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# Democratic Defenses and Destabilisations

Abstract: The so-called paradox of democracy is approached as a variant of a more general class of so-called paradoxes of self-amendment. It is studied from a legal philosophy and a game theoretic point of view. Special attention is devoted to the risks and chances of inducing the foes of democracy to accept democratic rules by granting them a share in power. The upshot is that admitting democratic competition there are no foolproof defenses against democratic self-destabilisation.

## 1. Introduction and overview

Once the invention of the state is made, the question of controlling it arises (see for an overview Gordon, S. (1999)). Taking recourse to controllers the ancient problem of controlling those who are in control emerges: “Quis custodiet ipsos custodes?” (who will guard the guardians?). As far as the problem of an infinite regress of controls problem is concerned democratic self-rule has been and is often still regarded as a way out: self-control seems to eliminate the need for control and thereby the need for controllers. But taking a closer look most of us will agree with John Stuart Mill (On liberty, chap. 1):

“The ‘people’ who exercise the power are not always the same people with those over whom it is exercised; and the ‘self-government’ spoken of is not the government of each by himself, but of each by all the rest. The will of the people, moreover, practically means the will of the most numerous or the most active *part* of the people; the majority, or those who succeed in making themselves accepted as the majority; the people, consequently, *may* desire to oppress a part of their number; and precautions are as much needed against this as against any other abuse of power. The limitation, therefore, of the power of government over individuals loses none of its importance when the holders of power are regularly accountable to the community, that is, to the strongest party therein. This view of things, recommending itself equally to the intelligence of thinkers and to the

inclination of those important classes in European society to whose real or supposed interests democracy is adverse, has had no difficulty in establishing itself; and in political speculations ‘the tyranny of the majority’ is now generally included among the evils against which society requires to be on its guard.”

(<http://www.econlib.org/library/Mill>)

The “rule of submission” (see, de Jasay, A. (1997)) which amounts to the general opinion that acceptance by a majority carries a moral claim to legitimacy independently of substantive normative content makes the problem even more pressing. Backed by such an opinion majority rule can easily overrun constitutional checks and balances. But one should not exaggerate the conventional reservations against majority rule. Majorities will tend to exploit minorities and majoritarian rent-seeking (see on this Rowley, C. K., R. D. Tollison and G. Tullock (1988), Tullock, G. (1993)) will be very widely spread in every democracy. Individual liberty will be threatened in many ways. Nevertheless, as long as majoritarian voting is in place and a free competition of parties to form winning coalitions admitted it is hardly conceivable that majorities will, say, start to enslave minorities of their own electorate, kill individuals in arbitrary ways etc.<sup>1</sup>

The most serious risk for individual liberty and a democratic system under rule of law is clearly that democracy may be abolished by democratic voting itself. Such self-destruction is not merely an abstract but a concrete possibility (e.g. the example of Germany in the 1930s). More generally speaking a party, which is determined to rule out any unfavorable election after being elected may abolish majority rule by its majority. The rules of rule change of a purely majoritarian system can easily set an end to it. After that no democratic way can lead back to democracy.

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<sup>1</sup> Even though there have been slave holding democracies in classical antiquity as in modern times it is hardly conceivable to have a society in which individuals who are slaves along non-political dimensions but could vote in general elections under equal political voting rights. In the latter regard Jasay’s otherwise often perceptive criticisms of democratic proclivities towards infringing individual spheres seem rather overblown.

Since anti-democratic intentions may not be verifiable in constitutional courts, every democracy in which anti-democratic parties may possibly gain power is seriously endangered. It is on this possibility that we will focus attention in this essay. In doing so we intend to study “democratic defenses and destabilizations” from a “philosophy of law cum game theory” point of view. The two prima facie distinct perspectives become intimately related once the central role of “rules of rule change” is acknowledged (see Hart, H. L. A. (1961), p. 41). Such rules are crucial elements of the dynamics of norm-generation in advanced legal orders like modern democracies. The rules of rule change allow for changing the rules of a system of rules and thereby the system itself according to rules of the system so changed.

This raises the problem of whether the power to enact rules can be limited by rules against its own (ab-)use or whether such power cannot be constrained by rules of the system itself. From a philosophy of law point of view we are dealing with problems of potentially self-referential systems of rules (see generally on this Suber, P. (1990)) while from a game theoretic point of view we may describe the very same problems in terms of sub-game-perfection of equilibria (Selten, 1975). Using majority voting to abolish itself is merely a most obvious case in point. More generally it raises the question of what a present majority can do under majoritarian rule to commit a later majority. Is there any way to commit to majority rule by a majoritarian vote if under majority rule a majority can be used to revoke any decision? More generally speaking, in a game in which some of the moves amount to the enactment of new rules of the game it is not clear whether – except for abolishing the rule of rule change itself – any permanent constraints on rule enactment are possible and if so how (see for a short overview inspired by Peter Suber’s work, Hofstadter, D. R. (1985), and his game “nomic”). After all, any rule stating that some rules may not be changed may itself be subject to changes, or so it seems.

Following the lead of the preceding observation we will adopt a philosophy of law perspective first (2.). Then we will approach the same class of problems in a somewhat more specific vein from a game theoretic point of view and illustrate by ways of simplified examples how a cartel of democratic parties might deal with dogmatic parties (3.). We extend this in the next section to include competition among democratic parties and its effects on the stability problem (4.). After having illustrated what philosophy of law and game theoretic analyses can in principle contribute to our understanding of democratic defenses and destabilizations this leads us to somewhat speculative final observations (5.).

## **2. On limiting the power to enact**

### ***2.1. The “logical” problem***

That the pope could not tie his own hands was a commonly accepted insight of medieval political theory. As already the “canonists” observed (see on this Ockham, W. v. (1992)) the pope could not “today” enact a command that would commit him to do something “tomorrow”. For, being the highest authority in church matters, the pope could revoke today’s command tomorrow. Therefore he could not in fact commit by a present command to a future action.

Moreover, a revocation of present enactments of norms would follow automatically under the rule that later norms enacted by the pope would supersede norms enacted before. In fact, this power to create norms that are “automatically” regarded as valid according to the basic “rule of recognition” (see on this, of course, Hart, H. L. A. (1961)) of the internal rules of the church characterizes more than anything else what it means to be the pope. But then, how could the pope conceivably commit himself in church matters?

Due to the preceding characterization of the pope there seem to be no sub-game perfect ways of commitment for him. According to the same logic, it seems to follow more generally that a supreme rule-giver in a system of rules cannot

commit. Like a rational actor who is defined such that he cannot give up his own rationality or a Bodinian sovereign (see on this Garzon-Valdes, E. (1983)) who cannot restrict his own sovereignty any supreme law-giver seems unable to restrict his own capacity to enact law *by law*.<sup>2</sup>

In a way, constitutionalism may be seen as an effort to solve the self-commitment problem of a supreme or sovereign law-giver. However, though constitutionalism as a matter of fact seems to have worked to some extent its logical basis is still doubtful. Is it conceivable that the rules of rule enactment could limit themselves? Is it meaningful to enact a constitutional clause like Article 88 Danish Constitution or Article 79 (3) Grundgesetz (GG, German Constitution or German Basic Law) which both stipulate that certain other norms cannot be altered in the future?

It is unclear whether articles such as 88 Danish Constitution or 79(3) GG could be changed constitutionally (see Ross, A. (1969), Raz, J. (1972), Hoerster, N. (1972)). It all depends on how we interpret the rules of the social games we play. If we accept, as we should, that the semantics of rules are such that they cannot be changed in ordered and intentional ways *unless* there are secondary rules allowing for such changes then a system of rules without a rule of rule enactment cannot be changed intentionally according to rules.<sup>3</sup> But if that is so then introducing a rule of rule change that *explicitly names the exceptions* to the fall-back rule of no change is possible. The semantics of interpreting rules are such that all intentional alterations of norms of the basic system of rules by enacting new rules are ruled out unless such alterations are explicitly allowed.

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<sup>2</sup> To put it slightly otherwise, being the highest authority in the church, the pope could not find means within his rule enactment power to solve any "political weakness of the will problem" he might face (see AINSLEE, G. (2002): *Break Down of the Will*. Princeton: Princeton University Press., also AINSLEE, G. (1992): *Picoeconomics*. Cambridge: Cambridge University Press., SPITZLEY, T. (2005): "Willensschwäche," Paderborn: Mentis.).

<sup>3</sup> Of course, people can start to act differently and thereby change the established rules or conventions but this is not of interest in a context in which we consider games in which the rules are changed only according to the rules of those games. To games in which there are other ways of rule change obviously other considerations would apply.

According to this interpretation the German Constitution by introducing 79 (3) GG explicitly allows “e contrario” to change all articles except for 79 (3) GG. The latter remains unalterable in explicitly stating that articles 1 and 20 may not be altered. In this reading article 79 (3) GG is just an extreme form of a list of exceptions to the rule that the basic rules are unalterable unless the alteration – in the case at hand for all articles except 1 and 20 GG – is explicitly admitted.

There does not seem to be a principal “logical” problem with the preceding solution of the commitment problem. We construe a game of rule enactment in which we start from a set of unalterable norms including one unalterable rule which explicitly lists the rules that can be altered. All others remain beyond the reach of the rule of rule enactment since rules in the sense that we use the term are “unalterable by rules”-entities unless the possibility of alteration is explicitly introduced by a secondary rule. As long as the consistency of the system of rules is enforced the rule of non-alteration will restrict the enactment of new rules (see on this also Kliemt, H. (1978)).

According to the preceding line of argument constitutionalism may work if an appropriate “rule of recognition” is in place. Applying this rule we can tell valid from invalid law and impose substantive constraints on what can be validly enacted according to the rules themselves. If the preceding is right there is no logical problem involved in limiting the constitution by means of the constitution. However, factual problems may stand in the way of constitutional limits to constitutional powers.

## ***2.2. The paper wall problem and democracy***

Critics of constitutionalism have objected always that it is impossible to constrain real powers in a society by writing something “on paper”. What matters according to this argument is “real” power (guns and money so to say) not words in a legal document and opinions about the legitimacy thereof.

However, in the last resort hardly anything but opinion does matter. As the British Moralists were fond to say “it is on opinion only that government is founded” (Hume, D. (1985), part I, essay iv).<sup>4</sup> The opinion that the words written on paper (or in case of unwritten constitutions established in practices) go along with a legitimate claim to obedience is constitutive for power (see on how power is constituted by secondary rules the seminal “Hartian” treatment in Barry, N. (1981)). Who is powerful is determined by rules. The powerful are powerful because certain individuals accept a “rule of recognition” such that those thereby empowered are “recognized” as those whose orders are to be obeyed;

“and this maxim extends to the most despotic and most military governments, as well as to the most free and most popular. The soldan of EGYPT, or the emperor of ROME, might drive his harmless subjects, like brute beasts, against their sentiments and inclination: But he must, at least, have led his *mamalukes*, or *praetorian bands*, like men, by their opinion.” (Hume, D. (1985), essay iv, “on the first principles of government”).

Some two hundred years later Hayek makes roughly the same point but contrary to Hume seems to think that the problem of constraining powers is more easily solved in “free” rather than unfree governments:

“There is thus no logical necessity that an ultimate power must be omnipotent. In fact, what everywhere is the ultimate power, namely that opinion which produces allegiance, will be a limited power, although it in turn limits the power of all legislators. This ultimate power is thus a negative power, but as a power of withholding allegiance it limits all positive power. And in a free society in which all power rests on opinion, this ultimate power will be a power which determines nothing directly yet controls all positive power by tolerating only certain kinds of exercise of that power.” (Hayek, F. A. v. (1973-79), vol. 1, p. 93)

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<sup>4</sup> In view of his common image of all Hobbes himself already said “... the power of the mighty hath no foundation but in the opinion and belief of the people...” (p.16) in HOBBS, T. (1682/1990): *Behemoth or the Long Parliament*. Chicago: Chicago University Press.

Much depends on what is meant by the term “free society” in this context. If we assume that we are talking of a non-despotic system in which secure individual rights and rule of law prevail then, clearly, it should be true that power is quite effectively constrained in a “free society”. The power of the mighty is constrained by the people’s unwillingness to follow too extreme orders of those who are – by the very willingness to follow their guidance – made powerful. But if we assume that a free society on top of being subject to rule of law is characterized by democratic rules of law enactment then things may be different. The claim to legitimacy that majority vote as such seems to exert may be so strong that it tends to undermine any restrictions that may have been involved otherwise (i.e., the aforementioned risks Jasay attaches to the democratic rule of submission). Therefore the fundamental problem of making constitutionalism work in practice – to make the constitution an effective factual restraint on majority rule rather than a mere paper wall – applies with particular force with respect to democracies or democratic games and their sub-games.

### **3. Playing the democratic power game**

Imagine you are in the position of a counselor to democratic parties. Assume that the parties supporting democracy confront minority parties who are critical of democracy itself. The minority groups intend to compete within the rules of the democratic game for a majority. Their agenda is to gain a majority to abolish democracy eventually. Or, to put it slightly differently, they intend to use the rule of majoritarian rule change to rule out its future use.

If the anti-democratic parties – to whom we will refer rather euphemistically as “dogmatic” also – should succeed to abolish democracy democratically this would have devastating consequences from the point of view of adherents of democracy. However, as long as the parties with non-democratic aims comply with the rules of democracy it seems very problematic from a democratic point of view not to admit them as players or competitors in general elections. In fact,



the constraints of their own democratic opinions make it very hard for democrats to discriminate against certain anti-democratic competitors in the democratic power game, especially when the presence of undemocratic intentions is not conclusively verifiable (except by matter of fact when it is too late).

The more seriously democratic parties take their own basic democratic convictions the more difficult it is for them to erect barriers to entry to the “political market”. In their dealings with dogmatic parties democratic ones will therefore tend to seek remedies for the problem that avoid to disenfranchise certain groups of the populace. For this reason and since experience indicates that letting the enemies of democracy play along with its supporters and to let them compete *within* the system may prove rather subversive for the original anti-democratic impetus of the dogmatic parties, democratic parties may tend towards “power sharing”. Offering the enemies of democracy a share in power will involve them with the exercise of legitimate power. This, in turn, may win the adversaries of democracy over – at least eventually.

Taking such a bet is in line with the democratic principles of the majority. It takes into account the democrats’ resentment against disenfranchising any groups of voters. Since it is based on quite plausible assumptions of political psychology democrats may often hope that integrating democracy’s enemies into the democratic process succeeds. This prospect seems worth taking some risk. Still, winning anti-democratic forces over by offering power sharing will not justify to expose democracy to arbitrary risks. So we need some kind of model to assess such risks in somewhat more precise terms.

### ***3.1. A model of a democratic majority cartel in a democracy***

To be more specific, assume that proven democratic parties compete according to the rules of the game of democracy but form a cartel as far as admission of non-democratic parties to a share in democratic power is concerned. Members of

the cartel believe that there can be two types of adversaries of democracy. One type is so dangerous that the risk of dealing with it is relatively high, while for the other it is somewhat lower. We refer to the latter as the *low-danger* or  $\varepsilon$ -*type*, and to the former as the *high-danger* or  $1-\varepsilon$ -*type*. The parameters  $\varepsilon \in \left(0, \frac{1}{2}\right)$  and  $1-\varepsilon$  can be interpreted as the probability of an abolishment of democracy if the democratic parties handed over *all* power to their non-democratic adversary.<sup>5</sup>

The probability that co-operation with the anti-democratic party leads to an end for democracy itself will depend on the *share of power*  $c \in [0,1)$  conceded (the concession made) by democratic parties to the anti-democratic ones. Though the concession of size  $c$  is made with the aim to assimilate the dogmatic parties into the democratic system this effort may fail. The actual *probability of failure* of the “appeasement policy” for given power share  $c$  is assumed to be

$$R = c\lambda$$

when the true type of the non-democratic party is  $\lambda \in \{\varepsilon, 1-\varepsilon\}$ .

Assume that, when offering the share  $c$  in power, the democratic parties cannot discriminate between the two types. But the democratic parties have *beliefs* about the non-democratic party’s type. More specifically, we assume the democratic majorities to expect the low-danger  $\varepsilon$ -type with probability  $p \in (0,1)$  and the high-danger  $1-\varepsilon$ -type with complementary probability  $1-p$ .

Let us assume we assess the *value of successfully integrating* the originally anti-democratic minority into the democratic process to be

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<sup>5</sup> Somewhat more generally, one could introduce separate parameters  $\varepsilon_H, \varepsilon_L \in (0,1)$  with  $\varepsilon_H > \varepsilon_L$  for the two types; but the implicit restriction  $\varepsilon_H = 1 - \varepsilon_L$  implies no essential loss.

$$u(c) = \alpha + (1 - \lambda)c$$

for some  $\alpha \in [0,1)$ . The process will eventually succeed and the benefits  $u(c)$  will actually be reaped with type-dependent *success probability* of  $(1-R)$ . The payoff of having admitted the dogmatic minority to a share  $c$  of power in case of failure is assumed to be 0. This payoff will apply with type-dependent complementary probability  $R$ . Note that if the inclusion strategy succeeds, its value will be higher for the  $\varepsilon$ -type than the  $1-\varepsilon$ -type since for  $\lambda = \varepsilon$  we get  $\alpha + (1-\varepsilon)c$  which in view of  $\varepsilon \in \left(0, \frac{1}{2}\right)$  is larger than  $\alpha + \varepsilon c$ . This reflects that during the time when transformation into a fully democratic party – the aim of the process – has not yet succeeded, it can be very plausibly assumed that from the point of view of the democratic parties the co-operation in democratic government is the more fruitful the less anti-democratic the party admitted to power sharing is. After the process ends either in success or failure and the party becomes fully democratic or succeeds to abolish democracy the two types of an originally dogmatic party should lead to equal payoffs for the other parties.

The kind of counsel that a counselor should give a cartel of democratic parties depends, of course, on the expected benefits perceived for different policies. As far as that is concerned the crucial policy variable is  $c$ . According to the assumptions made here,  $c$  can be fixed by the cartel of democratic majority parties as seems fit. Inviting the anti-democratic party in or not can be decided for alternative values of  $c$  by the majority.

For given values of  $\varepsilon$  and  $p$ , an optimal  $c$  can be determined by considering the expected value (or utility)

$$U(c) = p(1 - \varepsilon c)[\alpha + (1 - \varepsilon)c] + (1 - p)[1 - (1 - \varepsilon)c][\alpha + (1 - (1 - \varepsilon))c];$$

where  $1 - R_L = (1 - \varepsilon c)$  and  $1 - R_H = [1 - (1 - \varepsilon)c]$  indicate the probability that the process of power sharing at parameter  $c$  does not fail – the payoff being 0 if it fails – in case of the low and the high-danger anti-democratic party, respectively.

The  $c^* \in (0,1)$  which maximizes  $U(c)$  can be found by forming the first derivative (the second-order condition for an interior optimum  $U''(c) = -2\varepsilon(1 - \varepsilon) < 0$  is satisfied),

$$U'(c) = \{-p\varepsilon[\alpha + (1 - \varepsilon)c] + p(1 - \varepsilon c)[(1 - \varepsilon)]\} + \{[-(1 - p)(1 - \varepsilon)][\alpha + \varepsilon c] + (1 - p)[1 - (1 - \varepsilon)c]\varepsilon\}$$

and setting it to zero. Solving for  $c$  yields

$$c^* = \frac{p[1 - (1 + \alpha)\varepsilon] + (1 - p)(\varepsilon(1 + \alpha) - \alpha)}{2\varepsilon(1 - \varepsilon)} = \frac{1}{2(1 - \varepsilon)} - \frac{\alpha}{2\varepsilon} + \frac{(1 - 2\varepsilon)(1 + \alpha)}{2\varepsilon(1 - \varepsilon)} p.$$

Therefore, whenever a value  $c^* \in (0,1)$  with  $U'(c^*)=0$  can be found, the optimal policy advice is: the enemies of democracy should be admitted in to have the positive share  $c^* > 0$  of democratic power. If, however, there is no  $c^* \in (0,1)$  with  $U'(c^*)=0$  then the best policy is to keep the dogmatic party out at  $c^* = 0$ .

The smaller  $p$ , the smaller is the optimal inclusion level  $c^*$  which the democratic cartel will offer to the non-democratic party (recall  $\varepsilon \in \left(0, \frac{1}{2}\right)$  and  $\alpha \in [0,1)$ ). This would naturally be expected since  $p$  is the probability of the less dangerous dogmatic type.

Looking at the effect of a variation of  $\alpha$ , i.e., the baseline value of no integration ( $c=0$ ), one can check that  $\alpha \rightarrow 0$  implies that  $c^*$  converges to

$$\lim_{\alpha \rightarrow 0} c^* = \frac{\varepsilon + (1 - 2\varepsilon)p}{2\varepsilon(1 - \varepsilon)} > 0.$$

Moreover, the marginal change of  $c^*$  after a marginal increase of  $\alpha$  is

$$\frac{dc^*}{d\alpha} = \frac{(1 - 2\varepsilon)p - (1 - \varepsilon)}{2\varepsilon(1 - \varepsilon)}$$

which is negative for every  $p < 1$ . So, the larger the baseline value of no integration, the smaller is the optimal power share given to the non-democratic party by the democratic cartel. If  $\alpha$  is sufficiently large,  $c^*=0$  will in fact become optimal.

More generally, the requirement  $c^* > 0$  can be expressed as the requirement that  $p$  exceeds some lower bound:

$$p > \underline{p} := \frac{\alpha - \varepsilon(1 + \alpha)}{(1 - 2\varepsilon)(1 + \alpha)}$$

It may be useful to consider “type” convergence, too. If the types would converge according to  $\varepsilon \rightarrow \frac{1}{2}$  this implies

$$\lim_{\varepsilon \rightarrow \frac{1}{2}} c^* = 2 \left[ \frac{p}{2}(1 - \alpha) + \frac{1 - p}{2}(1 - \alpha) \right] = (1 - \alpha)$$

according to which an interior solution for  $c^* \in (0, 1)$  requires  $\alpha \in (0, 1)$ .

Finally, for  $p = \frac{1}{2}$  we get  $c^* = \frac{1 - (1 + \alpha)\varepsilon + \varepsilon(1 + \alpha) - \varepsilon}{4\varepsilon(1 - \varepsilon)} = \frac{1 - \alpha}{4\varepsilon(1 - \varepsilon)}$ .

The preceding considerations are applicable only if the democratic parties in a democracy would face their adversaries as a unitary actor. As long as

democratic parties manage to act as a kind of “power cartel” they should be able to implement the optimal strategy choice  $c^*$ . They will not unwisely incur the risk of admitting non-democratic parties to a share in power if that does not maximize their expectations. If, however, competition among democratic parties becomes a factor it may well be that the democratic cartel, desirable as it may be otherwise, breaks down. The following model captures some of the effects of competition among the democratic parties and corroborates in more precise terms some of the intuitive views on the potentially harmful effects of competition among democratic parties in a setting in which a dogmatic party is present.

### **3.2. Democratic competition for dogmatic parties**

Assume that there are two democratic parties and a single dogmatic one. The democratic parties could share power which in total amounts to  $c=1$ . None of them has a majority on its own but the two together could form a majority that jointly would command power  $c=1$ .

Let  $c_1 \in (0,1)$  be the power that democratic party 1 is offering to concede to its preferred coalition partner, democratic party 2, and let  $c_2 \in (0,1)$  be the concession that party 2 is willing to make to democratic party 1. Accordingly, democratic party 1 demands the share  $(1-c_1) \in (0,1)$  while democratic party 2 demands  $(1-c_2) \in (0,1)$ . If in the bargaining process among the two democratic parties the demands are incompatible in the sense of  $(1-c_1)+(1-c_2) > 1$  then insufficient concessions to the other democratic party, respectively, have been made since  $1 > c_1 + c_2$  (see on bargaining Holler, M. J. (1992)). Assume that in this case the one non-democratic party 3 approaches a democratic party, possibly the one which was willing to make the larger concession  $c = \max\{c_1, c_2\}$  to the intended democratic partner. We assume that the (by intention) non-democratic party expects the same concession as was offered to the democratic

competitor. To make the same such demand is plausible since the dogmatic party claims to be democratic and cannot be proven to have non-democratic intentions. If the party  $i \in \{1, 2\}$  with  $c_i = \max\{c_1, c_2\}$  evaluates sharing power with the dogmatic party at  $U_i(c_i)$  while a democratic party that is not sharing in power at all evaluates the result at 0 then the party approached should in principle be willing to share power if

$$U_i(c_i) = p(1 - \varepsilon c_i)[\alpha + (1 - \varepsilon)c_i] + (1 - p)[1 - (1 - \varepsilon)c_i][\alpha + (1 - (1 - \varepsilon))c_i] > 0$$

When, after insufficient concessions, a purely democratic coalition ceases to be an option, then the coalition may be formed even if the expectation is not maximal from the point of view of the democratic parties. Had they been able to form a cartel they would have been better off at least potentially. But the competition among democrats drives them towards a more risky course.

The preceding comparison of  $U_i(c_i)$  with the 0-payoff assumes, of course, that the democratic competitors 1 and 2 cannot agree on sharing power (after insufficient concessions in the sense of  $c_1 + c_2 < 1$ ). But even in case of insufficient concessions a party  $i \in \{1, 2\}$  may approach its democratic counterpart and try to avoid the impasse by a further concession  $c_i = 1 - c_j$  with  $j \neq i$ . Assume that the payoff from conceding  $c_i = 1 - c_j$  to one's democratic competitor is  $U_i(c_i) = 1 - c_i = c_j$ . Then we only have to expect a democratic party to co-operate with the non-democratic party if

$$(*) \quad p(1 - \varepsilon c_i)[\alpha + (1 - \varepsilon)c_i] + (1 - p)[1 - (1 - \varepsilon)c_i][\alpha + \varepsilon c_i] > c_j$$

holds for at least one party and  $i = 1, 2$  and  $j \neq i$ . Otherwise, one could expect the two democratic competitors to reach an agreement in spite of their initial impasse. If, however,  $U_i(c_i)$  is larger than  $c_j$  for at least one party  $i = 1, 2$ ,

chances are that the dogmatic party will be admitted into government. The crucial condition depends on insufficient concessions  $c_i + c_j < 1$  of the two democratic parties.

In slightly more precise terms one could imagine the following elementary procedure, among two democratic parties 1, 2 and a dogmatic party, 3:

Stage 1: Both democratic parties 1 and 2 choose a concession of  $c_1, c_2 \in [0,1]$  respectively. If  $c_1 + c_2 \geq 1$  the game ends with a coalition of the two democratic parties  $\{1,2\}$  and payoffs

$$U_i = \frac{1-c_i}{2-c_1-c_2} \text{ for } i=1,2 \text{ and } c_1 + c_2 < 2$$

$$U_1 = U_2 = \frac{1}{2} \text{ for } c_1 + c_2 = 2.$$

If  $c_1 + c_2 < 1$  the process proceeds to the next stage.

Stage 2: Democratic party  $i \in \{1,2\}$  with  $c_i > c_j$  (if  $c_1 = c_2$  equal probability is assumed) decides between

conceding  $c_i = 1 - c_j$  thereby ending the game with coalition (1, 2) receiving payoffs  $U_i = c_j, U_j = 1 - c_j$

forming a coalition (i, 3) with dogmatic party, 3, leading to payoff  $U_i(c_i) = p(1 - \varepsilon c_i)[\alpha + (1 - \varepsilon)c_i] + (1 - p)[1 - (1 - \varepsilon)c_i][\alpha + \varepsilon c_i]$ .

In sum the initial concessions are crucial along three dimensions:

- the power shares of the democratic parties in case of feasibility  $c_1 + c_2 \geq 1$ ,



- the role of becoming the natural target of undemocratic dogmatism (in the sense that party  $i$  with  $c_i > c_j$  will be approached since party 3 finds it more likely that this one offers a higher power share),
- the effect on the crucial condition (\*).

#### 4. Extensions

Assume that the above condition (\*) for expecting that a democratic party could be willing to co-operate with the non-democratic party applies. The result may be a coalition with a comparatively high power share  $c_i > c_j$  for the non-democratic party even though an operational cartel of the democratic parties would optimally choose only a very low involvement of the non-democrats or none at all (see Section 3.1). One might object to this finding that we considered a fairly inflexible bargaining protocol (essentially simultaneous concessions), but there are good practical and theoretical reasons (for example, the general impossibility result in Myerson, R. B. and M. A. Satterthwaite (1983)) to expect significant mis-coordination even under more sophisticated bargaining procedures. The public-good character of democracy implies that competition between democratic parties – no matter which precise form it takes – can produce a sub-optimal level of inclusion of dogmatic parties (which in fact may prove “lethal” for democracy itself). Democratic competition fares worse in that regard than a cartel of democratic parties entirely focused on (and restricted to) democracy’s preservation as well as on democratizing dogmatism. Inefficiency in fulfilling democratic values is the result of democratic agents’ efforts to maximize individual party-oriented payoffs rather than being first of all interested in preserving democracy.

Suppose that the two democratic parties independently choose levels  $c_1$  and  $c_2$  which jointly determine the degree of acknowledgement or legitimacy bestowed

on the non-democratic party. The non-democratic party's total share of power,  $c$ , which results from individual choices  $c_1$  and  $c_2$  could be determined in various ways depending on the institutional structure. In terms of our simple model this structure may lead to different conditions of power sharing with the non-democratic party.

For example,  $c \equiv \gamma(c_1 + c_2)$  for  $\gamma \in (0,1)$  would reflect that both democratic parties' acknowledgements are perfect substitutes regarding the non-democratic party's overall role in society and potentially harmful access to power. Alternatively,  $c \equiv \gamma \cdot c_1 \cdot c_2$  would formalize that more acknowledgement by one of the democratic parties can compensate for less acknowledgement by the other but with an increasing rate of substitution and, more critically, both democratic parties can *veto* any positive power share for the non-democrats since if either party chooses  $c_i = 0$  then total power  $c$  is zero. The same is true if for instance  $c \equiv \gamma \cdot \min\{c_1, c_2\}$  (capturing a very high degree of complementarity between  $c_1$  and  $c_2$  over their full range). Here, for the time being, we do not specify how  $c$  is linked to  $c_1$  and  $c_2$ .

Of course, whether in fact there will be institutional arrangements corresponding to the preceding examples of functional forms is an empirical issue. Likewise it depends on factual preferences of the decision making entities which kinds of decision they would reach under alternative institutional arrangements. Assume for instance that the democratic parties are concerned with, first, the common expected utility  $U(c)$  considered in Section 3.1 but also, second, a private utility component  $u_i(c_i)$  which only depends on the acknowledgement  $c_i$  that they themselves bestow on the dogmatic party. This term may increase or decrease in  $c_i$  depending on whether it primarily reflects costs of acknowledging the non-democrats or (private) benefits from doing so. The former may result, e.g., from the need to wield internal support for the implied gamble amongst risk-averse

party members or because acknowledgement of an extreme leftist/rightist party diminishes the moderate leftist/rightist party's voter base. Private benefits might take the form of an expected "preferential treatment" in case the non-democrats successfully acquire dictatorial power or could account for diminished electoral chances of the democratic competitor (reminiscent of implicit endorsement of the Ross Perot or Ralph Nader candidacies in US presidential elections by Democrats and Republicans, respectively, which, of course, did not threaten US democracy but potentially the established two-party system).

Independently of whether  $u_i(c_i)$  increases or decreases in  $c_i$ , party  $i$  will choose  $c_i$  to maximize the *sum* of expected net social benefits of inclusion,  $U(c)$ , and net private benefits  $u_i(c_i)$ . Except for special cases, whatever the expected  $c_j$  and the connection between  $c$ ,  $c_1$ , and  $c_2$  may be,<sup>6</sup> the maximum of  $U(c) + u_i(c_i)$  is achieved at a different level  $c_i^*$  than the maximum of  $U(c)$ . That is, individual decisions  $c_1^*$  and  $c_2^*$  will typically fail to result in the optimal level of inclusion  $c^*$  (as identified in Section 3.1).

The right level of comparison may actually no longer be  $c^*$  since private costs or benefits to the democratic parties,  $u_i(c_i)$ , were not considered in Section 3.1. But even if one looks at the level  $c^{**}$  which maximizes  $U(c) + u_1(c_1) + u_2(c_2)$ , e.g. when assuming  $c \equiv (c_1 + c_2)/2$ , the equilibrium  $(c_1^*, c_2^*)$  produced by strategic interaction of the democratic parties will typically fail to be socially optimal. The reason is that both democratic parties impose an externality on each other (via  $U(c)$ ) which is ignored in their particular optimization problems. The result could be too little integration of the non-democratic party, namely if private costs dominate: both parties try to free-ride, i.e., enjoy the expected net benefits

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<sup>6</sup> Even, for instance,  $c \equiv c_i$  could be justified either by false consensus (party  $i$  thinks that party  $j$  will reason in the same way so that  $c = c_i = c_j$ ) or by dictatorial illusion (party  $i$  thinks that her choice  $c_i$  will determine  $c_j$ ).

from successful integration but bear a less than equal share of its up-front costs. It seems more likely though that there will be too much integration in analogy to the analysis of Section 3.2. This is the case if private benefits are considerable: both parties try to feather their own nest and spoil the other's, but fail to fully account for the shared consequences of unsuccessful integration. The intermediate case in which positive and negative externalities cancel out is a theoretical possibility (then both parties' interests would be fully aligned with the common goal of preserving democracy), but it can be expected to arise only by great coincidence.

To admit party competition, a centre-piece of democratic rule, sub-optimal choices  $(c_1^*, c_2^*)$  may well be a price worth paying. In particular, the gap between the socially optimal level  $c^*$  and the one resulting from  $(c_1^*, c_2^*)$  can be tolerably small. This would be the case if the term  $U(c)$  is of considerably greater magnitude and variation than the corresponding private terms. Both democratic parties would then value democracy *per se* higher than winning a particular election or pursuing other private goals such as increasing their party's membership. Production of the "ideal level" of inclusion of the dogmatic party by competition among democratic parties can be expected to be a rare event, though. Still, the more all democrats are actually committed to democracy, the less likely a *fatal* deviation from the ideal level becomes. This is how it should be.

## 5. Conclusions

As practically everything else party competition in a democracy has advantages and disadvantages. Without allowing quite unrestrained democratic voting and open competition for power the legitimacy of democracy will be undermined. In particular in young or transitional democratic legal orders supporters of

democracy may deem it advantageous not to side-line democracy's foes. Under such circumstances, in particular, a supreme aim of democratic parties must be to induce the enemies of democratic rule to accept the rules of the democratic game. In all likelihood this aim can best be reached by granting dogmatic parties a stake in the democratic power game. But it requires to take the risk of offering a share of democratic power to those who intend to abolish democratic voting procedures.

Taking that risk will be good policy only if the enemy is not "too dangerous". As long as democratic parties can form a cartel which keeps out the dogmatic foes of democracy whenever granting them a positive share in democratic power is the inferior strategy one might basically trust that this risk will be taken only if it is worthwhile. But since competition among democratic parties may induce them to admit their dogmatic competitors to a positive share in power when it is unwise and an inefficient means to pursue the supreme democratic value of preserving democratic rule itself trust in the behavior of democratic parties may not be warranted.

One might want to take resort here to constitutional rules that simply prevent non-democratic competitors from competing. But keeping competition open for all competitors is such a basic ingredient of the process in which democratic legitimacy is built up that it may not be a particularly good policy to erect barriers to entry. Such a policy may be unwise also because under official prohibition the forbidden parties may engage in all sorts of conspiracies and clandestine operations. It may be much better to "have them in the open" or to admit them to the democratic power game as legitimate competitors.

Nevertheless, in particular in a transitional state of affairs in which democracy has not taken hold it may be relatively best to control the democratic game by certain constitutional rules of a non-democratic character. Imagine for instance a

transitional situation in which only parties which are declared and legally “certified” adherents of democracy are admitted. In the initial situation when they won power the legitimate parties have formed a cartel. But they want to extend admission of other parties such as to raise the level of democratic legitimacy of the system which, after all, crucially depends on winning the people over to democracy and in particular those who are leaning towards dogmatism. In such a situation one could imagine that a constitution would allow for a “path dependent” cartel formation rule among democratic parties of the following kind: any of the established democratic parties that form the cartel has a veto against the formation of any coalition that contains one of the non-democratic parties. Such a measure would fall short of a full fledged prohibition of dogmatic parties. But they would be allowed to compete for a majority of votes.

The rule might prevent some kind of race to the bottom in keeping up restrictions on coalition formation among democratic parties. Such a proposal may be a far cry of what we would expect from open competition in a democracy. But it may not be without merit in transitional political systems. If under such circumstances the adversaries of democracy would fail to win votes it would be helpful. Should they, however, win great shares of the vote it would be hard to imagine that democracy could persist.

To expect in such a situation that other powerful actors like the military might step in to defend democracy is unlikely. Nevertheless we should not dismiss the role of “guns” and other means of “brute” or “rogue” power too lightly even in an advanced Western democracy. The risks of a coup are not out of the world so to say. Increasingly professional armies may bring about increasing risks for our open political systems. As far as the latter is concerned we might learn something from classical political discussions. For instance, whether politics could control a standing army or whether such an army would naturally tend to

control the state has been discussed quite extensively in former times.<sup>7</sup> In a democracy with general franchise a militia organization of the army may form an obvious remedy for the problem of controlling the army. This seems to have worked very well in Switzerland through centuries. Since membership in the army and in the electorate are to a considerable extent co-extensive it is in line with the concept of self-governance to such an extent that we may say that militia systems like the Swiss and democracy with general franchise seem to fit almost like “hand in glove”.

That militia systems can form a kind of defense of democracy is supported by the fact that a militia system does not seem compatible with autocracy (in the sense of Tullock, G. (1979)). Other than in times of war having the population at large under arms is highly problematic for the autocrat. Even in a non-autocratic state without general franchise in which merely a sub-group of the general population is entitled to participate in some kind of democratic rule or other it would hardly be viable to allow the disenfranchised members of the population into a militia system and keep them away from the ballot.

Other problems of limiting government are particularly severe in case of democratic governments. Again Switzerland may serve as an illustration. In the Swiss as in many other cases dividing state power by ways of federalism and/or constitutionalism has worked. But with respect to federalism democratic rule seems a disadvantage rather than an advantage. For it seems difficult to sustain the stabilizing effects of federalism once central democratic powers of rule enactment are in place.<sup>8</sup> The claim to legitimacy and to voluntary submission going along with the fact that a norm has been democratically enacted seems to be so overwhelming for public opinion that it can overcome even the barriers of

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<sup>7</sup> Roman rules on term limits for the commanders of armies and later on the dispute about standing armies as discussed perhaps most notably in Macchiavelli's *discorsi* are cases in point.

<sup>8</sup> This is borne out by the fact that some of the at that time apparently gloomy predictions about the risks of an eventual collapse of the US into a unitary democratic state seem to be almost completely fulfilled presently.

federal structures backed by particular local interests. Those who plead for “more democracy” in the EU on the central level of decision making might want to heed this observation (as well as that of the collapse of the formerly strong American federalism to the democratic centre in Washington) as a warning.

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