On taming popular power

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1. Constitutional democracy

Political scientists seemingly never tire of discussing how democracy should be defined. Nevertheless, at least if one is allowed to compare with alternative forms of government, clarifying what distinguishes government based on popular power is rather simple. Regardless of how one has otherwise chosen to explicate the meaning of democracy, the term has for centuries been associated with three interwoven ideas: popular sovereignty, political equality, and the principle of majority rule. It is the people themselves who as a group direct their common affairs. In the process that defines the general will, all citizens should ideally be treated as equals and when disunity prevails the matter is determined by majority rule.¹

This core meaning of democracy encompasses several problems. Precisely which people constitute “the people” is not always obvious. Nor is it always easy to define the general will. And there are a number of conceivable interpretations of what it means to apply the principle of majority rule. I will not be addressing those often very delicate theoretical and practical political problems in this paper, which does not mean that the problems can be ignored; quite the reverse is true, but they will have to wait for another time.² Here we presume that we have a tolerably good understanding of what is meant by expressions like the general will or the majority, and that procedures exist for determining what it is in practice.

Instead, another component of the democratic superideology will be brought to the fore. Democracy as we know it from modern formations of western states as a rule contains another component. Beyond the idea of popular sovereignty, we in the western world have grafted onto it an idea that, strictly speaking, stems from an entirely different tradition of thought: constitutionalism or the rule of law. In the history of ideas of democracy, the legacy of the French and American revolutions illustrate that a constitutional democracy may assume different forms; emphasis on the two ideals may vary, something that can be traced back to each tradition of thought.³

When constitutionalism is alloyed with the idea of popular sovereignty, the results may vary. Constitutionalism may take on a multiplicity of expressions, but the common feature is that its purpose, to a greater or lesser extent, is to tame the power emanating from the people. That which ultimately interests us in the following is whether there is good reason for such an order, but to answer that question we must first be able to define the devices available for taming popular power. Thus, I have two tasks – one of surveying or exploration and one of normative evaluation.

¹ See Dahl 1956, 13, for a similar observation.
² See Hermansson 1989, chapter 6, or the modern classic in the field, Riker 1982.
2. Constitutionalism as a problem for democracy

The constitutional regulation of political decisionmaking we have chosen in Sweden—I am thinking primarily of the Instrument of Government of 1974—may be understood as a consistent attempt to institutionalize the fundamental ideas of democracy, popular sovereignty or power, political equality, and the principle of majority rule. It is ultimately the people who decide how they will be governed and ultimately the people who determine the extent to which democracy should be hemmed in by procedural or substantive restrictions.

In concrete terms, that means that the majority opinion as determined in an election should also be manifested in the policies pursued. The rules of the constitution should, as far as possible, be neutral in relation to political platforms. Constitutional rules should not prevent the party or parties that have won majority support for their platforms from implementing them. The material exception here applies to the survival of democracy, i.e., the rules that establish the procedures for determining the direction of the majority in future elections. For that reason, the Swedish constitution accords strong protection to political rights and freedoms.

This sketchy description of Swedish constitutional policy probably gives an exaggerated impression that Sweden’s current constitution is characterized by ideological orthodoxy. Despite any and all reservations, however, the fact remains that the current Swedish constitution is not in the least a typical expression of the political thought we have historically known as constitutionalism. Our previous Instrument of Government from 1809 was in that respect considerably more representative. Put another way, it means that the current Swedish Instrument of Government is ideologically closer to the French Revolution than to the American.

Constitutional government is associated primarily with ideas that state power should be constrained, restricted, and preferably balanced; in short, the government should be limited. The practical expressions of these ideas have been that constitutions assign certain institutions the task of ensuring the survival of the constitution, contain comprehensive lists of civil rights and freedoms, and divide governance among several bodies that can act as balancing, opposing powers. The Swedish constitution, however, does not particularly emphasize the power of control, individual rights and freedoms, or the balance of power.4

Constitutionalism may historically be understood as a reaction to absolute monarchy. Democracy was not the primary alternative to be advocated when the unrestricted rule of kings was called into question. There may have been

4 There is no room here to argue in greater detail on behalf of this interpretation of the Swedish constitution, but my intent was not to be controversial. I believe the interpretation is supported in all essential respects by the standard works on the subject. See, e.g., Holmberg & Stjernquist 1998 and Algotsson 1987.
an impulse towards democracy in ideas that derived the legitimacy of sovereigns from the consent of the people, but the core of the reaction was the idea of limited government or government bound by the rule of law.

The idea of the rule of law means ... that the law constrains state institutions - even the highest among them - in the same way that it constrains the citizenry in general. There is between sovereigns and people not only a power relation, where the one commands the other, but also a legal relation, where both parties have their determined rights and duties. The sovereign's rights include commanding the subjects, but if his commands exceed his legal authority, they lack binding force, and if he frequently violates justice, the legal ties between him and the subjects may be severed and the people released from their duty to obey.5

The most essential element in the idea of the rule of law is the notion of a predictable state authority. Ideally, political activities are close to administration and the application of law. It is the laws rather than the regent that govern society. There should be little creative activity in policymaking; instead, its nature should be that of procedural action.

Likewise, democracy may be understood as an alternative solution to the problems of political government. The fundamental idea here - popular sovereignty - is that society should seize the reins of state; the government should be controlled by the governed. Such a perspective is obviously more open to political activism than is the ideal of the rule of law. Ideas on the rule of law and popular sovereignty can, however, be combined through the argument that the state is constrained by laws emanating from the general will. This is the ideological cornerstone of constitutional democracy, but the point is not that the state must be constrained, but rather that its actions must reflect the general will.6

Nor did immediate harmony between the two solutions to the problem ensue when demands for political democracy were raised in earnest a bit more than a century ago. Instead, the idea of the rule of law and constitutionalism was set in opposition to popular sovereignty. The motive was probably baser, but the intellectually sophisticated advocates of the political right stressed that democracy was a threat to the temperate and predictable action for which the rule of law stood. Meanwhile, partisans of democracy asserted that the past should not be allowed to dictate over the present, because "the earth belongs to the living, not to the dead," as Thomas Jefferson put it. "The dead have no rights."7

The idea of popular sovereignty eventually emerged victorious from this conflict. But - and herein lies the peculiar nature of the western view of

6 The classical reference is from Rousseau's Du Contrat Social of 1762.
7 See Holmes 1995, 141.
democracy—this could happen without the rule of law and constitutionalism coming out the losers. When democracy was assailed by fascism and communism in the interwar period, it turned out that popular sovereignty protected the rule of law. But the reverse connection can also be proved. The rule of law has been successfully used to support popular sovereignty. The idea of civil rights and freedoms was liberated from its confinement to the civil arena and expanded to also embrace politics. Political rights may be regarded as the result of a marriage between the ideal of the rule of law and the notion of popular sovereignty. Our democratic superideology contains elements that historical circumstances have molded into a synthesis of those disparate ideas.

Thus, the predominant western view of democracy may well be understood as a union of the ideas of the rule of law and popular sovereignty.

This idea (the idea of the rule of law) that has been of such extraordinary meaning to western culture has no immediate logical connection to the idea of popular sovereignty. But the two schools of thought have enjoyed such an intimate historical alliance that each has entirely permeated the other.

But the two ideals are not in any obvious way in keeping with each other. The synthesis means that partially antagonistic elements are brought together and balanced against one another, but depending on how the synthesis is shaped, the constitutional elements can either facilitate or constrain democracy.

3. How should we seek answers to our questions?

As pointed out earlier, constitutionalism encompasses three ideas about constitutional devices for taming popular power. It follows that we can also discern three ways to tame popular power:

- Popular power may be constrained
- Popular power may be limited
- Popular power may be balanced

The idea that power must be constrained is the core of constitutionalism; political decisionmaking must follow a predetermined procedure. “Public power shall be exercised under the law,” as it is put in the Swedish constitution. We usually think, however, that constitutionalism entails something more, and then it is either the balance of power or the limitation of power that we have in mind. The idea that power should be balanced is aimed at bringing about moderation, while the limitation of power is specifically a matter of shielding certain areas from political intervention.

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This simple typology of constitutional devices is mayhap not entirely irreproachable, but with a little good will, one can say that the actual grounds for categorization are consistent. It is a matter of three ways of regulating decisionmaking, those being procedure, content, and preconditions or milieu. The typology is probably also able to capture all the phenomena it is meant to include, i.e., it is exhaustive. The trouble is that the categories do not seem in any natural way independent of one another. A constitutional court, to take perhaps the most obvious example, may thus be justified with reference to both the constraint of power and the balance of power. A well designed classification matrix should, in addition to the two previously mentioned criteria, preferably also meet the standard that the categories be mutually exclusive. In many contexts, it is precisely that criterion which utterly determines whether we can rely on the conclusions drawn. That is less problematic here, however. Given our purpose and the design of the examination, we can comfortably live with the fact that certain constitutional controls affect more than one of the three categories.

In addition to this tripartite division, there is reason to note another important dividing line. Political decisionmaking is not influenced only by constitutional rules. How power is exercised, its orientation but also its impact, is also affected by a great many factors that are not formalized in a constitution or any other type of regulatory framework; in some cases, factors that should not or perhaps even cannot be formalized. Devices for taming popular power can thus either be formalized in a set of rules or function more informally.

Taken together, these distinctions give us the following set of alternatives:

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Figure 1. Six ways to tame popular power

From this point on, the paper is mainly organized according to this matrix. Each category will be defined and clarified using examples. We also consistently ask whether the taming of power is desirable from the angle of
democracy. To do the latter, however, we must first think about how we should appropriately proceed. We must have some kind of method for carrying out the examination.

How should we examine normative arguments?

Most people probably believe that science cannot answer normative questions. Common sense tells us that there is no objectively valid answer key when it comes to problems of values, while empirical questions (like logic and mathematics) essentially always have answers that are independent of personal opinions. I too mainly accept such a belief, which differentiates between values and facts, but nevertheless feel no particular anxiety when researchers sometimes cross the line and permit themselves to argue about issues other than the strictly factual. There is certainly an important difference. In questions of values, we cannot claim that we are seeking the truth, but the crux is whether we impose common rules upon ourselves as to what are considered valid arguments. If we can agree on common rules for the “disputation,” then we can also answer value questions within the framework of science.¹⁰

Now, I do not believe that anyone need hesitate to continue reading. I have no pretensions of proving the validity of any ultimate value; my ambition is considerably more limited. The thought in the following is that democracy is taken as the point of departure and, given such a value premise, we can then ask whether we have reason to accept certain encroachments on democracy.¹¹

More precisely, we ask what arguments or reasons can be cited in support of such encroachments. The consequential question becomes whether certain types of reasons are weightier than others.

I believe that the reasons or arguments in this context may be of essentially three different types. Societies may want to tame popular power in order to bring about an improvement of democracy. Secondly, arguments may be cited that are neutral or independent of the attitude towards democracy. The third possibility is that the motive is to set aside or impair democracy. In short, the purpose of the taming may be to strengthen, remain neutral to, or reduce popular power.

Most interesting is whether the taming can be justified in a way that even the most devoted advocates of popular sovereignty are compelled to accept. Constitutional devices or “power mechanisms” that can be positively justified

¹⁰ To an extent, I elucidated this position in an earlier paper on the vindication of democracy (see Hermansson 1994). My point of view is substantially based on Stefan Björklund’s (1991) mode of argument, which may in turn be understood as an attempt to develop Popper’s critical rationalism.

¹¹ If you will, one can imagine this as a kind of contract model, where the parties are allocated a determined goal (the realization of democracy) and assigned a special problem (the taming of popular power).
on democratic grounds should reasonably be unproblematic. The critical question here is more likely whether any such examples exist. Nor should the middle category, the neutral, furrow the brow of the democrat. Likewise, it should be easy to declare that the third type of argument, the negative, will not sway the dedicated democrat.

There is reason to insert a minor proviso here. To the vast majority, the democratic polity is at the end of the day only of instrumental value. We accept democracy because we see it as the best possible political means to realize other, more fundamental values. In the last case, the negative reasons, it could therefore be possible to discern the peculiar cases in which the diminution of democracy is justified with reference to fundamental values that even a democrat can accept. There may be many such values, but to be truly persuasive, this should involve principles that most deeply underlie the acceptance of democracy, such as respect for human dignity.

4. Democracy as self-imposed procedural constraints

In a trivial sense, it is of course so that constitutionalism does not at all have to stand opposed to democracy. A working democracy presumes at least some kind of constitutional regulation. The general will upon which democratic decisionmaking is supposed to be based must be established using some form of procedure. There is a large array of electoral systems and decision methods available here. They differ with respect to when and how minority opinions are shunted aside in favor of those adopted by a majority, but there is no lack of alternatives for those looking for democratic procedures for decisionmaking.

Actually, one can probably not even imagine that any general will exists before the people are faced with the problem of casting a vote. The interesting conflict between the two ideals presents itself in the next step, when we must decide how decisionmaking should be regulated. In line with the analytical model presented earlier, we can conceive of three types of constitutional rules. Beyond the neutral aspect of constitutionalism, we can from the democratic point of view make a rough distinction between its positive and negative sides.

12 The section is based essentially on section 4.2 in Hermansson 1996.
13 This is stressed in Petersson 1987, 148.
14 As indicated early in the paper (footnote 2) there is the additional problem that the general will is at risk of becoming dependent on procedure, and on purely logical grounds can never be guaranteed immune to manipulation of the rules.
15 See Holmes 1995, chapters 5 and 6. Habermas 1997, 63-74, writes that there should by definition be a positive correlation between popular sovereignty and the rule of law. He uses the expression “inner, thus conceptual correlation” (p. 63), but I interpret that as his attempt to develop a
The positive side of constitutionalism is represented by rules that strengthen democracy. At first hand, we may consider the fact that constitutional rules lend stability to the democratic system, but we also imagine that there are certain quality-enhancing elements. Certain rules can even be said to contribute to a kind of refinement of the general will. The democratic ideal does not stop with the idea that the people should decide; it also stipulates that decisionmaking should be preceded by a public dialog in which citizens are given the opportunity to reflect over the choices on the agenda. Entirely consistently, rules on freedom of expression and laws pertaining to the media enjoy a unique position in most democracies. Properly designed, a law can reinforce the element of deliberation in the decision process—dialog and reflection—and therewith facilitate democracy.

The other side, negative constitutionalism, is likewise expressed in constitutional rules or statutes that oppose or impede the realization of the general will, or rather, the majority opinion. This involves rules made by previous generations that constrain common political action by the citizens of today. Here, constitutionalism entails a limitation of democracy.

All democratic constitutional policy involves, in a certain sense, a kind of constitutional, self-imposed constraints. But the expression is sometimes cited as if a constitution should by definition stand for something that will be positive in the long term, even if it may be understood as negative in the short term. The thought is nicely illustrated with the picture of Odysseus, who allowed himself to be tied to a mast to protect himself from the seductive sirens. Democracy’s rules of the game can likewise be formulated so that we deliberately protect ourselves against our own irrationality, stupidity, or other character weaknesses.16 This means that we can impose constraints on ourselves in order to better our chances of getting what we want.

Although this is a powerful illustration of the whole point of democratic constitutional policy, it would be wrong and naïve to presume that this always facilitates democracy. A determinative test here is whether the self-imposed constraints can be reexamined: whether the people can later choose to eliminate or retain their self-imposed constraints in the face of forthcoming decisions. If such is not the case, that is, if this equivalent to responsible government upon the delegation or election of representatives does not exist, it is necessarily a reduction of democracy, a form of negative constitutionalism. From the democratic point of view, it can never be acceptable for the popular sovereign to permanently abdicate, and yet the idea is still being touted that political decisionmaking would thrive if democracy were abolished or made subject to a guardian. This would not only damage democracy. The elitist calls from the imitators of Plato and Confucius are

16 See Elster 1984.
illusory and encompass the danger of tyranny. Like all other decision systems, democracy cannot give any guarantees against wrong and, as they may prove in hindsight, less than well-advised, positions. But unlike other types of political systems, democracy is intended to always offer opportunities to learn from our errors.

The conceptual tension between the ideas of democracy and constitutionalism emerges in a pronounced way in countries that have constitutional courts. Beyond the fact that the existence of such a court changes the partisan political game—the court always offers one last chance for the minority to keep the majority from getting its way—the regulation of the court’s authority is a delicate matter from the democratic point of view. Its task may generally be said to be that of safeguarding the democratic rules of the game as expressed in the constitution. The problem is that the judges, who are usually more or less inaccessible to normal political demands for responsible government, also have extraordinary opportunities to influence the objective direction of policy. The constitutional court then becomes not only an instrument of control aimed at guaranteeing the constraint of decisionmaking in certain procedures, it tends also to act as a balancing counterpower vis-à-vis elected representatives.

What conclusion should we draw regarding the place of constitutional courts within the framework of democracy? It is actually too early to take a final position. We must first cogitate on the place of the division of power within democracy. But provided that we are now looking only at how procedural constraint can be achieved in a democratically desirable manner, a special point of view can be stressed. If a constitutional court is accepted in a democracy on these grounds, it should be granted a carefully defined mandate. The constitution itself should then, as the Austrian legal philosopher Hans Kelsen emphasized, be very strictly worded and entirely liberated of ideological “phraseology.”

A few more normal, or at any rate less dramatic, examples of self-imposed procedural constraints offer three peculiar variants of decision methods. In certain especially important matters, constitutions commonly stipulate compliance with special and usually more rigorous provisions. The archetypical example is that of amending the constitution itself, when the parliament either steps back in favor of the people, or is compelled to make decisions twice with an intervening election, or must make a decision by some form of qualified majority.

17 Hermansson 1996, 130–138, presents the argument against expert rule and for democracy.

18 I base this on Holmström 1998, 246, who also provides the quotation from Kelsen. With one important exception, the same analysis may also be applied to the status of the Central Bank of Sweden or the European Central Bank. The difference is then that it is not a matter of safeguarding democracy, but rather certain monetary policy objectives.
The first variant poses no problems from the democratic perspective. Usually, the procedure is that the parliament or its equivalent first makes a decision on a constitutional amendment, whose validity is conditional upon confirmation in a referendum. The drawback to a system of this type might be that the people are called in to decide on a number of minor and mainly only technical adjustments to the text of the constitution. The legitimacy of democracy is at risk of being undermined if the referendum institution is used for mere trivialities.

The second variant, the rule of delay, is also generally uncontroversial when applied to matters of a long-term nature. It forces us to think again, to take no hasty measures, which may in a way be understood as a kind of refinement of the general will. From the democratic perspective, this would thus be an instance of positive constitutionalism.

The third variant, qualified majorities, is more problematic. It is also slightly odd that it is used in place of the delay method when the matter is seen as urgent, as if greater consensus could compensate for inadequate reflection. The hallmark of the qualified majority requirement is essentially that one abandons the principle of majority rule. Minority opinions are given an opportunity to stymie the will of the majority. Is this at all acceptable from the democratic standpoint? If so, it must be a matter of a self-imposed procedural constraint that the people themselves or their elected representatives can rescind through a democratically more normal procedure. This means that decisions to abolish a rule on a qualified majority must be subject to some kind of delaying rule. Otherwise, it entirely loses any meaning.

In summary, we can draw two conclusions so far. The main point of view is that some form of procedural regulation is a prerequisite if we are speak of a democracy at all. Exactly how those rules should be formulated is open to discussion, but there are several alternative decision methods that are rather equivalent from the democratic perspective. The second conclusion is that procedural rules can also be used positively to strengthen the capacity of popular power to govern and to help us deliberate before we make decisions.

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19 See Hermansson 1990, chapter 6, or Barry 1992, who summarizes the research findings that show the connection between political equality and the principle of majority rule.

20 Elster & Hylland 1986 present an intriguing idea on an approach to allowing decisionmakers to determine the appropriate level for the qualified majority in various matters. Given certain reasonable assumptions, it is always possible to identify a defined level that is “self-confirming,” that is, the level supported by the same proportion of eligible voters. Elster and Hylland also present a similar method that is capable of identifying the “right” age level.
5. Democracy is predicated on civil virtues

One of the more fundamental ideas of liberalism is that a just society must be characterized by neutral rules of the game. The idea may be more narrowly defined in various ways, but the point is that the state should remain neutral towards its citizens’ personal dreams and beliefs about the good life. Historically, this has been associated with the idea that the liberal state should be confessionless, the idea that the state should not through its fundamental institutions force any particular faith or conviction upon its subjects.

Democracy is often held up as a kind of special case of this thought. In Swedish discourse, it is associated with Herbert Tingsten’s famous words on democracy as a superideology in his 1945 book *Demokratiens problem*:

> The belief in democracy is not a political outlook in the same sense as conservatism, liberalism, and socialism. It entails an opinion on the form of government, on the methods by which political decisions are made, not on the content of state decisions and the structure of society. It may thus be regarded as a kind of superideology, in the sense that it is common to disparate political outlooks. One is a democrat, but also a conservative, liberal, or socialist.

According to Tingsten, one should be able to embrace the idea of democracy regardless of one’s political convictions in other respects.

Both of these ideas—the liberal idea of a neutral state and democracy as a superideology common to all—seem appealing and reasonable to those of us who embrace them in one version or another, but they are actually highly problematical and not at all as powerful as they may at first seem.

It should be pointed out that both ideas primarily function as sermons to the choir. For the devout liberal or the democrat as a matter of principle, there may certainly be a point to understanding that his or her personal convictions are also an ecumenical posture, but it will hardly persuade those who are skeptical or negative from the outset.

A similar observation is found in the communitarian critique of liberal thinking. The point of view appears in several variants and is more or less cogent, but the essence is that when push comes to shove, liberal institutions are anything but neutral. To those who dissent and to those who cherish non-liberal ideas about what characterizes a desirable social community, the rules of the liberal democracy game are directly objectionable and injurious to the

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21 Both the leftist liberal John Rawls and neoliberal Robert Nozick adopt variants of this idea. They differ in their views on what neutrality entails in practice, but even two leftist liberals like Rawls and Ronald Dworkin differ in their approach to how we should more closely define neutrality. One of my colleagues, Ludvig Beckman, analyzes that specific subject in his *The Liberal State and the Politics of Virtue* (2000/2001).

22 Tingsten 1945, 57. Tingsten’s view on democracy and particularly his thesis on democracy as a superideology have been widely discussed, including in Hermansson 1986, Boström 1988, and Aronson 1990.

23 See Brian Barry’s (1989) “How Not to Defend Liberal Institutions.”
society itself. In multicultural societies, such controversies are the rule rather than the exception. Telling examples include laws against female genital mutilation, the opportunity to use freedom of expression to communicate messages that others find blasphemous and family law that puts different family configurations on an equal footing. Viewpoints of that kind can be refuted and in some instances disarmed by means of conceptual precision.\textsuperscript{24} But at the end of the day, I believe that liberal democracy insists upon a positive attitude. It is a matter of a value choice that excludes certain other ideas.\textsuperscript{25}

An even more fundamental objection is that there are no perfect procedures or rules of the game. A pivotal insight from the theory of social choice is that every conceivable decision method, other than the purely dictatorial, allows the possibility that the outcome of a referendum may depend on irrelevant factors. That means the general will may vary depending on things like voting rules, constituency division, or number of alternatives on the agenda. Certainly, this need not be a problem in practice. If the citizens' political opinions are structured in a relatively normal way—if they can be arranged on one or more scales of the right-to-left ilk—the method of referendum does not matter much, provided that voters do not cast their votes tactically, but rather according to their convictions. The problem is that the legitimacy and survival of democracy becomes dependent on everyone refraining from their opportunities to manipulate the rules of the game. Even those at risk of losing a referendum, even if it concerns the issue dearest to their hearts, must for the sake of democracy refrain from tactical action in this respect.

In a fundamental sense, democracy is thus predicated on something beyond democracy itself, predicated upon citizens being prepared to take responsibility for democracy. The basic problem is that this cannot be formalized in statutes or constitutions. Naturally, it would be easiest if we could introduce a system that rewarded responsible behavior, but the standard prescription of economists does not suffice in this context either. And the core of the problem is precisely that; in purely logical terms, it is impossible to construct an incentive-correct decision structure for certain types of "utility."

The material insight in this section is that a working democracy is predicated on the kind of norms that are usually called public spirit. The absence of such civil virtues or the widespread instance of other destructive norms can have a highly palpable negative impact on democracy.

\textsuperscript{24} See, e.g., Kymlicka 1989.
\textsuperscript{25} See Barry 1989.
6. Rights that guarantee the opportunity to participate

We often mention rights in the same breath as democracy, as if the two were almost the same thing, and in many respects they are kindred spirits. Democracy and human rights can both be manifestations of a single endeavor to bring about a nobler social order in which human dignity and respect for the individual set their stamp on the form and content of policy.

Still, those of us familiar with partisan politics are fully aware that they may be each other’s opposites. In constitutional policy contexts, rights are regularly held up as a counterweight to democracy. It may be that people then usually assert that rights exist to counteract majority oppression and are thus actually an expression of a more genuine democracy. The most typical example here is property rights, which the political right periodically holds up as one of the cardinal points of a democratic society. From those more oriented towards political philosophy, the same idea is familiar from the neoliberal thinker Robert Nozick.

The relationship between democracy and rights seems thus more problematic than one might at first imagine. The basis for this is quite simply that there are different kinds of rights, that rights may refer to different kinds of things. And yet this circumstance offers a possible way out of the intellectual morass. It also means that we should be able to imagine that rights may appear both positive and negative on democratic grounds.

But let us take one thing at a time. First, we should to some extent clarify what we mean here by a right. Rights may refer to various states of affairs and may be directed towards different antagonists, but they may also be of various types. According to one famous typology first initiated by the legal philosopher Hohfeld, we should differentiate between claim rights, power, freedom, and immunity. This gives us a system of concepts that are logically related, pair by pair. A claim right thus corresponds to an absence of freedom, that is, an obligation, for someone else. In this context, however, we can at first ignore all such conceptual niceties. The central thought is clearly evident in Ronald Dworkin’s phrase “rights as trump cards.” A right for an individual or a group means that a certain state of affairs may not be made the object of common deliberations and collective determinations. The collective and other individuals must quite simply respect that which the right stipulates. That may apply to the individual’s freedom and personal privacy or the

26 The former leader of the Swedish Moderate Party, Gösta Bohman, is one example. See Aronson 1990, who analyzes political thought with respect to the attitude towards democracy among the Swedish conservative party leaders who acted under democratic conditions (from Trygger and Lindman through Bohman, except for Holmberg).

27 Nozick (1974) begins his book with the words: “Individuals have rights.”


29 Dworkin 1984. See also the introduction in Waldron 1984.
provision of certain critical necessities. A regulation of rights thus means that
the content of democratic decisionmaking must be limited (or directed
towards certain stated goals).

The classic discussion has pertained to whether certain rights should be
included in the very definition of democracy. The front line has often been
that put forth by individuals oriented towards the political right, that only civil
and political rights can be allowed to be a part of democracy. Leftist
individuals have countered by striking a blow for social rights as well.30
According to a more scientifically rigorous point of view, however, it is only
certain political rights which by definition, so to speak, are part of democracy.
Democracy is then understood primarily to be a set of procedural rules and
the only acceptable exceptions are rights (rules of content), which are often
aimed at protecting and guaranteeing the democratic procedure.31 The
political rights that guarantee citizens the right to participate in the political
decision process may thus be interpreted as examples of positive
constitutionalism.

It follows that any rights not oriented towards the political community, but
rather towards other individuals, can be understood as neutral with respect to
democracy. The majority of what we think about when we talk about rights
can therewith also be said to be in the nature of negative constitutionalism.
They are a hindrance to democracy, a limitation of popular power that cannot
be justified by the claim that they in any immediate sense facilitate democracy.

But this does not exhaust the question. If we take our point of departure
from Robert Dahl’s line of argument, it would at this point be reasonable to
differentiate among three different types of rights that can all in some sense
be considered protections of the democratic procedure. Beyond the rights that
are by definition part of democracy, we can also identify rights that are not part
of democracy, but which are nevertheless necessary for democracy, and rights
that are neither part of or necessary for democracy, but which are required to
uphold respect for the idea of human equality.32

The problem with adopting rights within the second category—those which
are required on empirical grounds for democracy to work—is that we have a
hard time drawing a clear boundary within the group and thus end up in the
midst of the partisan conflict on the position of property rights versus the
need for social and economic equalization. It was precisely this that Tingsten
believed we should avoid by keeping matters of content outside the
democracy itself. I am inclined to agree. My own lingering uncertainty applies
to the right to education, which should not be understood as part of
democracy but still seems to me to enjoy a unique position among all the

30 See the Elvander anthology 1975.
31 Barry 1992, 104.
other more or less clearly justified proposals on social rights. But I also realize that this line of argument leads us downhill.

As to the third category of rights, I am more inclined to agree with Dahl. As an example here, we can take fair treatment in a court of law. I find it reasonable that we believe there are a number of fundamental human rights that the democrat should accept. In rough terms, that which can be summarized in the expression “the right to life and limb.” Respect for human dignity is something of a precept for most democrats and it is justification for the idea that the democracy should impose certain constraints upon on itself.

7. Political taboos - a ruling device?

Early in the 20th century, the Swedish labor movement established the principle that “religion is a private matter.” In so doing, the movement took on a self-imposed constraint that religion would not be made the object of policy. The issue of the monarchy probably has something of the same status today, and perhaps also the matter of relations between the negotiating parties in the labor market. This constraint had nothing to do with advocating freedom of religion, the individual’s right to embrace any religious belief with no meddling from the state. If it had been, Sweden should have chosen to politicize religion, meaning that politicians should have acted to bring about the abolition of the state church system. The thought was instead that it would be best for politics, or at least for the movement, if certain issues were kept off the agenda.

The American political scientist Stephen Holmes has introduced the same idea using the expression “gag rules.” Holmes’s perspective is that of the survival of democracy and he believes that democracy is at risk of going under if political conflicts are permitted to become too intense. For the sake of democracy, we should therefore impose certain constraints on ourselves regarding what is allowed to be politicized. Subjects that cause schisms so deep that all other political discussion and activity are undermined or come to a standstill should, according to Holmes, be kept off the political agenda.33

Holmes illustrates his point using three examples from the history of the United States: the abolition of slavery, freedom of religion, and the abortion controversy. As the examples suggest, it is far from obvious that we would be prepared to accept self-censorship in matters we truly believe are morally significant. Based on democratic precepts, Holmes’s arguments are highly problematic. The idea is essentially that democracy works best if we do not have too much of it. This is singularly lacking in appeal to the democrat, but it may very well be empirically true. One reason that we cannot dismiss this

33 Holmes 1995, chapter 7.
point of view outright is that basically the same idea is found in several other versions. Let us briefly consider a couple of the most familiar.

The interwar period’s experience of the collapse of democracies and the emergence of totalitarian political systems was for a while the central subject of study for political sociologists. What could explain why history went backwards, so to speak? How could we understand that democratic systems in certain cases even self-destructed, with no threat or intervention from without? One of the most famous research projects provided answers to those questions in terms of political culture. The critical difference between countries like Germany and Italy on the one hand and the United States and the United Kingdom on the other, was that the former, where democracy broke down, suffered from a lack of democratic culture. The critical factor was the existence of a “civic culture.”

This research triggered two intriguing discussions. The first had to do with the interpretation of the causal connection. What was the cause and what was the effect? Was it really true that the culture came before the democracy, or was it actually that the democracy fostered its citizens to embrace certain values? The second discussion is related to our problem statement. It had to do with the kind of prescription that was written for the countries with a low level of democratic culture. Some social scientists claimed that the research showed that moderation was best, that too much participation could harm democracy and that a certain dose of apathy could be functional to the continued existence of democracy.

A more familiar example today is the Dutch political scientist Arend Lijphart’s theory on democracy’s chances for survival in ethnically divided and polarized societies. The basis for almost everything Lijphart writes is the division of models of democracy into two parts, which he initiated. The democracies of the world can, according to Lijphart, be classified among either the British-influenced majority model or the more Swiss-oriented “consocial” model oriented towards cooperation. Lijphart actually never asks which model is most democratic and in normal cases that is probably not the aspect that differentiates them. But it is not at all difficult to read between the lines that certain extreme versions of consocial democracy are actually lesser versions of democracy in which cooperation and compromise are generated not by democratic means, but through institutions controlled from the top that are short on popular support and transparency. Lijphart’s main point of view is that certain countries, those that are deeply ethnically divided and polarized, have no choice between the two models of democracy. Either they try to apply consocial democracy, and then perhaps with all of its limitations,

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34 The main work is Gabriel Almond and Sidney Verba’s The Civic Culture. See Barry 1978 for a critical review of the entire research tradition.
35 See Lewin 1970, who outlines the discussion between normativists and functionalists.
or they have no democracy at all. The best must not be permitted to be the enemy of the good.\textsuperscript{36}

With democracy as our point of departure, what conclusion should we draw from this? Is there reason for the democrat to welcome the existence of political taboos? There may be something to Holmes’s thinking, purely objectively. Democracy is intended to be a civilized method of managing conflicts, but it only works as long as we do not try to apply it to the really tough cases. If such a limitation of democracy is uncontroversial—no one has any objections—or if it is unconscious, then no harm is done. No one perceives it as an actual restriction. It is then also pointless to ask whether this should be welcomed.

The interesting problem arises when the idea of political taboos is introduced in a concrete situation, as a kind of informal rule for political discourse and decisionmaking. It seems to me that it would be reasonable to be highly skeptical, especially if those recommending restraint are those who want to maintain the status quo for their own reasons. It then becomes rather an immoral and basically deeply undemocratic method of argument: If I do not get what I want, I will not accept our conclusions.

\textbf{8. The division of power when the general will is ambiguous}

There are two main hallmarks of Swedish democracy. It is a parliamentary system in which elected representatives are appointed using a proportional election method. The antithesis of the Swedish model is the American, which is characterized by presidentialism combined with elections conducted according to the majority representation system. In one respect, the difference is that parliamentarism accumulates or concentrates power to a single channel, while presidentialism is based on a division of power between two bodies (the legislative and the executive) which both enjoy popular legitimacy entirely independently of one another. In the second respect, the line of demarcation is rather the reverse. The proportional method tends to distribute power among many different partisan groups, while the majority representation method tends to produce a two-party system in which power is concentrated to the side that has for the time being gained a majority.\textsuperscript{37}

\textsuperscript{36} This idea emerges most clearly in Lijphart 1975 (especially page 238) and Lijphart 1976. I personally found Wilander 1999 useful.

\textsuperscript{37} See chapter 2 in Democracy and Leadership (Petersson et al, 1997). Beyond the main alternatives of parliamentarism and presidentialism there is also a hybrid form, semi-presidentialism, which is applied in France, Finland, and Russia. It should perhaps also be pointed out that a country like Germany cannot be said to have a presidential system, even though the country has a president. The German president is appointed by the Bundestag. See Sartori 1994.
As a rule, it is only the first of the two dividing lines to which we refer when we talk about division of power. But with certain exceptions—indeed independent public administration and municipal self-government, which some may assert are probably quite significant—the Swedish system lacks in such case an element of the division of power. Certainly, parliamentary systems also contain a kind of division of labor between the legislative (the Riksdag), the executive (the ministries), the administrative (public administration), and the judicial (the courts) branches of government. But the division of power refers to something more than just the assignment of the various tasks of the state to different bodies of power—the bodies must also balance each other. There are two variants here. The division of power may have the nature of a very strict division in which different state bodies are carefully separated. But it may also involve, as in the United States, mandated “checks and balances.”

The second dividing line is also noteworthy in this context. The distribution of power by means of the proportional method also has a kind of moderating or balancing effect. This was understood in his time by the Swedish right-wing leader Arvid Lindman, who in exchange for meeting the demands of the left for general and equal suffrage (at first only for men and only for elections to the Lower House) suggested and carried through a transition from majority election to proportional election. That he simultaneously laid the foundation for a future right-wing schism and therewith a very protracted social democratic hold on power is another matter entirely.

The two constitutional policy positions illustrated here with the Swedish and the American cases imply that a possibility of two other combinations of answers is given. The classic examples, the United Kingdom and Switzerland, are very useful here. The British model of democracy is an unalloyed concentration of power model. Power is accumulated constitutionally to the parliamentary channel, where it is put in the hands of the party that has for the time being garnered the support of a majority of voters. The political system in Switzerland gives us the opposite combination. The power of the parliament is balanced by constant referenda, and the proportional representation method is driven to the point that the country permanently applies a system of coalition government.

Our arguments thus far can be summarized in the following diagram:

38 See, e.g., Lewin 1992, chapter 3. See also Przeworski 1992, 249f, who often mentions this as an example of how the victims of democratization (the former holders of power) can be given certain guarantees against the utter loss of their former positions.
Relation between bodies of power

Representational model:

<table>
<thead>
<tr>
<th></th>
<th>Parlamentarism</th>
<th>Presidentialism or similar</th>
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<tbody>
<tr>
<td>(Accumulation of power)</td>
<td>(Division of power)</td>
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<tr>
<td>I United Kingdom</td>
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<td>II United States</td>
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<td>III Sweden</td>
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<td>IV Switzerland</td>
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Majority method
(Concentration of power)

Proportional method
(Distribution of power)

Figure 2. Four main constitutional policy alternatives

These four constitutional solutions represent different ways of looking at the worth of the division of power, but there is no reason on those particular grounds to ascribe any of them an advantage on the basis of democracy. Any of the variants may be applied in a democracy. The choice among them depends on other considerations. The British model is preferable if we desire strong ability to act, while its antithesis yields strong safeguards against sudden, radical changes in policy.

The deciding criterion for whether a democracy should accept a system in which power is divided is whether the bodies of power are democratically founded or not. The old Swedish order with a division of power between the king and the Riksdag was thus unacceptable from a democratic perspective. That the Riksdag was eventually democratized was not enough—the abolition of royal power (square III) or the replacement of the king by a president (square IV)—was also required. Conversely, there is naturally nothing objectionable about the system of municipal self-government (if it can indeed be called a variant of the division of power—in the Swedish unity state, there is despite all a national body of power that settles all disputes on authority, i.e., it has “authority-authority”). The idea of democracy is not vouchsafed to any certain level or any certain magnitude of the demos, the people, but can very well be applied to entities other than the state.39

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39 Mats Lundström (1998, 48ff) argues as if democracy by definition were tied to the political entity we call the state and that it should therefore be an expression of some kind of logical error of thought to ask whether or not the European Union is democratic. Lundström’s reasoning is mainly elucidative, but here I believe he is far too legalistic and that this also leads him wrong in his interpretation of, e.g., Robert Dahl. Whether a particular political entity is worthy of being called a procedural democracy in its fullest sense or qualifies only as a procedural democracy in a narrow sense is not, or in my opinion should not be, determined by a formal, legal dividing line, but rather a genuine line of demarcation in terms of power.
indicates that democracy instead works better in small political communities than in the state formations we have now. But how various democratic entities, whether of the same distinction or from different “levels,” should be combined in order to optimize democracy is not in the least obvious. The three alternatives available to us are the unity state, the federal state, and the federation of states, but the choice among them seems to be about other values, such as efficiency or the opportunity for national self-determination.40

The version of the division of power usually discussed in Swedish politics is not of the above kind. Instead, it usually has to do with considering whether certain kinds of government agencies or state functions should be characterized by far-reaching delegation of power and accountability. The idea that Sweden should establish a constitutional court is brought up now and then, for instance. One possible role model would be Germany where the parties appoint jurists who are more or less loyal to the party as judges in cases pertaining to the constitutionality of laws. The democratic concern is, as noted earlier, that the judges in certain cases also gain extraordinary opportunities to influence the objective direction of policy, although they are beyond the reach of normal demands for political accountability. The new EMU-adapted ordinance on how the Central Bank of Sweden is to be managed is in practice a similar construction.41

The delegation of power actualizes a number of interesting complications from the democratic perspective. One such problem applies to the possibility of exercising power via representatives, which was given its resolution with representative democracy. The key to solving the problem is the idea of responsible government. Our democratic institutions presume that this can work, even if the representatives directly elected by the people delegate power further down the line, but obviously we run the risk of weakening democratic control, that demands for accountability will be diluted if power is delegated more than one step away—subdelegation—and particularly if the delegating authority is vaguely specified. The Swedish administrative model, which is unusual in the world, seems nearly an archetypal example in this context. Elected representatives govern with the help of laws and directives and

41 See Hermansson 1996. A new dissertation (Ahlbäck 1999) triggered a discussion of something similar for the state audit bodies. The study supports the conclusion that the constitutional status of both audit bodies Ahlbäck studied, the National Audit Office and the Parliamentary Auditors, should be strengthened. As I see it, it does not, however, follow that the construction should be given a design that has the nature of a division of power (see Petersson 1999). We might imagine here—even if I find it naïve—that the National Audit Office, unlike the Central Bank of Sweden, can be given such a precise mandate that its work contains no elements of a political nature, and that a division of power would therefore be consistent with the standards of democracy (see section 4 of this paper). But I still find it difficult to see the point in making an audit power entirely independent from its clients—the elected representatives. The reasonable conclusion seems instead to be that both the Riksdag and the ministries need strong audit bodies so that they can perform their respective functions within the framework of a parliamentary democracy.
neither the Riksdag nor the ministries seem capable of influencing individual matters. That which determines whether this can be considered democratically acceptable is the existence of regular oversight of the delegation of power. How well the delegation has worked should be regularly examined.

As I see it, the problem with the two cases—the constitutional court and a politically independent central bank—is that we either guarantee genuine opportunities for responsible government, and then we have only a mild form of division of power, which is desirable from the democratic point of view (it is doubtful whether we can settle for the opportunity to amend the constitution or entirely revoke the original delegation)—or we gain a genuine system of division of power, which then also represents the negative variant of constitutionalism. In short: as democrats, we can accept the division of power if the system is based entirely on the ability to directly or indirectly give the bodies of power democratic legitimacy. The question is whether we have exhausted the subject with this answer, or whether there may be acceptable reasons other than democracy itself that would make it possible for us as democrats to accept a delegation of public authority that goes so far that we gain some kind of division of power. Are there other reasons that would justify granting autonomy to government agencies or other public bodies? In the eyes of the democrat, what kind of mechanisms or institutions could replace a system of responsible government?

The answer we are looking for is reminiscent of the one Michael Walzer gives when the subject is justice. His proposal is that a justly organized society should appropriately be understood as a system built up of different, distinct arenas, each of which has its own logic for justice. The greatest problem of justice, according to Walzer, is that distribution systems invade or spill over into arenas where they do not belong—which Walzer calls tyranny.\footnote{Walzer 1983.} An equivalent for our part would thus be that we could point out several alternative models of responsible government.

The only possible variants I can imagine here are the market and the profession.\footnote{Individual rights also generate a form of division of power, i.e., that between the public arena and the individual. This has been addressed in a previous section and is otherwise irrelevant in this context, as long as we do not believe that the individual is engaged in the exercise of public authority.} When market competition works as intended, it offers a type of guarantee against waste of resources. It seems to me that the prerequisite for using this mechanism within the framework of a type of exercise of public authority or a public undertaking is that the proper goals of the institution should be rather obvious to everyone, as should be what good management of the autonomous institution should entail. Elected representatives could then content themselves with making sure that competition is not eliminated. But it is doubtful whether the popular government could also refrain from this, and
thus it is more a matter of an administrative management device and not one of an alternative to responsible government.

The idea of a profession or a guild is another matter. Objectives are best realized if the institution is put in the hands of a group of individuals who are not only spared the meddling of politicians, but are also spared competition from the outside. Through education, rules of accountability, and quality assurance, the autonomous group consciously assumes responsibility for its own professionalism. The risk involved in overly avid interest on the part of elected representatives, for instance with respect to alternative forms of healthcare or educational models, is that the internal professional discussion may be deprived of its meaning. "After all, the politicians do not care what actually works." The question is whether elected representatives can entirely abdicate. Can one conceive of the profession as the core of a public institution that becomes entirely autonomous? I have difficulty believing in such a system. One possible danger is that the group could become so deeply divided that it could not maintain its own internal discussion forums, in which case one would be forced to declare that it was no longer a profession. The task of elected representatives should thus here as well be to supervise the "exterior," to make sure that the profession does not mismanage its own institutions for responsible government. Therewith, they have not entirely abdicated their own responsibility.

Finally, we should perhaps ask whether there is nonetheless no other reason for delegation. This would in such case have to do with institutions where there is actually no positive reason to offer for those who demand autonomy, but wherein every attempt to apply a model of democratic governance would be immediately harmful to the legitimacy of democracy. It may be that certain corporative arrangements can be justified. The state refrains, for instance, from intervening in certain sensitive issues in the labor market, instead allowing the negotiating parties to assume responsibility for certain aspects of the economic policy. Certainly, some people claim that this gives us a more efficient system. It is, or so they say, a better way of guaranteeing compliance with decisions than if the state were in charge. The thought I am trying to bring forward is based on the notion that we are perhaps wise in keeping the old system, even if this argument is not correct, simply because the state has no prospects of particularly stellar success either. We then get yet another palpable failure of policy, where certain highly powerful actors were given the chance to be relieved of any social responsibility. Nor is this, to the democrat, an acceptable argument for the division of power. It would in the end be a destructive method to base democracy on the existence of ignorance and prejudice.

In summary, this means that the main grounds for the division of power are that we cannot always, on a purely democratic basis, classify different forms of democratic institutions. We might want to shape the state so that it
takes into consideration more than one perspective at a time. It may then seem appropriate to apply more than one model at a time; if they sometimes end up in conflict there is nothing to be done about it, or the conflict may even be understood as a good thing. It gives rise to a kind of balance of power system that has a moderating effect on all.

Beyond this, there may be reason for certain public institutions to apply a far-reaching delegation of power and authority. This also gives rise to something approaching a division of power system. The main rule should be that the delegation is regularly reexamined. The popular sovereign should never abdicate.

9. Pluralism - evolving the individual and the democracy

Far from all politics and common action take place within the public arena. The majority of collective decisionmaking in a modern society such as the Swedish one is not in the nature of the exercise of public authority. It takes place within the framework of all kinds of voluntary associations and informal communities. Many of society’s true powers, individuals and collective actors alike, are allowed to influence the lives of the people with no public mandate for their activities. They, just like all others, are compelled to obey the law and they are expected, perhaps more than all others, to behave in a morally upright manner. Nothing else is required of these powers. The question is what kind of opinion a democrat may hold concerning such a pluralistic social order.

It is a rather simple matter to discern several reasons in the political science discourse that indicate that the democrat should welcome pluralism. First, it can be argued that pluralism is a necessary component of a working democracy. The opportunity to freely organize is a prerequisite for giving citizens any meaningful choice in the political decision process. Pluralism also provides the conditions that make it possible for citizens to get the information they need to make enlightened decisions.\(^{44}\)

Several other arguments are based on the idea that pluralism brings along with it good consequences for citizens and by extension for democracy. One such thought emphasizes and is founded on the value of human differences. The good inherent in diversity of organizations and ideas is that it increases the chances that everyone will find appropriate forms for their own personal evolution. For as long as these human endeavors and activities do no wrong to others, there is no reason to manage the pluralistic society. It is however a good thing if certain organizations also give people the opportunity to practice democracy on a small scale. The voluntary organizations, the popular

\(^{44}\) Robert Dahl (e.g., 1971 and 1982) has developed this perspective.
movements, can then act as schools of civil upbringing, as producers of the virtues vital to democracy.45

There is a similar thought that instead emphasizes that organizations may act as alternatives to or compensate for inadequate individual resources. Voluntary associations can, if built around politically relevant issues, contribute to greater political equality—more democracy. They activate citizens whose individual resources (education in particular) would otherwise probably not equip them to participate in political life. The popular movements function in that case as a kind of “floor” that elevates the level of civil participation. Economic and social differences in society then do not have such a clear impact on political participation.46

Another variant of this impact thinking has aroused a great deal of attention in recent years. The central concepts are not pluralism and personal development (human capital) but rather the civil society and social capital. The idea is that a richly evolved civil society has the capacity to produce social capital, that is, interpersonal trust. It is sometimes added that the civil society should preferably be characterized by many weak ties, rather than a few strong ones, and that interpersonal relations should preferably be horizontal (democratic), rather than vertical (authoritarian). The critical factor in this theory is the amount of social capital, which unlike human capital is not connected to individuals, but is rather a characteristic tied to relations or systems of relations. Social capital can not only explain economic growth, but also the health of the democracy.47

Thus far, there seems to be nothing that speaks against pluralism but it does also have a downside. There is no natural law that says that associations of various kinds necessarily facilitate political equality among citizens. They may have the completely opposite effect. Special interest organizations and voluntary associations may instead make those already blessed with abundant resources even stronger, or at least miss recruiting the most resource-deprived citizen groups. There is also risk that the organizations will not in the least help create the civil society. At any rate, participants in the public debate mention special interests or groups seen as sources of nothing but constant demands at least as often as they mention voluntary associations and popular movements. In the worst case scenario, these groups may even counteract the dialog that is the foundation of a working democracy. Instead of open popular movements, we are then dealing with ideological sects and intellectual ghettos.48

45 Here, John Stuart Mill should be held up as the source of the idea.
46 The classic analysis of this is found in Verba, Nie & Kim 1978. See also Petersson, Westholm & Blomberg 1989.
47 The discussion was triggered by and has revolved around Putnam 1993.
What then becomes the conclusion the democrat should draw from this? The opportunity for people to associate is a democratic value in itself, and the organizations’ freedom to act means that the state accepts competition for the right to distribute value in society. This may be an asset from the democratic perspective, but the organizations may also exploit their freedom to harm democracy. This looks like a genuine balancing problem, but there is generally no choice in practice, the exceptions being associations that obviously infringe on the rights of certain people and those that directly threaten the survival of democracy, where we must identify the boundary at which human dignity or the self-defense of democracy make it necessary to intervene. Otherwise, freedom should prevail. A democratic state cannot raise demands for full control over its own inner life. If we do not content ourselves with legalistic argument, we have no choice but to declare that “only the totalitarian state is entirely sovereign.”

10. What remains of popular power?

Where has this walk through the landscape of political scientific argument taken us? We could first of all discern several variants of formal or informal devices for taming or at least molding popular power. Popular power may be more or less constrained, limited, and balanced by counterpowers.

Constraining popular power in certain predetermined procedures is a necessary component of a democracy. Exactly which procedures should be chosen cannot be determined—there is no absolute answer. Statutes and decision rules are not the be all and end all, but democracy is definitely not served by carelessness with its forms. That democracy is essentially predicated on certain types of civil norms or virtues is another matter entirely. Public spirit cannot be ordered or commanded into existence through special paragraphs in the constitution.

Limiting the content of popular power emerges as the most far-reaching form of taming popular decisionmaking. Despite that, there are a couple of arguments by which a democrat still has reason to accept such an order, in certain cases. The one case has to do with rights that protect political participation and democracy itself. Democrats should also impose upon themselves the kind of decision constraints justified with reference to respect for human dignity. If democracy in practice is insensitive to its own value basis, it risks committing the same error as when it abolishes itself by formal, democratic means. It is logically entirely possible, but would be unreasonable from a normative point of view.

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49 The quotation was taken from Gunnar Heckscher (1951, 21), the pioneer of Swedish political science with respect to the organization system.
With respect to the limitations of the content of popular power, it seems important to define and establish the reasons in the form of a right. All other more informal limitations of the content of decisionmaking should be avoided. Political taboos are harmless if accepted by all, but otherwise are at risk of functioning as a kind of threat against the opposition, meaning in reality that democracy is eliminated.

Balancing political power with supervisory and constraining counterpowers can be said to represent the pinnacle of predemocratic constitutional policy. For the democrat, however, there is only one good reason to consciously experiment with the division of power. One can perfectly justifiably claim that political decisionmaking should always take different kinds of views into consideration. Democracy can also use the device of giving different types of considerations equivalent institutional guarantees, in which case the various bodies of power enjoy equal public support.

With respect to the balance of power otherwise, a point of view opposite to that we established in the matter of limitations of content seems reasonable. Here, we can only hope that all informal balancing of power is good for democracy in practice. With a few carefully defined exceptions, democracy cannot live if it does not give full rein to pluralism. It cannot be helped that democracy in so doing also makes room for forces that do not always work to the good.

Added to each other, these various devices for taming popular power could give rise to a sharply curtailed and constrained democracy. Our own examination of such proposals has however led to a kind of framework for democracy wherein the constitutional architecture is rather austere. The central idea is that formal regulations should supply a procedure that assures us that we will arrive at decisions that can be reasonably interpreted as manifestations of the general will. Beyond that, only the people themselves should be allowed to inhibit popular power. If the people are divided, forcibly inflicted unity cannot be taken too far. In such cases, it is a democratically healthy sign if popular-based movements balance and tame political power.

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