



From Schumpeterian Democracy to Constitutional Democracy

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Abstract. A critical issue of a constitutional democracy is to determine an optimal limitation of citizens' political liberties. This problem is analysed here within the framework of a parliamentary system of government, and in the context of Rawls' principle of equal political participation. It is argued that optimal barriers to entry into political competition are a function of the legislative decision rules, the domain of collective choices, and the rules for selecting (and dismissing) the executive. Contrary to Schumpeter and Riker who rejected 'populism' (the approach that public policy should be a result of citizens' preferences), we argue that it is possible to reconcile greater citizen participation and liberal democracy with an appropriate institutional design.

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1. Introduction¹

Every representative democracy constrains the political participation of its citizens. The plurality of views that may be expressed in parliament and of proposals that may be considered for discussion is also reduced. This is achieved through devices that determine the choice of representatives (e.g. electoral thresholds, multiplicity of electoral districts, formulas to transform votes into mandates, etc.), and through mechanisms that reduce the variety of proposals to be considered in the agenda (e.g. the possibility to have legislative initiatives, mode of setting the agenda, party discipline, etc.).

This paper deals with the problem of the optimal limitation of equal political participation in a parliamentary system of government, where parliaments fulfill three major functions: to approve normal legislation, to elect (and dismiss) the executive, and to amend the constitution. The answer to the problem of optimal barriers to entry into parliamentary politics is at the same time a clarification of the meaning of democracy, because it deals with the regulation of political competition.²

In the emerging field of modern political economy several scholars have clarified what they meant by democracy: Joseph Schumpeter and Anthony Downs, the forerunners of the economic approach to democracy, gave great importance to the concept, later followed by James Buchanan, William Riker, Mancur Olson to name the most prominent of these scholars. However, as Dennis Mueller (1997:134) points out, the problem of the choice of the system of representation has been left out of the research agenda, perhaps because the field has been dominated by English-speaking authors who assume that the number of parties is fixed and equal to two. An additional reason for not considering the issue is the dominant anti-populist tradition in modern political economy.³

This tradition started with Schumpeter (1943), with his new theory of competitive democracy and the criticism of an organic conception of the ‘will of the people’. Additionally, Riker (1982) not only criticized the organic, but also the individualistic, approach to the ‘will of the people’ (on the basis of fundamental social and public choice results) and defended liberal democracy *against* populism. Thus, Schumpeter and Riker share a high skepticism about ‘populism’ or the idea that public policy is, or may be, a result of citizens’ preferences.

It is argued that it is possible to reconcile, at least in theory, liberal democracy *and* ‘populism’ under an appropriate institutional framework taking into account the system of representation, appropriate legislative decision rules, restrictions on the domain of collective choices and, finally, stability-inducing rules for appointing executives.⁴

Section 2 clarifies Schumpeter’s procedural analysis of democracy, which was mainly a positive approach. Democracy as competition for the leadership of the executive leaves a secondary role for parliament, so that there is no reason to be concerned with systems of representation. Section 3 addresses Riker’s defense of liberalism against populism in the context of early results of social choice. Section 4 frames the discussion concerning optimal systems of representation in the context of Rawls’ (1971) principle of equal political participation. Procedures and outcomes should be just, according to political equality, when considered from the point of view of the impartial spectator. Section 5 clarifies the scope of just democratic outcomes (Pareto improvements and general purpose redistribution) and deals with the implications of majority rule ‘disequilibrium’ and possible escapes from cycling. Section 6 analyses in more detail the degree of proportionality in a proportional representation system and the problem of legislative and executive stability. Finally, the concluding section relates our analysis to the decreasing voter turnout in Western democracies.

2. Schumpeter’s Pure Procedural Approach to Democracy

After criticizing the ‘classical doctrine of democracy’ which attaches meaning to meaningless entities like ‘the people’, ‘will’ or ‘will of the people’, Schumpeter (1943:269) developed a minimal, but extremely powerful, definition of procedural democracy:

the democratic method is that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote.⁵

With the explanation of this succinct definition, Schumpeter made a major contribution to the future development of public choice.⁶ Some aspects of the definition should be emphasized. Democracy is an ‘institutional arrangement’ to reach political decisions, i.e. a set of rules and institutions necessary to arrive at binding decisions for the polity. A crucial element of democracy is the competitive environment that, similar to competition in private markets is never perfect.⁷ Within a framework of certain formal conditions and procedures such as limited tenure, free and competitive elections, free press, some individuals will be chosen to take the political decisions for the community and that is all. In democracies, binding decisions are taken ‘by means’ of a competition for votes. Note that Schumpeter’s definition of democracy is compatible with individually as well as collectively binding decisions, that

it proclaims no substantive value, and that it is consistent either with strong or weak political competition.

The Schumpeterian approach to democracy has been criticized on different grounds. First, there is the problem of inclusion, i.e. of knowing who should be included in the *demos* and thus participate in the democratic process?⁸ Second, there is the problem that this *procedural* definition of democracy lacks any substantive value.⁹ Concerning the problem of inclusion, it is important to note that Schumpeter's definition does not refer to the problem of inclusion and that it is perfectly compatible with the widest participation of citizens. With respect to the second problem, it is correct that emphasis is on procedures, not substantive value, as Schumpeter's analysis was mainly positive. He wanted to analyse the real dynamics of democratic regimes and criticized some ideals attached to the 'old approach to democracy' like the abstract ideal of the 'common good'. For a positive approach to democracy, a *pure procedural* approach seemed sufficient to him. Yet, I agree with the critics when they point out the shortcomings of Schumpeter's approach. He did not seem to be aware of the importance of the 'one man - one vote rule' as an expression of political aspiration and as the foundation of an ideal—the ideal of equal representation of the interests of each individual. Seemingly, he not only disregarded the principle of equality¹⁰ but also the need for a certain degree of consensus within democratic systems. This failure to acknowledge some of the more important values or ideals attached to the concept of democracy has important implications concerning the *normative* appraisal of different democratic regimes and of the systems of representation. The critical issue not considered by Schumpeter is the nature of political competition. The now familiar distinction between choice *of* rules and choice *within* rules had not yet been developed at Schumpeter's time,¹¹ and his analysis was focused on political choice within rules. Constitutional issues, including questions regarding the formal written constitution, as well as legislation that frames political competition (electoral systems, funding of political parties, fair treatment of all candidates, etc.), are almost absent from Schumpeter's work. However, he does take a position concerning the role of the parliament and even the electoral system. Basically, the function of the electorate's vote is to accept leadership, and the basic function of democracy is to produce an executive, and this is done through the rule that the party which has the majority in parliament should form government. Nothing in the argument suggests proportional representation (PR) and in fact Schumpeter (1943:273) is a critic of PR: "If acceptance of leadership is the true function of the electorate's vote, the case for proportional representation collapses because its premises are no longer binding". Schumpeter is almost right *if* we accept his assumption on the role of the electorate's vote. He is wrong, however if we assume a dual role for the electorate's *unique* vote in parliamentary democracies—accepting/rejecting leadership *and* revealing preferences on efficiency and distributive justice issues.

3. Riker's Liberalism Against Populism

Schumpeter, as a forerunner of modern political economy could not have anticipated the upsurge of social and public choice, starting in the decade after he published his *Capitalism, Socialism and Democracy*. Even less could he anticipate that those results could be interpreted as reinforcing his procedural theory of democracy and his dismissal of 'populism'.

In fact, social and public choice achievements in the fifties, sixties and seventies, as Riker understood them, were very pessimistic about democratic theory.

Among those results the most important for Riker was perhaps the general non-existence of a majority rule equilibrium in collective choices. This result was not new, but was definitively established by Arrow (1951), namely that no decision rule (including simple majority) could satisfy a simple set of normative criteria including the transitivity of collective choices. Only under special circumstances like single-peakedness and unidimensional issues does majority rule lead to consistent, i.e. transitive outcomes (Black's 1958 median voter theorem¹²). However, Riker never assumed the political space as unidimensional, and results of the late seventies [McKelvey (1976) and Schofield (1978)] have shown that *any* collective choice may be the winner, after a sequential pair-wise voting scheme starting from any other proposal. All these results led Riker to conclude (1980, 1982) that collective choices were subject to agenda manipulation and strategic voting. On the other hand, he was familiar with research [Shepsle (1979), Shepsle and Weingast (1981)] showing how particular institutions 'solve' the problem of majority-rule 'disequilibrium'. Therefore, he concluded that politics is as much the result of preferences as the consequence of institutions (embedded rules) and of the art of political manipulation (Riker 1986). This led him to a critique of 'populism' and a defense, not very enthusiastic, of liberal democracy. According to him, liberal democracy is a negative ideal in the sense that what voting makes possible is the rejection of bad decisionmakers. I agree with Riker's approach, that social choice intransitivity is a pervasive phenomenon in democracy, particularly when citizens have heterogeneous preferences and there are many political entrepreneurs. The political agenda is not *given* but is permanently *created* by political entrepreneurs, who purposefully use new issues (create new dimensions of the policy space) to create intransitivities that might be used to destroy majority coalitions. However, I do not subscribe to Riker's pessimistic interpretation that intransitivity is a necessary problem for democracy.¹³

The problem of intransitivity is relevant when considering systems of representation and I will return to it in section 5. Beforehand, it is necessary to consider a general framework to appraise normatively systems of representation.

4. Constitutional Democracy and Imperfect Procedural Justice

With John Rawls I share the normative position that a constitutional democracy should above all be just.¹⁴ This means the priority of justice over other conflicting values. Reasonable citizens should be able to voluntarily accept the basic institutions of the society within which they live. Otherwise the stability of these institutions is at risk and therefore other objectives, which can *only* be achieved through stable societies, are simply impossible to achieve.

When considering theories of justice, it is imperative to distinguish procedures from outcomes, and clarify whether justice applies to the former, to the latter or to both. *Pure* procedural justice is an approach that makes use of a criterion (or criteria) to define just procedures but has no criterion to evaluate outcomes. Procedures are defined independently of outcomes in a pure, non-consequentialist manner. The contractarian approach of James

Buchanan aims at being such a pure procedural approach. Democracy is seen as an institutional arrangement to reach collective decisions, where a quasi-consensus¹⁵ over the choice of rules is assumed, because in a situation of uncertainty citizens at an initial conceptualized 'constitutional stage' are unable to predict their future positions in society. Two important aspects of Buchanan's approach are the emphasis on consensus over constitutional issues and the methodological individualist stance. However, Buchanan's approach was not purely procedural but consequentialist.¹⁶

A pure procedural approach to democracy is neither possible (Arrow 1951) nor desirable given the potential instability of just procedures. If a certain set of rules and institutions (R) is likely to produce a certain set of outcomes (X), and if a subset of these outcomes (X1) leads to the denial of the basic rules and institutions (\sim R), we have a problem of (in)stability. It does not seem wise to accept a certain set of rules if, with high probability, the consequences of these rules will be damaging for those rules.¹⁷ Feasibility and stability problems are sufficient to rule out the approach of *pure* procedural justice.

The case of *perfect* procedural justice needs a brief mention.

Ideally, a just constitution would be a just procedure arranged to ensure a just outcome. The procedure would be the political process governed by the Constitution, the outcome the body of enacted legislation, while the principles of justice would define an independent criterion for both procedure and outcome (Rawls 1971:197).

Rawls's approach is that such perfect procedural justice does not hold and the best that can be achieved is *imperfect* procedural justice (I) defined as the case where there are independent criteria to evaluate outcomes, but there is no feasible process to implement it. These independent criteria are Rawls's two principles of justice as fairness, namely the (first) principle of equal liberties, and the (second) difference principle.

I argue that constitutional democracy in general, and systems of representation in particular, should be analyzed in the framework of imperfect procedural justice (II) but of a different kind. Procedures are deemed to be just according to the principle of equal political participation,¹⁸ and outcomes should be 'reconstructed' as just according to the same principle (see below). When arguing that each individual should have the same right to participate in the constitutional process, implicitly it is assumed that similar conditions to participate should be given so as to avoid that inequalities in conditions translate into inequalities in participation.

To summarize, optimal 'barriers to entry' into political markets should be just according to the Rawlsian principle of political equality, and lead to just outcomes. A certain degree of legislative, executive and constitutional *stability* is a necessary (but not sufficient) condition for achieving those outcomes. In brief 'barriers to entry' have to be considered in a procedural *and* consequentialist way. However, as far as consequences are concerned, they depend as much on 'barriers to entry' as on the decision rule used in the legislature,¹⁹ the domain of collective choices, and the rules for selecting and dismissing the executive. Therefore, the optimal limitation of political competition will be dependent on these variables. The relationship between them will be considered next.

5. Escapes from Majority Rule ‘Disequilibrium’

5.1. ‘Reconstructing’ Outcomes as (Un)just Outcomes

Four types of democratic collective outcomes can be differentiated according to the consequences they have on individuals: those where no one loses and at least someone increases his welfare; those where some individuals lose and a general class of individuals gains; those where some individuals lose and specific classes of individuals improve their situation; and those where no one is better off and at least someone is worse off. For simplicity, I will label them respectively, Pareto improvements (or loosely “efficient” outcomes), general-purpose redistribution (or ‘fair’ according to distributive justice), special-interest redistribution (selective outcomes), and ‘inferior’ outcomes. The idea that democratic institutions may lead to inferior outcomes should not be ruled out since it is a logical possibility, and to some extent, a historical fact. It is generally agreed that the likelihood of unfortunate outcomes should be minimized, but opinions and constitutional practice diverge about the ideal procedures to achieve this objective.

From the constitutional perspective, i.e. the perspective of the individual in a situation of uncertainty or ignorance,²⁰ democratic procedures should lead only to efficient and distributively just outcomes and should avoid selective or inferior ones. The justification for this can be found, among others, in the works of Buchanan and Tullock (1962), Mueller (1996), and Buchanan and Congleton (1998),²¹ who stress efficiency issues, and Rawls (1971) who stresses distributive justice. It is worth clarifying what I mean by general-purpose redistribution.

General-purpose redistribution is driven by a rule (which may or may not have a functional form) where the degrees of freedom of the legislature are relatively low. Examples are a general application of the Rawlsian maximin principle to redistribute to the less well off in society, or a flat income tax (one degree of freedom each) or a linear progressive income tax²² (two degrees of freedom). These examples are chosen to illustrate that what really matters for generality is the low degree of freedom of the legislature and not the substantive meaning of a just distribution (the underlying social welfare function). General purpose income redistribution is thus compatible with proportional or progressive income taxation. Note that with general purpose redistribution and one degree of freedom, an equilibrium with redistributive issues exists and the median voter rules (Meltzer and Richard 1981). *Ceteris paribus*, as the degrees of freedom (and the dimensionality of the redistributive space) increase so does the probability of cycling and of inconsistent collective choices.

The argument in favor of generality, however, is not grounded solely in terms of avoiding cycles but in terms of the expected consequences of ‘disequilibrium’ in these zero-sum (or even negative) redistributive games. Special-interest groups searching for particular benefits, with the possibility of special interest redistribution, will engage in rent-seeking activities in competition for special treatment. The result will be that some groups will be better off and others worse off in an asymmetric way. This asymmetry is due to the differential capacity of groups to organize themselves for collective action (Olson 1965, 1982) and to put pressure on the members of parliament. If Olson’s theory is correct, this means a violation of the principle of equal political participation. In this way it is possible

to 'reconstruct' outcomes and show that, in this case, they are not just and thus should be ruled out of the legislative agenda. A similar reasoning, but one which would lead us to the opposite conclusion, is that Pareto-improvements and general redistribution issues can be 'reconstructed' as just outcomes according to criteria of procedural justice.

5.2. Majority-Rule 'Disequilibrium': Some Normative Implications

Simple majority rule is not only widely used in legislatures but has interesting normative properties concerning political equality as well.²³ Particularly for two-party legislatures and binary choices it works well. However, as mentioned earlier, for legislatures with multiple parties and multiple issues, majority rule does not work too well because it opens up the possibility of potential cycles. Not only are cycles possible, they are inevitable, if there are political entrepreneurs who are able to explore the multidimensionality of the policy space. This 'disequilibrium' is particularly troubling, since legislatures, in most parliamentary systems with proportional representation, have three major functions: to enact normal legislation, to amend the constitution, and to elect the executive. Therefore, we could have legislative incoherence, government instability, and constitutional breakdowns.

However, some authors have argued that the problem is not too serious. Peter Ordeshook (1980), in an exchange with William Riker (1980), argued that it is necessary to distinguish equilibrium (in the sense of a unique Condorcet winner that may not exist) from predictability. Prediction is possible if cycles are limited to a small sub-space of the issue space, such as the bargaining set, so that outcomes are not as arbitrary as McKelvey (1976) and Schoffield (1978) suggested. Cox (1987), and Schoffield (1995) developed concepts such as the uncovered set and the electoral heart, to highlight that the social choice set is centrally located, taking into account the median preferences in each dimension. Even with these more optimistic approaches of the eighties and nineties, the problem deserves attention. It is necessary to identify the sources of voting cycles: the majority rule itself, the multidimensionality of the policy space, and the multiplicity of independent actors²⁴ in the legislatures. It is no accident that escapes from cycles assume one of the following forms: changing the legislative decision rule, reducing the dimensionality of the choice space, and diminishing the number of independent actors in the legislature. I will consider each of these in turn.

5.3. Voting Rules to Promote Consensus and Efficient Outcomes

Many voting rules have been proposed in the literature as alternatives to simple majority rule even when knowing that no rule would be satisfactory (in the sense of not violating at least one of Arrow's axioms). Initially, some form of qualified majority rule was suggested (Wicksell 1896, Buchanan and Tullock 1962), demand-revealing mechanisms *for public goods* have been exhaustively analysed (Lindahl 1919, Groves and Ledyard 1977) and new voting methods have been suggested (e.g. voting by veto, Mueller 1978, 1996). To be sure, this literature has shown that it is possible to avoid cycling in multi-dimensional decisions, to increase honesty in preference revelation and to create incentives to build a

consensus. However, its scope is limited to the search for efficient outcomes. If the only function of government was to provide public goods than several of these rules would be strong candidates for a universal legislative rule. However, as Wicksell reminded us when he proposed the qualified majority rule, his “principle of just taxation” assumed a previous just society. Legislatures should deal with efficient and distributive justice issues and, as Mueller (1989) suggested, different problems should be dealt with by different rules.

In this sense, if a parliament considers that some issue should be a Pareto improvement,²⁵ some rule other than simple majority should be used. An important case is the constitution (*lato sensus*) including electoral rules. It can be classified as a public good and it is consistent that most countries amend the constitution and approve electoral laws by a qualified majority of 2/3. This increases the probability that amendments are Pareto improvements and obviously puts more weight on the status quo than simple majority but still allows some flexibility. In the same way, as legislatures recognize that some issues deserve a rule other than simple majority, there is no reason why it is not possible to consider an enlargement of this (or other consensual building rule) to issues that have a clear efficiency rationale.

5.4. Domain Restriction

Another escape from cycling is through the restriction of the domain of decisions. An intuitive solution to multi-dimensional cycling is to transform a single decision in a m -dimensional space into m independent decisions in uni-dimensional spaces, so that the median voter in each dimension would be decisive. Gordon Tullock (1981) formulated the question: why is there so much stability in actual legislatures if the results of collective choice literature always stress cycling and disequilibrium? Shepsle’s work (1979, 1989) gives an answer: it is because legislatures have institutions (in particular, committees) that structure the equilibrium.²⁶

Other authors (Weingast and Marshall 1988) follow this interesting path of analysing how legislatures ‘structure’ equilibria. Yet, the analysis of how actual institutions *force* equilibria does not solve the problem of potential cycling and leaves a certain set of normative issues unanswered: First, whether parliamentary procedures of decisionmaking, including committee assignment procedures are just and secondly whether they lead to efficient outcomes. In the presence of potential intransitivity, if stability is to be achieved it should be through structure-induced equilibrium.

If any proposal is better than the *status quo*, the voting cycle should be broken and each and every individual would subscribe to some fair method to induce a definite choice. Just procedural democracy emphasizes the fairness of procedures necessary to induce the equilibrium. The issue is whether a structure-induced equilibrium is fair and if it leads to efficient and just outcomes. There is good reason to believe, contrary to Weingast and Marshall (1988), that the self-assignment of MPs to committees does *not* lead to efficient outcomes since, typically, members of parliament that choose to join a certain committee (defense, education, etc.) do so because they have strong (and extreme) preferences on the issue, far away of what would be the median preference of the floor on that issue.²⁷

5.5. *Barriers to Entry into Politics*

Another and perhaps a more important practical solution to the problem of cycling and ‘disequilibrium’ is through the reduction in the number of different preference profiles (or actors) within the legislature. This may be accomplished by electoral systems that reduce proportionality through several devices. This means that systems of representation, appropriate legislative rules, and equilibrium-inducing agendas may be considered as complements with regard to legislative stability. For example, it is possible to have a more ‘populist’ parliament (lower barriers into politics) if legislatures are able to discriminate between efficiency and redistributive justice issues (applying different rules), and fair agendas that induce equilibria.

Having considered other factors that may produce legislative stability, I now turn to the issue of optimal limitation of equal political participation in general, and ‘barriers to entry’ into political competition in particular, considering legislative and executive stability.

6. Optimal Limitation of Equal Political Participation

6.1. *The Problem*

A crucial problem of a constitutional democracy, already addressed by Rawls (1971), is the following: to what extent should (equal) political liberties be constrained? Giving priority to equal liberties, the general answer to this question is that “the limitation of liberty is justified only when it is necessary for liberty itself” (Rawls 1971:215). In more precise terms Rawls (1971:230) states that,

we should narrow or widen its extent [equal political participation] up to the point where the danger to liberty from the marginal loss in control over those holding political power just balances the security of liberty gained by the greater use of constitutional devices.

The use of some constitutional rules *may* be a means to secure liberties but at the cost of loosening control over those holding power, meaning that in this case there is a trade-off associated with the use of more limitations to equal political participation. However, it should not be ruled out that some other constitutional devices, that by definition constitute a limitation on legislative majority rule, do not have any benefits in the preservation of basic liberties and the sustainability of democratic institutions. In this case, there would be no justification, from a normative point of view, to include these rules in the constitution. An individual behind the veil of ignorance or uncertainty would not voluntarily give up political power in exchange for nothing.

To understand the danger to liberty from an absence of constitutional rules, it is worth considering first the characteristics of a polar case of democracy where equal political participation would be taken to an extreme. In other words one would examine how the full development of liberties of political participation would constitute a threat to other liberties (e.g. freedom of the person, liberty to follow moral, philosophical and religious beliefs) as well as a threat to political participation itself.

6.2. *Unbounded Equal Political Participation: Extreme Populism*

It would take too long to analyse direct democracy over all issues, which is an extreme case of unbounded political participation. However, before considering representative democracy, it is important to point out the meaning of this big step from direct to representative democracy, labeled by Dahl (1989) as ‘a big transformation’. Direct democracy means rule *by* the people, while representative democracy means rule *for* the people. The latter is associated with a fundamental agency problem between citizens, the principals, and their agents, the members of parliament. In a representative democracy, a dichotomy exists between the people’s sovereignty and parliament’s sovereignty leading to the possibility that on a number of issues the majority in the country is not the majority in parliament.²⁸ Having said this, I want to consider unbounded equal political participation in a representative democracy and a parliamentary system of government.²⁹

The characteristics of unbounded political participation can be described in four areas: the design of the parliamentary system of government, the mode of representation, the mode of setting the agenda and parliamentary decisionmaking rule(s). The full extent of political participation is given with just one chamber, one electoral district, no judicial review of parliamentary decisions, no limitation on issues to be decided upon (no bill of rights). As far as representation is concerned, only age and mental capabilities would limit citizenship, and each and every citizen would be able to run for parliament without constraints (not necessarily being a member of a political party). The size of the legislature would be big enough to reflect the diversity of preferences among the electorate. As for the agenda, not only representatives but also all citizens would have the possibility to submit legislative proposals. Moreover, referenda and general elections would be very frequent.

These are certain elements of what could be labeled an extremely populist democracy, a polar case and unrealistic form of a parliamentary system. This case entails a very high level of political competition with equal political participation taken to extremes, within a representative democracy. Barriers to entry into political competition would be set at the lowest possible level. It is not difficult to understand how populist democracy would be a threat to basic liberties, and why such a system can not be found in any contemporary democracy.

6.3. *On the Necessity of Constitutional Devices*

Equal political participation has to be constrained for the sake of the preservation of other fundamental liberties. It is assumed here that liberty of the person, liberty of conscience and freedom of speech have priority over liberty of political participation, so that the latter may have to be constrained for the sake of the preservation of the former liberties.³⁰ The system of representation is just one among other forms to achieve this objective. In fact, the populist model of representative democracy sketched above shows that there are multiple ways to constrain equal political participation and competition. One way is through a separation of powers between different branches of government, judicial review, bicameralism, or other forms. Another possibility is through the mode of political representation, e.g. the monopoly power of political parties to appoint candidates to parliament, electoral thresholds, formulas

to transform votes into mandates which reduce proportionality, several electoral districts, small parliaments, etc. Still another form to constrain participation is to limit the possibility to define the agenda and to constrain legislative initiatives (e.g. only party leaders can have initiatives). Finally, the exclusion of some issues from democratic rule (e.g. basic rights and liberties) and the use of supra-majorities on some issues are other ways to constrain equal political participation and populist democracy. It is important to note that in several European countries basic rights and liberties *cannot* be changed by the legislature since they are entrenched in the constitution.³¹ Therefore, no majority has the power to change or suppress them. The inclusion and ‘entrenchment’ of a bill of rights in the constitution is an obvious limitation to equal political participation and democratic rule. However, it is a limitation that would command a wide consensus, and that would pass through the scrutiny of any reasonable individual behind the veil of uncertainty.³² Its justification lies in the avoidance of the potential inferior outcomes of a populist democracy. The fact that there are various means to constrain equal political participation shows that, in order to achieve political stability, one is not limited to use only *one* procedure (barriers to entry) but it is possible to use a combination of other institutional procedures.

6.4. Procedures to Achieve Participation, Political Stability, and Just Outcomes

That electoral laws have political consequences is clear, at least since Duverger (1946) and Rae (1967), although much debate exists concerning the implications of these laws (Lijphart 1990). Therefore, the problem of how to reconcile citizens’ participation with political stability and just outcomes is essentially a question of institutional design.

As referred to already, parliaments in parliamentary democracies fulfill three distinct functions: a legislative function, the ‘election’ of the executive³³ and the introduction of constitutional amendments. This has three implications for the concept of political stability as well as for the limitation of equal political participation. By political stability, I mean that fair democratic procedures should not give rise to outcomes that may subvert those democratic procedures, in other words democracy should be able to avoid degenerating into autocratic or even dictatorial rule. This may be the outcome of either legislative, executive or constitutional instability. The legislative branch of government should be able to deal with the promotion of citizens’ interests in basic efficiency and justice issues, so that they are not set by revolutionary or violent means of any kind. This means, firstly that these issues should be on the political agenda, and secondly that there should be some consistency in democratic choices, in the sense that decisions should not be reversed easily.³⁴

To represent the diversity of preferences among the electorate in the legislature, pure proportional representation is the ideal system of representation. *If* the principle of political equality is accepted and also its priority over other democratic ideals, it is possible to build a strong case against majoritarian³⁵ electoral systems in favor of proportional representation.³⁶ An important point to make here is that the equal political participation principle gives a *criterion* that can and should be used for a normative appraisal of these rules.

Insofar as the function of electing the executive is concerned, it has been argued that constraints on equal participation and distortions to proportionality are necessary for government stability. This is generally accepted and almost universally practiced in electoral

systems,³⁷ however the degree of constraint goes from mild deviations from pure PR systems to majoritarian systems with a low degree of proportionality. Supporters of majoritarian systems use two types of arguments. First, that plurality systems generate a smaller effective number of parties in the parliament when compared to proportional representation systems (PR),³⁸ so that one party often has the majority of seats to form a government. Second, that government stability is further enhanced because a citizens' vote would be a vote for the executive. While the first argument is essentially correct, the second one is flawed because the stability of the executive is not only a function of the parliamentary composition but also of the constitutional devices which may help (or not) to enhance the duration of the government.³⁹ An example of such a device is the constructive motion of censorship, included in the German constitution, which establishes that parliament can only dismiss the head of the executive (Chancellor) after the election of a successor. This rule requires that prior to the dismissal of the cabinet a new coalition has to be formed. The intransitivity of social choices, considered in the previous section, would be much more damaging if any new coalition could overthrow the executive without the obligation to show its credibility through the proposal of a new head of government. This example highlights the crucial point concerning restriction of equal political participation in parliamentary democracies. Since there are two 'stages' of representation, citizens-parliament and parliament-executive, there are two levels where it is possible to constrain equal political participation. I will label them type I and type II restrictions respectively. The dominant model in European countries has been to use type I restrictions through electoral systems. Implicitly this means that 'populism', in the sense of having a parliament that reflects citizens' preferences, is sacrificed in favor of political stability. A favorable consequence has been to increase the probability of government stability through the indirect effect of reducing the effective number of parties in the parliament. However, associated with these restrictions is the reduction in the plurality of opinions expressed in the parliament. The failure to distinguish type I and type II restrictions has obstructed what would seem to maximize equal political liberties without the cost of executive instability. This could be achieved by a lower degree of type I restrictions to insure that a significant diversity of opinions are expressed in the parliament (a high degree of proportionality), coupled with a higher degree of type II constitutional devices to insure government stability, even when the party which supports the executive is a minority in parliament. However, legislative stability is not guaranteed unless additional institutional devices make possible the distinction between efficiency and distributive issues (applying different rules for each) and promote the salience of these issues in detriment of special interest legislation.

7. Conclusion

It seems that, for at least some decades, democratic countries experience a growing discontent concerning the functioning of democracy. Some see an indicator of this in the decreasing voter turnout in most countries, and interpret this trend with clear negative overtones.⁴⁰ In a sense, this trend supports the rational choice approach to voting. It may be the case that voting is turning into a more instrumental act and is no longer seen as an act explained by moral or civic obligation. Voters may be aware that the probability of affecting outcomes is very low, so they rationally abstain from voting. Decreasing participation, *as the result*

of a rational choice in a Schumpeter–Downsian framework, should not be considered the essential problem of democracy.

A quite different reason for citizens' disenchantment with democracy, which might also explain decreasing voter turnout, has to do with what appear to be 'violations' of the principle of equal political participation. This is illustrated by the increasing influence of the market in the political forum, mainly in what concerns financing political parties, electoral campaigns and lobbying the members of parliament. Decreasing participation as a result of citizens' perception of unfairness in political competition constitutes a real problem for democracy because it may lead to the discrediting of democratic institutions.

A third reason is inconsistencies of legislative decisionmaking and salience of the 'wrong' issues in parliament. When majority rule is the single decision rule and there is an incapacity to avoid special-interest legislation, it is likely that the potential for cycles leads to agenda manipulation, strategic voting, and logrolling. The results of the 'art of political manipulation' may well be neither Pareto-improvements nor general redistribution but special-interest redistribution, particularly if members of legislature committees have extreme positions on the issues.

Finally, it is likely that large segments of the voting population feel that their interests are not represented in parliament, given the existing system of representation (majority systems or PR systems with low proportionality). The problem is that, although barriers to entry into politics create political stability, they may also lead to citizens' alienation concerning the *res publica*.

I have argued that limitations to equal political participation should be lower when the domain of choice is constrained (e.g. when a generality principle is applied in politics) and when there are rules to induce government stability even when the executive has minority support in parliament. Low barriers to entry are also desirable when it is possible to identify issues representing Pareto-improvements and issues related to distributive justice and to apply different rules for each type of issue. An appropriate institutional design would make possible a reconciliation of popular participation with liberal democracy, without falling into some sort of inconsistent and unstable form of 'populism'.

Notes

1. Preliminary versions of this paper were presented at a seminar at the Tinbergen Institute (Amsterdam) and at the 1999 Annual Meeting of the European Public Choice Society at ISEG (Lisbon). I wish to thank Bruce Ackerman, Peter Bernholz, Charles Blankart, Francesco Forte, Arthur Schram, Monika Vanberg, Frans van Winden and especially Dennis Mueller for their comments. Any remaining flaws in the argument are entirely mine. I also would like to acknowledge the great hospitality received at CREED (University of Amsterdam) when the first draft was written as well as the financial support from Fundação para a Ciência e Tecnologia (Ministério da Ciência e Tecnologia). For the English revision special thanks go to Keith Taylor.
2. This issue was introduced explicitly in the economic literature at least three decades ago (Tullock 1965) under a monopolistic approach to government. This approach to government is more appropriate either in presidential systems (e.g. USA) or in parliamentary systems with majority electoral systems (e.g. Great Britain), where there are two dominant parties and the 'winner takes all'. However, in parliamentary systems with proportional representation, this is not typically the case and the problem is of a different nature since there are typically minority and coalition governments, majority governments being an exception.

3. Note that this was not the case in the political economy of the XIXth century. John Stuart Mill, in his *Considerations on Representative Government*, not only considered the issue but also supported one of the most personalized methods of proportional representation.
4. Ordeshook (1992) also seems to consider that it is possible to reconcile populism and liberal democracy. However, his argument follows a different path. Not only because he considers implicitly a presidential system of government but also because his 'solution' uses the structure of constitutional government (separation of powers, federalism, etc.) while I focus on the system of representation and on rules internal to the legislature. I consider the current approach not anti-thetic but complementary to Ordeshook's approach.
5. Schumpeter (1943:269). Schumpeter's approach to democracy has been labeled by political scientists as 'elitist', an adjective that is not neutral, since it contains a pejorative meaning. Hereinafter I will refer to it as a *procedural or instrumental* approach to democracy.
6. That Schumpeter (1943) was a precursor of public choice seems clear: however, how influential his work was, is more doubtful. Downs (1957) acknowledges his influence in a clear way and Mitchell (1984a, 1984b) recognizes some relevant contributions, but is not very emphatic. Mueller includes Schumpeter in the forerunners of public choice and credits him with stressing the role of the "pursuit of self-interest by politicians and the role competition plays in politics" (Mueller 1997:2). The contributions of Schumpeter are in fact quite impressive. First, and foremost, the methodological individualist approach to politics was quite new, at the time, and is impressive even for today's readers. Second, the theory of democracy, with its emphasis on procedural rules, competition for leadership through the 'struggle' for votes was clearly innovative. Third, the observations concerning the role of political parties and their tendency to converge into the same platforms, "anticipated" the median voter theorem: "A party is a group whose members propose to act in concert in the competitive struggle for political power. If that were not so, it would be impossible for different parties to adopt exactly or almost exactly the same program. Yet this happens as everyone knows" (Schumpeter 1943:283). Fourth, Schumpeter had a clear understanding of the rationally ignorant voter. The voter "is a member of an unworkable committee, the committee of the whole nation, and this is why he expends less disciplined effort on mastering a political problem than he expends on a game of bridge". Fifth, he clarified the relationship that should exist between democracy and individual freedom. "If, in principle at least, everyone is free to compete for political leadership by presenting himself to the electorate, this will, in most cases though not in all, mean a considerable amount of freedom of discussion *for all*. In particular it will normally mean a considerable amount of freedom of the press" (*italics* in the original Schumpeter 1943:271-2). Mitchell 'complained' that Schumpeter was a bit cynical about politicians, but what about public choice? [On this see the nice anecdote told by Hardin (1982:xiv-xv)]. It is beyond the scope of this paper to do full justice to Schumpeter's contributions and to explain why he did not receive the deserved attention by political economists.
7. Schumpeters' idea that political markets (as economic markets) are not fully competitive, and that there are political failures (as well as market failures), has been a specific feature of public choice from its early beginnings til today.
8. For a discussion of this topic and a criticism of Schumpeter see Dahl (1989). Curiously, Dahl does not seem to criticize Schumpeter on his definition of democracy but only on the problem of inclusiveness.
9. See Gutmann (1993).
10. In fact Schumpeter was very brief when referring to equality in his book. He states that its meaning is in doubt, and that the principle of equality is sanctioned by christianity which "harbors a strong equalitarian element" (Schumpeter 1943:265).
11. This distinction became clear with the development of public choice theory and it is now more clear with the autonomous development of the research program of constitutional political economy, which considers choices among rules. Hereinafter, the term *constitutional choice* will be used for choice *of* rules, while the term *parliamentary choice* will be used for choice *within* rules.
12. A generalization of the theorem to a multi-dimensional space basically implies a similar condition of symmetry in preferences, which seems an irrelevant case.
13. Of course, it *may* be a problem for democracy, particularly if the absence of an equilibrium is associated with government instability and/or with contradictory and absurd legislation. One of the reasons for the collapse of democracies may be associated precisely with this absence of an equilibrium. However, as I shall argue in sections 5 and 6, both realities do not follow necessarily from the absence of an equilibrium.
14. This does not mean that I subscribe to Rawls' content of justice, namely the *two* principles of justice. I agree with Rawls' *first* principle of justice, the consequences of which is the basic topic of this paper.

15. *Consensus* is the source of ethical evaluation. “The approach must be *democratic*, which in this sense is merely a variant of the definitional norm of individualism. Each man counts for one and that is that. (. . .) A criterion for ‘betterness’ is suggested. A situation is judged ‘good’ to the extent that it allows individuals to get what they want to get, whatsoever it might be, limited only by the principle of mutual agreement” (*italics* and inverted commas in the original; Buchanan 1975:2).
16. The evolution of Buchanan’s thought seems to have been away from ‘parliamentary’ decision making and toward constitutional issues (Buchanan 1954, 1975, 1993; Brennan and Buchanan 1980; Buchanan and Congleton 1998). The foundation of this journal also follows the same path. This shift of attention seems to be, in part at least, motivated by the limits of majority rule, i.e. its incapability to control ever expanding budgets, public deficits, and so forth. The argument here is that Buchanan’s approach, which was in great measure procedural, has become more *consequentialist*, because taking collective decisions out of the ‘parliamentary stage’ into the Constitution is tantamount to a shift from simple majority rule to qualified majority. The consequences of reducing the scope of simple majority rule can, to some extent, be predicted, with the likely effect of changing the substance of the issues from a dominant redistributive nature to a dominant efficiency nature, and also to give a greater weight to the *status quo*. Sen (1996) also discusses whether Buchanan’s approach to rights is ‘independent’ (pure procedural) or ‘integrated’ (consequentialist), and reaches the conclusion that it is consequentialist.
17. A new constitution in an emerging democracy should be stable in the sense that the predicted outcomes under the new regime should not be such that the constitution itself is put into question and eventually replaced.
18. Which is Rawls’s first principle of justice applied to the political process: “The principle of political liberty when applied to the political procedure defined by the Constitution, I shall refer to as the principle of (equal) participation. It requires that all citizens are to have an equal right to take part in, and to determine the outcome of, the constitutional process that establishes the laws with which they are to comply” (Rawls 1971:221).
19. I am indebted to Dennis Mueller for having pointed out this issue.
20. Adam Smith is a precursor of the constitutional perspective with the concept of the ‘impartial spectator’ which occupies an important role in his *Theory of Moral Sentiments*. According to D. D. Raphael and A. L. Macfie in editions 2 and 6 of this book, Smith made important developments of this concept [Smith 1967 (1790):15]. They also quote Walter Eckstein’s preface to the German translation of Smith’s book, where he points out that Kant refers to Smith as the man who looks at every subject from the point of view of the community, that is the perspective of the impartial spectator.
21. Buchanan and Congleton (1998) dedicated an entire book to the application of the principle of generality in politics or what they label ‘non-discriminatory democracy’. The analysis that follows is indebted to their approach.
22. Which is a combination of a lump-sum subsidy with a unique marginal tax rate.
23. See May (1952), Rae and Schikler (1997).
24. An ‘actor’ is a political party (collective actor) in the case of legislatures with completely disciplined political parties or a MP in the case of legislatures when MPs have complete autonomy of vote. The above distinction made it possible that two-party legislatures (e.g. the United States) have *more* actors (preference profiles) than multi-party systems (e.g. continental Europe) with 4, 5 or 6 disciplined parties.
25. For every public good there is at least one distribution of tax shares so that everyone is better off. However, it is also always possible to have a different distribution of tax shares so that some become worse off. Therefore, to say that an issue should be considered a Pareto improvement is tantamount to saying that the parliament considers it should increase the welfare of all.
26. Structure-induced equilibrium (SI) means that the equilibrium is reached through a procedure (‘rule’), not allowing all possible combinations of proposals to be voted on, which restricts matters to certain sequences, such as in a typical parliament agenda.
27. More research seems to be needed to clarify the Weingast and Marshall (1988) conjectures, which are in any case stimulating.
28. In several cases where referenda were held, the results of the referenda were different from what would be the result of majority voting in parliament. A recent example was the 1998 Portuguese referendum on whether or not an intermediate tier of government should be created (regional). The legislative majority was in favor but a popular referendum blocked the issue.

29. Direct democracy over all issues would be associated with prohibitive decisionmaking costs and this and many other arguments would easily support the rejection of unbounded direct democracy. The analysis below will be centered on a particular type of democracy, a parliamentary system, which is the dominant system in Europe with several variants. Focusing on this particular type of democracy does not mean that it is the ideal form of government.
30. 30
31. This is a distinct reality in the United States where rights are difficult to change but *can* be changed. It is an important difference, as Ackerman (1991) points out, because it may indicate two traditions in constitutional thinking: that which gives priority to rights over democratic rule, and that which considers that even rights should be under democratic rule.
32. For an approach to rights as commanding a wide consensus see Mueller (1997).
33. 33
34. In *The Federalist Paper* 62 (probably written by Madison) it says “To trace the mischievous effects of a mutable government would fill a volume” (in Rossiter (1961[1788]:380). He points out that constitutional devices that slow down the approval of bad laws have the same effect for good laws. Anyway, he believes that the potential excesses of the legislative power need to be constrained. Jefferson in a letter to Madison (20/12/1787) which is quoted in Alexis de Tocqueville [1981(1835):291] mentions the same problem and suggests that there should be a period of one year between the presentation of a new law and the final vote by a majority of two thirds in both houses.
35. The term ‘majoritarian’ will be used interchangeably with ‘plurality’ to highlight the crucial characteristic that in each electoral district only one Member of Parliament is elected, although the systems are different in other respects. In ‘plurality’ systems the first who passes the ‘post’ wins in one round (relative majority of votes) where in the majoritarian systems, the winning candidate needs an absolute majority either in the first or second round (e.g. the French case). Systems have very different implications concerning strategic voting.
36. However, even within majoritarian electoral systems the political equality principle has some normative implications: electoral districts should have similar magnitudes, and their design should be impartial (see Rawls (1971:221). The assertion that the principle of political equality can be used for a normative appraisal of majoritarian electoral systems is distinct from the statement that the principle of equality is consistent with majoritarian electoral systems, which we believe it is not. In ‘first past the post’ electoral systems, even with electoral districts with the same size, the winning candidate can have just a plurality of votes (e.g. with three parties one third is enough) while another may have total support. Citizens are not treated alike since MPs are elected with a wide variance of voters. Even within proportional representation systems, some are more consistent with the principle of political equality and others less.
37. The only two cases of electoral systems (for national legislatures) with a single electoral district (a necessary but not sufficient condition for pure proportionality) are The Netherlands and Israel.
38. According to Lijphart’s (1990) study, the average effective number of elective parties is 2.95 for plurality-majority and 3.35 to 4.2 for proportional representation (average in all districts). Lijphart argues that the effect of the electoral system on the number of parties is not as big as Rae (1967) suggested but is still relevant.
39. See Mueller (1996, 1997).
40. This is the opinion of Lijphart (1997) who argues in favor of compulsory voting among other institutional mechanisms to reverse this decreasing trend. What Lijphart seems to overlook is that making voting compulsory eliminates one valuable indicator of people’s dissatisfaction with democracy.

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