to be mistaken, and reverse one's vote rather than exercise a veto. However, a representative could not possibly know whether he was actually using his veto power *ex ante*, that is, prior to the tallying of the vote—whether his view was idiosyncratic or in keeping with the other voters—if he did not possess any prior knowledge of others' likely votes. This knowledge, however, could only come from discussion.

Rousseau did indeed reject any discussion at the point of decision (*délibère*) in the famous passage rejecting communication among the citizens (II, iii, 3). As Manin has argued, we cannot take Rousseau's use of the term *délibération* to mean discursive reason-giving, as political theorists conventionally mean by this term—here, as in virtually all cases, he means decision.²⁶ Yet recall that in *Social Contract*, Rousseau offers a temporal justification for the choice of decision rule: “The more rapidly the business at hand has to be resolved, the narrower should be the prescribed difference in weighting opinions; in deliberations [decisions] which have to be concluded straightaway a majority of one should suffice” (IV, ii, 11). This complicates the matter of deliberation somewhat. In the absence of discussion, the relative urgency of the matter could not drive the selection of a vote threshold.²⁷ Except perhaps in the trivial amount of additional time involved in vote-counting, there should be no difference between the time necessary to conduct a vote requiring a supermajority for adoption and that requiring a simple majority. So something must occur to cause the difference in the time between that needed to attain a majority of voters and that needed for a supermajority or a unanimity. Even if active persuasion is formally excluded, nevertheless, there must be some means by which people can come over time to recognize what is the common good on a particularly important matter. This must, it seems, be discussion.

Note that the very sentence rejecting communication also indicates that the rightness of the decision hinges upon a people “*suffisamment informé*.” The way in which citizens come to know the perspectives of others cannot take the form of rhetorical appeals or vigorous debates, and certainly not

bargaining. But it must indeed be at least partially a discursive process. “There is no need for intrigues or eloquence to secure passage of law of what each has already resolved to do *as soon as he is sure that the others will do likewise*” (IV, I, 2; italics mine). The common good is indeed clearly apparent to all, but no individual can have real confidence in his judgment of it *ex ante* without ensuring that others see the matter similarly. Again, the points at which communication poses the greatest risk—and should thus be completely forbidden—are at the moment of voting, but this does not entail the complete absence of discussion prior to this point.

Ultimately, though, the question of whether or not a law accords with the general will is for each individual to answer independently. Once counted, the tally ought to divulge the proper answer to this question. Optimally, the tally would approximate unanimity; yet paradoxically, the best way to attain unanimity is not through the use of a unanimity rule. For Rousseau, it was not merely a pragmatic but a moral choice that led him to abandon unanimity: whereas unanimity that emerged freely through patriotism and concern for the general good would have been optimal, when a unanimity rule served instead to enable the selfish to thwart the public-spirited, it became corrosive to liberty. As he noted in *Social Contract*, unanimity also reigns “when the citizens, fallen into servitude, no longer have freedom or will” (IV, ii, 3). Unanimity may emerge from coercion, but a supermajority reflects a desirable degree of concord without reflecting potential tyranny. The very possibility of someone mistaking the general will, or of someone voting to substitute one’s particular will for the general will, means that individual decision-making capacity has been preserved.

Likewise, Pufendorf’s insight, that faced with the option of derailing an otherwise unanimous vote, a person is under an obligation of sociability to defer to the majority encourages us to view the use of majorities and supermajorities from a moral perspective. For a citizen to withhold his assent would “betray a spirit, unreasonably proud and troublesome, to think himself wiser than all his fellows”; instead, he should simply leave the union (VII, ii, 15). Rousseau argued similarly, as we have seen, that the human inclination toward “personal privileges” may make breaking with the unanimity rule too alluring: When a person knows that she can readily defeat any measure that appears at odds with her interest, it may be simply too tempting to resist.

Thus, the use of supermajority rules provided an even sharper opportunity to recognize our own fallibility. When we know that a supermajority is necessary, both Grotius and Pufendorf implied, dissenters ought to take seriously the arguments leveled by the majority and carefully consider whether we wish to assert that we, the minority, possess wisdom that the

majority does not. In very rare cases, a veto may be justifiable. But in most cases, when the matter is of great importance, we should carefully consider whether the other side may indeed be correct before choosing to assert the power of a minority against a majority.

Rousseau's account of decision rules is indeed epistemic, in keeping with the "Condorcetian"—perhaps we may now say "Pufendorfian"?—reading. Yet Rousseau also understood that voting rules have moral implications and have a real ability to shape the lives of human beings in common. As Tracy Strong has suggested, Rousseau argued "that living a life that enables the common, that is, the human, although not itself a structured or rule-governed life, is not possible without such structures or rules."²⁸ For Rousseau, we act correctly and freely when we recognize that our fellow citizens, taken as a whole, almost certainly have reached a correct decision and graciously accept our error.²⁹

Conclusion: Rousseau and Decision Procedures

Whereas prior scholars have focused on the compatibility of Rousseau's discussion of voting in assemblies with the work of Condorcet, here I have sought to establish the origin of some of Rousseau's discussions of decision rules in the work of Grotius and Pufendorf. Rousseau was clearly quite familiar with the work of each, using Grotius as a target of searing criticism and Pufendorf as a more moderate foil. Such a reading also may shed new light on Rousseau's discussions of decision rules more generally, inclining us to view these choice of devices as not purely epistemic, as the Condorcetian reading would seem to suggest, but with a moral force. The choice of majority and supermajority decision rules, in Rousseau, is as a means of eliciting unanimity for the right reasons. Such decision rules seek to ensure the absence of coercive social pressures to assent on one hand but to affirm the moral significance of rendering a veto on the other. A supermajority rule encourages members of a would-be vetoing minority to consider the extent to which they have confidence in their own judgment extremely carefully prior to exercising a veto. Yet unlike unanimity rules, a supermajority rule does not grant to each individual the extraordinary power to reverse the verdict of the rest of the society and thus embrace the hubristic account of individual judgment that such a power would imply. Instead, both majority and supermajority decision rules encourage us qua individuals to view ourselves as participants in a truly collective process of decision-making.

It is clear that Rousseau was indebted to Grotius and to Pufendorf in his writings on voting rules. However, whether we may demonstrate that these

thinkers also influenced the central figure in the development of social choice theory, the Marquis de Condorcet, remains open. We may feel reasonably confident that Condorcet would have encountered Grotius and Pufendorf through the work of Rousseau; although Condorcet did not willingly acknowledge the influence that Rousseau had over him, it is virtually certain that Rousseau's work had a profound effect on his views.³⁰ Given that he declined to cite Rousseau, we cannot assume that his apparent failure—to the best of my knowledge—to cite Grotius or Pufendorf is clear evidence that he did not encounter the Barbeyrac translation. As Richard Tuck has argued, Pufendorf's *Law of Nature and of Nations* and Grotius' *Law of War and Peace*, especially in Barbeyrac's translations, "form[ed] a two-volume encyclopaedia of contemporary political thought available in virtually every private or public library from the Urals to the Mississippi."³¹

Whereas the tension that I have suggested is inherent in Rousseau's use of supermajorities—specifically the emphasis on "counting of heads"—cannot be resolved purely through appeal to history, demonstrating the historical origins of his view does clarify the logic of his decision. Furthermore, it does seem that Rousseau's "Condorcetian insight"—that a vote of a supermajority may have been more reliable than that of a simple majority—may have some antecedents in both Pufendorf and Grotius. More important than the lineage of Rousseau's thought, though, is the interpretive light that these earlier accounts shed on his treatment of these issues. To read Rousseau through Condorcet is to come to the view that the choice of voting rules depends purely on the importance of reaching the right answer. To read Rousseau through Pufendorf, however, is to see that the adoption of a voting rule *itself* has moral significance insofar as it reflects a positive view of the wisdom of majorities, and indicates sensitivity to the human frailties—and, it must be noted, occasionally great courage—that might induce a minority to remain obstinate in the face of overwhelming opposition. Majority rule may be a means of ensuring the correct decision under the assumption of competence, but it also promotes humility and the acceptance of one's own fallibility: we are not all required to agree for an outcome to have binding force over us. That is, we are generally obliged to accept as correct an outcome with which we have disagreed. Under most circumstances, if we have failed to persuade the majority of our perspective, we should accept the likelihood that we have erred in the face of vast opposition to our views. In other words, in Rousseau's view, it is the moral duty of a citizen to accept not only the validity of the majority vote, but its probable truth as well.

Notes

1. This paradox is also discussed in Schwartzberg (2003), in which Rousseau's use of qualified majorities is examined in the context of the enactment of fundamental law. See Melissa Schwartzberg, "Rousseau on Fundamental Law," *Political Studies* 51, no. 2 (2003): 394.

2. In David Estlund's words, "Rousseau conceived voters as giving their opinion on an independent matter of fact—the content of the general will—and held that the answer receiving the majority of votes under certain circumstances was guaranteed to be correct." David M. Estlund, Jeremy Waldron, Bernard Grofman and Scott L. Feld, "Democratic Theory and the Public Interest: Condorcet and Rousseau Revisited," *American Political Science Review* 83, no. 4 (1989): 1318. Drawing in part on Patrick Riley's *Will and Political Legitimacy* (Cambridge, Mass.: Harvard University Press, 1970), Frank Lovett has contrasted this "rationalist" reading of the general will, in which the general will is discovered by voting, with that in which the will is generated (as the "voluntarist" reading would maintain) through a vote. See Frank Lovett, "Can Justice Be Based on Consent?" *Journal of Political Philosophy* 12, no. 1 (2004): 81-84.

3. Estlund raises Rousseau's requirement of moral "deference" as a cause for concern in *Democratic Authority: A Philosophical Framework* (Princeton, N.J.: Princeton University Press, 2008). Estlund's epistemic proceduralism holds that "democratically produced laws are legitimate and authoritative because they are produced by a procedure with a tendency to make correct decisions." (8) Yet in Estlund's view, Rousseau's account as a "correctness theory" goes too far: "In a well-functioning polity, where she has no grounds to challenge the legitimacy of the procedure, she must not only obey it but also surrender her moral judgment to it." (103) Instead, Estlund's epistemic proceduralism holds that although we may have some moral obligation to obey the outcome of a generally reliable democratic procedure even when we believe it is mistaken, we do not have an "epistemic reason to believe" the outcome. Estlund himself recognizes that this is puzzling—it leads us to the view that "'P is (certainly) true but I do not believe it'" (106)—but holds that epistemic proceduralism, compared with Rousseauian correctness theories, "generates more legitimacy and authority with less demanding epistemic claims." (106) Here I suggest that Estlund does not adequately appreciate what Rousseau (in my view rightly) regards as the moral benefits of fallibilism inherent in acknowledging that one is almost surely wrong in the presence of overwhelming disagreement about the content of the general will; that is, otherwise unanimous agreement about the content of P ought ordinarily to give a person a good epistemic—and even a good moral—reason to believe P.

4. Note that in the same year, Runciman and Sen published an article in *Mind* that set the stage for further investigations into the connection between social choice theory and Rousseau's work on the general will, previously suggested by Kenneth Arrow in *Social Choice and Individual Values* (New York: John Wiley and Sons, 1951): 81-82. See W.G. Runciman and Amartya K. Sen, "Justice and the General Will," *Mind* 74, no. 296 (1965): 554-562.

5. Brian Barry, *Political Argument* (London: Routledge and Kegan Paul, 1965), 292-293.

6. Bernard N. Grofman and Scott L. Feld, "Rousseau's General Will: A Condorcetian Perspective," *American Political Science Review* 82, no. 2 (1988): 571. Recent work on supermajorities has investigated the conditions under which proportionality matters for the accuracy of the decision [e.g., Christian List, "The Epistemology of Special Majority Voting," *Social Choice and Welfare* (forthcoming)]; Iain McLean and Fiona Hewitt, *Condorcet* (Aldershot, UK: Edward Elgar Publishing Limited, 1994). Here, I bracket this issue.

7. For a discussion, see Jules L. Coleman and John Ferejohn, "Democracy and Social Choice," *Ethics* 97, no. 1 (1986): 6-25, and especially Joshua Cohen, "An Epistemic Theory

of Democracy," *Ethics* 97, no. 1 (1986): 28, in which Cohen emphasizes the importance of supermajorities for salient issues in Rousseau.

8. A supermajority threshold empowers a minority to block the majority: a 35% minority is able to derail the majority vote under a 66% threshold, whereas a simple majority requires a 50% opposition to thwart it.

9. Estlund, Waldron, Grofman and Feld, 1335-6.

10. Keith Michael Baker, *Condorcet* (Chicago: The University of Chicago Press, 1975): 9.

11. Grofman and Feld, 570.

12. Paul Weirich, "Rousseau on Proportional Majority Rule," *Philosophy and Phenomenological Research* 47, no. 1 (1986): 119.

13. Judith N. Shklar, *Men and Citizens: A Study of Rousseau's Social Theory* (Cambridge, UK: Cambridge University Press, 1985): 218.

14. Jean-Jacques Rousseau, *The Social Contract and Other Later Political Writings*, edited and translated by Victor Gourevitch (Cambridge, UK: Cambridge University Press, 2004), 49. Further English references to *Social Contract*, *Discourse on Political Economy*, and *Considerations on the Government of Poland* will be to this edition and will be cited in the text by book, chapter, and paragraph number.

15. The argument that the majority is authorized to substitute for the whole by a unanimous vote at the inception of political society was, of course, made famous in the social contract tradition by Hobbes (*Leviathan*, ch. 18) and Locke (*Second Treatise of Government*, ch. 8). Here my focus is on the context in which Rousseau made this argument and on the comparatively elaborate discussions of alternative voting rules offered by Grotius, Pufendorf, and Rousseau, rather than on the genealogy of the "substitution argument" as such.

16. Hugo Grotius, *The Rights of War and Peace*, edited and with an introduction by Richard Tuck, from the edition by Jean Barbeyrac (Indianapolis, Ind.: Liberty Fund, 2005). Further references will refer to this edition and will be cited in the text by book, chapter, and paragraph number.

17. Bernard Manin, "On Legitimacy and Political Deliberation," *Political Theory* 15, no. 3 (1986): 343.

18. Charles Hendel, *Jean-Jacques Rousseau Moraliste*, vol. I (London: Oxford University Press, 1934): 100; Robert Derathé, *Jean-Jacques Rousseau et la Science Politique de son Temps* (Paris: Librairie Philosophique J. Vrin, 1974): 81-82.

19. Samuel Pufendorf, *Of the Law of Nature and of Nations*, 4th ed., translated by Basil Kennet (London: printed by S. Aris for J. Walthoe, R. Wilkin, J. and J. Bonwicke, S. Birt, T. Ward, and T. Osborne, 1729). Further references will refer to this edition and will be cited in the text by book, chapter, and paragraph number. Rousseau also cited Pufendorf at *Political Economy* on the right of property (IV, x, 4) and on the definition of right in *Letters from the Mountain* (I, i, 20). See also Derathé, 82, f. 5-7.

20. Derathé, 83.

21. Derathé, 84.

22. Interestingly, although Pufendorf acknowledged that express consent to the latter covenant is not required for democracy, since it is implicit in the decision to enact the decree selecting the form of regime, tacit consent is nevertheless required.

23. Note that we might also be able to trace to Pufendorf elements of Rousseau's insights on agenda-setting; see the recent debate between Ethan Putterman and John Scott in the pages of the *American Political Science Review*. Ethan Putterman, "Rousseau on the People as Legislative Gate-Keepers, Not Framers," *American Political Science Review* 99, no. 1 (2005): 145-151; and John T. Scott "Rousseau's Anti-Agenda-Setting Agenda and Contemporary

Democratic Theory,” *American Political Science Review* 99, no. 1 (2005): 137-144. In particular, we can find in Pufendorf discussions of “domain restrictions on preferences” in this context, as Scott understands them. A very brief article by Eerik Lagerspetz highlights a few dimensions of Pufendorf’s contributions to the theory of collective decisions, including the pragmatic substitution of majority rule for unanimity; see Eerik Lagerspetz, “Pufendorf on Collective Decisions,” *Public Choice* 49, no. 2 (1986): 180-181. Lagerspetz also identified in Pufendorf a precursor to the minimax rule, a discussion of the significance of single-peaked preferences, and an awareness of the risks associated with agenda manipulation.

24. See Steven G. Affeldt, “The Force of Freedom: Rousseau on Forcing to be Free,” *Political Theory* 27, no. 3 (1999): 310-311, for a thoughtful discussion of the way in which individuals must confront in an ongoing fashion the private will’s inclination toward independence, away from the “continuous constitution of a general will.”

25. See Schwartzberg, 394.

26. In a noteworthy precursor to social choice questions of agenda-setting and preference rankings, Pufendorf and Grotius both turned to the discussion of combinations of votes. In a passage that Pufendorf took nearly verbatim from Grotius, he discusses the wrongness of combining a vote for banishment with that for death against an acquittal (“death being neither a part of banishment, nor banishment of death,” Pufendorf wrote, following Grotius), though when some favor a fine of 20 and others a fine of 10, they may unite against acquittal. (LNN, VII, ii, 155; LWP, II, v, 251)

27. Manin, 345.

28. The discussion of temporality here is also surprising in light of Rousseau’s general wish to reduce the time between proposal and decision, which Nadia Urbinati has argued stands in contrast to Condorcet’s embrace of time-delays. See Nadia Urbinati, “Condorcet’s Democratic Theory of Representative Government,” *European Journal of Political Theory* 3, no. 1 (2004): 62-69.

29. Tracy Strong, *Jean-Jacques Rousseau: The Politics of the Ordinary* (Lanham, MD: Rowman and Littlefield, 2002): 102.

30. McLean and Hewitt, 38; see also David Williams, *Condorcet and Modernity* (Cambridge, UK: Cambridge University Press, 2004): 208-209.

31. Richard Tuck, *The Rights of War and Peace* (Oxford, UK: Oxford University Press, 2001): 165.

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