B.J.Pol.S. **37,** 643–658 *Copyright © 2007 Cambridge University Press*
doi:10.1017/S000712340700035X *Printed in the United Kingdom*

Absolute Majority Rules

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This article considers *absolute majority rules*, which require the affirmative vote of a majority of all those eligible to vote in the institution. I compare absolute majority rules to simple majority rules under which only those present and voting are counted, and to simple supermajority rules. Under plausible conditions, absolute majority rules prove superior. Absolute majority rules insure majorities against strategic behaviour by minorities and combine supermajoritarian effects with majoritarian symbolism.

The theory of voting rules developed in law, political science and economics typically compares simple majority rule with alternatives, such as various types of supermajority rules[1] and submajority rules.[2] There is another critical dimension to these questions, however. In the US Congress, the votes of a majority *of those present and voting* are necessary to approve a law.[3] In the legislatures of California and Minnesota, however, the votes of a majority *of all elected members* are required.[4] All these legislatures use 'majority rule'. What is the difference between these schemes, and is it consequential?

Similar examples are found in many polities. In each house of the Parliament of India, to enact a constitutional amendment requires (for most subjects) both (1) a majority of the total membership of the house and (2) two-thirds of the members of the house who are present and voting.[5] How, if at all, do these requirements differ? In Iraq in 2005, the Transitional Law stated that '[a] general referendum will be successful and the draft constitution ratified if a majority of voters in Iraq approve and if two-thirds of voters in three or more [provinces] do not reject it'. The Iraqi Parliament interpreted this clause to mean that 'two-thirds of voters' meant 'two-thirds of registered voters', not of those voting, even though 'a majority of voters' in the same passage required only a majority of votes cast.[6] What is at stake in this decision?

In these examples, there is no dispute about whether the voting rule mandates a simple majority or some particular supermajority. The dimension on which these rules vary is different altogether: the issue is whether the majority (or supermajority) is calculated with

* Harvard Law School. Thanks to Adam Cox, Jacob Gersen, Douglas Ginsburg, Saul Levmore, Albert Weale and two anonymous reviewers for helpful comments, and to Justin Rubin and Sean Heikkila for helpful research assistance. The Russell J. Parsons Faculty Research Fund provided generous financial assistance.

[1] In what follows, I shall use the term 'supermajority rules' to denote only the sub-class of asymmetric supermajority rules, which privilege the status quo. There are also symmetric supermajority rules, which do not privilege the status quo but which yield non-trivial ties. See Robert E. Goodin and Christian List, 'Special Majorities Rationalized', *British Journal of Political Science*, 36 (2006), 213–41.

[2] See Adrian Vermeule, 'Submajority Rules: Forcing Accountability upon Majorities', *Journal of Political Philosophy*, 13 (2005), 74–98.

[3] Subject to the requirement of a quorum, as discussed below.

[4] California Constitution Article 4, Section 8(b); Minnesota Constitution Article 4, Section 22. For other examples, see International Center for Parliamentary Documentation of the Inter-parliamentary Union, *Parliaments of the World: A Comparative Reference Compendium* (New York: Facts on File, 1986), p. 528, Table 16: Voting Majority Requirements.

[5] Constitution of India Part XX, available at http://indiacode.nic.in/coiweb/coifiles/part.htm.

[6] See 'Election Change Seems to Ensure Iraqis' Charter', *New York Times*, 4 October 2005, at p. A1.

https://doi.org/10.1017/S000712340700035X Published online by Cambridge University Press

reference to the number of votes cast, the whole number of eligible voting members of the institution, or on some other basis. A fully-specified voting rule must state both a multiplier and a multiplicand. To say that the voting rule should be 'a majority' or 'a supermajority' is an underspecified statement, like saying 'X is more than' or 'three multiplied by'. If a voting rule is to be coherently stated, one must ask 'a majority (or supermajority) of what'?

The choice of multiplicand is at least as important as the choice of a multiplier. Suppose a voting body with a hundred members, a quorum rule under which at least a majority of fifty-one must be present and vote in order to take decisions with legal effect, and a standard multiplicand under which only those present and voting are counted. The choice of a multiplier makes some difference. With these specifications, a minimum simple majority is twenty-six; varying the multiplier to two-thirds requires a minimum supermajority of thirty-four. Varying the multiplicand, however, makes a much larger difference. With a multiplicand of all members, a minimum majority is fifty-one – unanimity if only a minimum quorum is present – and a minimum two-thirds supermajority is sixty-seven. In this and other examples, what makes the multiplicand important is that the difference between half and two-thirds of a small number may be much less than the difference between half of a small number and half of a larger number. Everything depends upon what the numbers actually are, but clearly the choice of the multiplicand is consequential.

In what follows I will try to make progress on the question of voting multiplicands.[7] An *absolute voting rule* is a rule whose multiplicand is all members eligible to vote in the institution. The antonym of an absolute voting rule is a *simple voting rule*, under which the multiplicand is all those present and voting. An absolute voting rule can take any multiplier, as can a simple voting rule. To narrow the issues, I confine the discussion to two comparisons. In Section II, I compare absolute majority rules to simple majority rules. In Section III, I compare absolute majority rules to simple supermajority rules.

My thesis is that under plausible conditions, absolute majority rules prove superior both to simple majority rules and to simple supermajority rules. Three claims are central: (1) absolute majority rules will, under certain conditions, better satisfy the preferences of legislative majorities by ensuring them against a loss of control that can and does occur under simple majority rule (as discussed in Section II); (2) absolute majority rules will, under certain conditions, dampen strategic behaviour that arises under simple majority rule (also discussed in Section II); (3) absolute majority rules combine supermajoritarian effect with majoritarian symbolism (discussed in Section III). Theorists with differing high-level commitments can each find one or more of these rationales attractive; my aim is to be catholic among different approaches to political theory, which converge to support absolute majority rules under the conditions I identify. Finally, the analysis is strictly

[7] For discussions *en passant* in the literature, see, among others, Amartya Sen, *Collective Choice and Social Welfare* (New York: North-Holland, 1979); Dan S. Felsenthal and Moshe Machover, 'Ternary Voting Games', *International Journal of Game Theory*, 26 (1997), 335–51; Keith L. Dougherty and Julian Edward, 'The Pareto Efficiency and Expected Costs of k-Majority Rules', *Politics, Philosophy & Economics*, 3 (2004), 161–89. An excellent unpublished treatment of absolute majority rules from a social-choice perspective is Keith L. Dougherty and Julian Edward, 'Simple vs. Absolute Majority Rule', University of Georgia Working Paper (Sept. 2006, on file with author). Dougherty and Edward evaluate simple majority rule and absolute majority rule by reference to a range of Paretian and ordinal-utilitarian welfare criteria, concluding that by most criteria simple majority rule is superior. The authors limit their treatment in three ways: (1) transaction costs are ignored; (2) all voting and nonvoting is assumed sincere; (3) there are no political constraints on the choice of voting rules. I relax these assumptions in the discussion here, and suggest that when transaction costs, political constraints and strategic behaviour are taken into account, absolute majority rules are superior to simple majority rules under plausible conditions.

https://doi.org/10.1017/S000712340700035X Published online by Cambridge University Press

normative. I make no attempt to offer a positive theory that would explain why absolute majority rules appear where they do and do not appear where they do not.

The argument is structured as follows. Section I examines the mechanics of absolute voting rules and contrasts them with simple voting rules. Particularly important here is that absolute voting rules in effect count abstention as a negative vote, whereas simple voting rules ignore abstention entirely. This effect helps absent members of the majority retain control of the institution's decision making and also creates a status quo bias.

Sections II and III compare absolute majority rules to simple majority rules and to simple supermajority rules, respectively. Section II suggests that absolute majority rules can increase majority control over the institution's voting outcomes, relative to simple majority rules. Under certain circumstances, minorities may exploit majority absenteeism or non-participation to produce countermajoritarian results. Absolute majority rules frustrate this, in ways that can be more effective than direct adjustments to the quorum rule, adjustments to the voting multiplier, or arrangements such as proxy voting. In short, absolute majority rules offer legislative majorities an insurance policy against strategic minorities. Section III suggests that absolute majority rules provide the effect of simple supermajority rules while nominally or expressively adhering to majoritarian principles. Legislative majorities who are constrained to permit a voting rule with supermajoritarian effect may prefer this muted version of supermajoritarianism to an open acknowledgement of minority power. A brief conclusion follows.

I. PRELIMINARIES

This section briefly sets out the mechanics of majority rule with various multiplicands; especially important is the differing effect of abstention under different rules. The inquiry is limited by the following assumptions. (1) An absolute majority rule requires a majority of all members, and an absolute supermajority rule requires a defined supermajority of all members. I discuss only the former here.[8] (2) I discuss only cases in which voters must choose between two options, such as enacting a measure or adhering to the status quo, so I will ignore the plurality variant of majority rule. (3) Throughout, I confine the discussion to legislatures, although there are analogous issues in the design of voting rules for courts, direct democracy and other institutions. (4) Throughout, I assume that the legislative process is fully transparent, both in the sense that legislators can observe each others' votes, and in the sense that outsiders can observe all legislators' votes. This is the standard case for modern legislatures deciding on sub-constitutional issues.

Absolute majority rules are common. Even more common, however, is the scheme of simple majority rule favoured by *Robert's Rules*. Under this scheme, (1) a quorum is a majority of all members; (2) a simple majority is needed to change the status quo; and (3) only those present and voting are counted in calculating whether requirement (2) is satisfied.[9] I will compare this scheme to the following absolute majority voting scheme, which I take to be standard: (1) a quorum is a majority of all members and (2) the affirmative votes of a majority of all members are required to change the status quo.

[8] In principle there could also be absolute submajority rules, under which a fraction less than a majority of all members suffices to take action, even in the choice between two options.

[9] See Henry M. Robert, *Robert's Rules of Order: Modern Edition*, edited by Darwin Patnode (Nashville, Tenn.: Thomas Nelson, 1989), originally published in 1876.

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Absolute majority rules and simple majority rules perfectly converge where all duly qualified members of the institution are present and cast votes. A major difference between the simple majority scheme and the absolute majority scheme is the effect of abstention from voting or physical absence from the voting institution.[10] Under any absolute voting scheme, the requisite majority needed to enact a proposal is a fixed quantity, whereas under a simple majority scheme the requisite majority is variable. The consequence is that under the absolute majority scheme, abstention or absence from the legislature in effect counts as a negative vote, because it reduces the pool from which the requisite fixed number of affirmative votes can be drawn. Conversely, under a simple-majority scheme: 'Eliminating 'no' votes reduces the number of supporters needed to create a majority'.[11] In a twelve-person voting body, under a simple majority scheme, six affirmative votes fail to enact a measure if six voters are opposed (assuming ties are broken in favour of the status quo), but the switch of even one vote from opposition to abstention changes the outcome. Under an absolute majority rule, the switch makes no difference.

In general, this feature of absolute multiplicands is highly consequential: it entails that absolute majority rule produces a status quo bias.[12] Suppose that a voting body with a hundred members must vote on a proposition.[13] Forty members vote yes, twenty vote no, and forty either abstain or are not present. There is a standard quorum rule and (at least) sixty participants present, so action can be taken. Simple and absolute majority rules yield different outcomes, however. Under simple majority rule, only those present and voting are counted, so the measure passes 40–20. The measure would also pass even under a two-thirds supermajority multiplier with the ordinary present-and-voting multiplicand. Under absolute majority rule, however, the measure fails, since the fifty-one vote absolute threshold is not reached. In this example, then, the status quo effect produced by changing the multiplicand is larger than the status quo effect produced by increasing the multiplier to two-thirds.

What of the non-voters?[14] If they did not exist, so that the body had only sixty eligible voters, the proposal would pass under an absolute majority rule, indeed even under an absolute majority rule with a two-thirds supermajority multiplier: 'The effect of the [absolute majority rule] is to count every member of the body that does not vote affirmatively as voting against the passage of the act'.[15] In other words, merely by declining to cast a vote in favour of the proposal, non-voters can defeat the measure under an absolute majority rule. Under either the simple or the absolute majority rule, the abstainers could also defeat the measure simply by casting their votes against the measure. The absolute majority rule gives the abstainers another option, however: defeat the measure while failing to participate. Members who have other reasons for abstaining or being physically absent,

[10] See Dougherty and Edward, 'Simple vs. Absolute Majority Rule', p. 1.

[11] Cary R. Covington, 'Building Presidential Coalitions Among Cross-Pressured Members of Congress', *Western Political Quarterly*, 41 (1988), 47–62, p. 50.

[12] See Dougherty and Edward, 'Simple vs. Absolute Majority Rule', pp. 18–19. As I use the term, 'status quo' refers strictly to the legal status quo, which may or may not correspond to any particular status quo for policy choices. The legal status quo may itself permit change in the policy status quo, as when an administrative agency is given, by law, delegated power to decide whether or not to adopt a new policy.

[13] The example is adapted from Wikipedia, 'Absolute Majority Rule', available at http://en.wikipedia.org/wiki/absolute majority.

[14] I am eliding here a possible distinction between abstention and physical absence from the legislature. The distinction is discussed below.

[15] *Board of Supervisors of Ramsey County* v. *Edward Heenan*, Supreme Court of Minnesota, *Minnesota Reports*, 2 (1858) at *2.

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including other pressing business or a desire to suspend judgement on the measure, contribute to its defeat.

There is a complication here about the precise definition of the alternatives. The most common simple-majority scheme requires a majority of those 'present and voting'. Legislators who abstain may still count towards a quorum, which means that under a simple-majority scheme, the winning majority may be far less than a majority of quorum. In the purest version of the rule, a statute may be enacted (with a quorum present) by the affirmative vote of only one legislator, if no one opposes.[16] Yet there is an intermediate possibility. Consider the following discussion, from a recent case in the Alabama Supreme Court:

Section 63 of the Alabama Constitution of 1901 provides that 'no bill shall become a law' unless 'a majority of each house be recorded thereon as voting in its favor …'. This provision could be interpreted in at least three ways:

1. An absolute majority of each house – that is, 53 members of the 105-member House of Representatives and 18 members of the 35-member Senate – must vote in favor of a bill for the bill to pass;
2. Assuming a quorum of 53 House members and 18 Senate members are present when a vote is taken, a majority of those 53 House members (at least 27) and a majority of those 18 Senators (10) must vote in favor of the bill; or
3. Assuming a quorum of each house is present, a majority of those present and voting in each house must be in favor of the bill (e.g. if 53 House members are present, and 10 vote 'yes' and five vote 'no' and the remaining 38 do not vote, the bill passes the House; similarly, if 18 Senators are present, of which 5 vote 'yes' and 3 vote 'no' and the remaining 10 do not vote, the bill passes the Senate).[17]

The first interpretation is an absolute majority rule, under which either abstention or absence from the legislature is in effect counted as a negative vote. The second and third interpretations differ in the following way: the second requires a majority of those present, whereas the third requires only a majority of those present and voting. Under the second option, as under an absolute majority rule, an abstention by a legislator who is physically present in effect counts as a negative vote by reducing the pool from which the necessary majority may be drawn. Only by physically absenting herself from the legislature, so as not to count among those present, may the legislator ensure that she has no effect on the vote. Under the third option, by contrast, a legislator may abstain while remaining present, and the abstention is not counted. In other words, the first option, absolute majority rule, treats both absence and abstention as a negative vote; the second treats abstention but not absence as a negative vote; and the third treats neither absence nor abstention as a negative vote.[18]

[16] *Board of Supervisors of Ramsey County* v. *Edward Heenan* ('Previous to the constitution [which instituted an absolute majority rule] … laws could be passed by a single member voting in the affirmative, if no one voted against him').

[17] *Birmingham-Jefferson Civic Center Authority* v. *City of Birmingham*, Supreme Court of Alabama, unpublished, 2005 WL 1023157 (Ala. 2005) (Parker, J., concurring specially).

[18] The same three possibilities exist where the multiplier is a supermajority rather than a majority. In the US Senate, for ordinary motions a majority of those present and voting are required for passage, assuming the presence of a quorum (as in option 3 in the text). However, two-thirds of the senators present are required to ratify a treaty. See US Const. Art. 2, §2, cl. 2. The effect of the latter rule is that abstention by a senator who is present is equivalent to a no vote, but absence is not. See Joseph Freixas and William S. Zwicker, 'Weighted Voting, Abstention, and Multiple Levels of Approval', *Social Choice and Welfare*, 21 (2003), 399–431, p. 413.

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In terms of the three options listed by the Alabama Supreme Court, I am principally interested in the choice between the first and the third. The intermediate second option presents the issues less crisply. For simplicity, I will generally treat physical absenteeism and abstention as equivalent, except in those cases where the difference between the two matters.

With these preliminaries in place, I will offer a normative analysis of absolute majority rules. Absolute majority rules can promote majoritarian control (Section II) and can also ensure a commitment to nominal or expressive majoritarianism, even where a voting rule with supermajoritarian effect is desirable (Section III).

II. MAJORITARIAN CONTROL

In this section, I emphasize that absolute majority rules promote majoritarian control of institutional outcomes. The central concern here is what Jeremy Bentham called the tactic of 'intentional surprise':[19] under a simple majority scheme, minorities can exploit high majority absenteeism to outvote a rump majority. In legislatures, absolute majority rules block intentional surprise by strategic minorities, and thus ensure that the legislative majority retains a veto over outcomes even with a given level of absenteeism or abstention.

The Insurance Effect of Absolute Majority Rules

Consider the ordinary legislative baseline of simple majority voting with a standard present-and-voting multiplicand. Where there is asymmetrical absenteeism between minority and majority, a group that is a minority in the chamber as a whole may prevail over the votes of a rump majority. Suppose a hundred-member body, a standard simple-majority scheme, and a quorum of fifty-one attenders, all of whom vote. The vote is twenty-six in favour of a measure and twenty-five against. Because of the standard multiplicand, the twenty-six prevail even if, with full participation, they would have lost by a massive supermajority of 74–26. Under an absolute majority rule, by contrast, there are not enough votes in favour to enact the measure.

This is an extreme case that illustrates the more general point.[20] An absolute majority rule prevents minorities from concentrating their forces at a decisive time and place, in the manner of Napoleon, in order to overwhelm the few voters who are present from a larger but dispersed majority. More precisely, an absolute majority rule safeguards the majority against *affirmative* surprise attacks by Napoleonic minorities; it does not prevent the minority from ganging up to block a majority afflicted with absenteeism from taking affirmative steps to enact its preferred measures. This emphasizes that absolute majority rules protect the status quo, just as does raising the voting multiplier from majority to supermajority.

A minority may employ Napoleonic tactics only if, and when, there is asymmetrical absenteeism or abstention, such that a disproportionate number of the majority do not contribute to the present-and-voting multiplicand. Asymmetrical participation may arise

[19] Jeremy Bentham, *Political Tactics*, edited by Michael James, Cyprian Blamires and Catherine Pease-Watkin (Oxford: Oxford University Press, 1999), originally published in 1838, p. 62.

[20] Note, however, that the risk of Napoleonic minorities increases when the quorum rule is set lower than a simple majority, as in the United Kingdom, Austria and Ireland. See Bjorn Erik Rasch, 'Parliamentary Voting Procedures', in Herbert Döring, ed., *Parliaments and Majority Rule in Western Europe* (New York: St Martin's Press, 1995), p. 498.

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from several causes.[21] First, the minority may care more intensely about a particular issue than do some or many members of the majority. Secondly, even if policy preferences are equally intense all round, members decide whether to absent themselves or abstain based on random factors – political campaigning or personal business in the home district, travel problems, illness and mandatory disqualification due to a conflict of interest. Sheer statistical flux will then ensure that alert minorities will sooner or later have an opportunity for action.[22]

Thirdly, entrepreneurial minorities will search for and hit upon issues that put majority voters to a political Hobson's choice, such that neither a vote for nor a vote against a measure is palatable.[23] In such cases, many members of the majority may abstain, potentially giving the minority voting control. In the Philippines Senate in 2004, the minority bloc introduced a resolution indicting a politically controversial figure for fraud. The resulting vote was nine in favour, *none* against, and nine abstentions. 'The minority bloc immediately declared victory … [However, the Senate President ruled that because] the ayes and the abstentions are even, the result is a tie and the resolution has not been adopted'.[24] In effect, the Senate President reinterpreted the voting rule as an absolute majority rule to protect the majority bloc.

Finally, asymmetrical participation may arise precisely because a majority tries to maximize its power by spreading itself over more legislative terrain than the minority. This tactic can backfire if minorities are strategic. Thus, in committee voting in the US House of Representatives before 1995, majorities faced a chronic problem: the multiplicity of committees meant that several committees or subcommittees would often meet at the same time. Simultaneous scheduling meant that 'political control [might] slip away to a well-organized minority that might concentrate its strength at a single location for a "sneak attack" on the majority'.[25]

The strategic threat of minority action may itself force the majority to maintain a lower level of absenteeism than it would otherwise choose, and this is a cost. The absolute majority rule avoids that cost, but exacts a price in turn by raising the cost of changing the legal status quo. Under the absolute majority rule, a majority of the whole body cannot succeed if its participation falls below the absolute threshold, no matter what supermajority results. Under absolute majority rule in a hundred-member body, a vote of fifty for and twenty against fails to enact a measure, so the coalition or party that holds an absolute

[21] Rational and public-spirited legislators might abstain if they are uninformed and are aware that they are uninformed. In such cases, the worst outcome for the uninformed voter is to cast the decisive or swing vote. Putting aside any desire to take a position for its own sake, the best course is then to abstain in deference to informed voters. See Timothy J. Feddersen and Wolfgang Pesendorfer, 'The Swing Voter's Curse', *American Economic Review*, 86 (1996), 408–24. However, there is no reason to think that this sort of abstention is markedly asymmetric across chamber majorities and minorities.

[22] See Lawrence S. Rothenberg and Mitchell S. Sanders, 'Legislator Turnout and the Calculus of Voting: The Determinants of Abstention in Congress', *Public Choice*, 103 (2000), 259–70; Lawrence S. Rothenberg and Mitchell S. Sanders, 'Rational Abstention and the Congressional Vote Choice', *Economics and Politics*, 11 (1999), 311–40. These studies find that in the 104th Congress, the timing of a vote during the week and during the session was the most important determinant of abstention; campaigning in the home district and (presumably) the demands of travel have a larger effect on the decision whether to vote than does the likelihood of being the pivotal voter.

[23] Martin Thomas, 'Issue Avoidance: Evidence from the U.S. Senate', *Political Behavior*, 13 (1991), 1–20, finds that 'proactive issue avoidance' through abstention, by members who do not want either to support or oppose a measure, occurs with non-trivial frequency in the US Senate.

[24] Editorial, '12th Congress has nothing to show', *Manila Times Internet Edition*, 9 February 2004.

[25] *Guide to Congress*, 5th edition (Washington, D.C.: Congressional Quarterly Press, 2000), p. 552.

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majority must ensure participation by at least a chamber majority to enact legislation. Minorities who are obstructionist, rather than affirmatively Napoleonic, benefit from the status quo effect of an absolute majority rule, so long as a decisive fraction of the majority is absent; and this raises the cost of majority absenteeism, the very cost the absolute majority rule reduces in other situations.

The net effect may still be desirable from the majority's point of view. The threat posed by strategic minorities forces legislative majorities acting under a simple-majority scheme to maintain a sufficient presence at all times. If there is some rate of absenteeism that the majority would like to permit among its membership, an absolute majority rule ensures that the majority can do so without exposing its flank to the minority's concentration of force. The accompanying cost is that the absolute majority rule makes it harder to overcome obstructionist minorities who wish only to block legislation. Under an absolute majority rule, however, the chamber majority at least obtains the benefit of certainty: knowing the vote threshold it must meet to enact legislation, it can at least plan the occasions on which it is feasible and desirable to assemble in full to pursue its programme, while retaining the assurance that absenteeism cannot be exploited by the minority on other occasions.

Generally speaking, an absolute majority rule has the costs and benefits of an insurance policy. It protects the absolute majority from a minority's tactic of concentrating forces, but forces the absolute majority to pay a premium in the form of higher transaction costs of organizing to enact legislation in other cases.[26] Relative to simple majority rule, an absolute majority rule reduces the cost of majority absenteeism or non-participation, at least in so far as the threat is affirmative minoritarian opportunism rather than minoritarian obstruction. Majorities will favour this arrangement when the benefits of paying the insurance premiums exceed the costs.

Alternatives?

There are other institutional arrangements that also tend to promote majoritarian control. I will examine several candidates: (1) the ability of voting majorities to reverse countermajoritarian results in later voting; (2) quorum-breaking by majorities and adjustments to the quorum rule; (3) adjustments to the voting multiplier; and (4) proxy voting. In general, although these devices qualify the risk of strategic minorities, they do not eliminate it. Absolute majority rules will often be the least costly and most effective means of controlling the risk of countermajoritarian results that arises under a simple-majority scheme.

Reversal by voting. I will begin with the ability of the absolute majority to reverse countermajoritarian outcomes in subsequent voting. Bentham expressed scepticism about the need for quorum rules on the following grounds:

> It might be apprehended, that where parties existed, those who found themselves one day in superior force, would abuse this superiority to the production of a decree contrary to the will of the majority. But this danger is not great; for the majority of to-morrow would reverse the

[26] Richard Forgette and Brian R. Sala, 'Conditional Party Government and Member Turnout on Senate Recorded Votes, 1873–1935', *Journal of Politics*, 61 (1999), 467–84, show that party leaders have substantial power over the rate of participation by members in the US Senate.

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decree of the past day, and the victory usurped by the weaker party would be changed into disgraceful defeat.[27]

The legislative majority that would have prevailed with full attendance may, on this view, simply repeal the minoritarian enactment the next time it assembles, and the minority, anticipating this, will refrain from the useless exercise. The ability to reverse minoritarian legislative action functions as an ultimate constraint that reduces the importance of the quorum minimum, a point missed by George Mason when he argued to the Philadelphia constitutional convention that without a quorum minimum in Congress, 'the U[nited] States might be governed by a Juncto'.[28]

Yet this is a soft constraint; it dampens but does not eliminate the risk of Napoleonic minorities. Two points are important. First, some measures are costly to reverse in fact, even if they can be easily reversed in law. A measure that reveals information to the public may be impossible to undo in any practical sense. So too, a measure that makes a payment of money or property out of the treasury may be legally difficult to undo if constitutional protections of property are triggered, or simply because it is politically costly for government to demand recoupment from parties who have relied on it to their detriment.

Secondly, a minoritarian enactment may decisively change the status quo point. It may then be more difficult for the legislative majority to repeal an earlier minoritarian enactment than it would have been to vote it down in the first instance, even if the enactment has only been law for a brief period. The change in the status quo point may affect outcomes if some legislators support neither the enactment nor its repeal. Suppose that under a simple majority scheme the status quo is no law, that a bill is proposed, that it would be defeated 74–26 with full participation, and that it is enacted 26–25 with asymmetrical absenteeism. It does not follow that the new status quo will be reversed, and the old one reinstated, by a vote of 74–26 when the legislature next convenes with full participation. If twenty-four of the forty-nine absent voters – less than a majority of the absentees – are opposed to both the enactment and its repeal, the vote on the reversal will be 50–50. If so, the repeal will fail, because in most legislatures (other than those who give the presiding officer a tiebreaking vote) a tie defeats a measure.[29] Opposition to any change in the status quo on the issue at hand might result from a concern for the stability of legal rules, a wish to use the constrained legislative agenda for other pressing business, or simple status quo bias.

Even bracketing such cases, Bentham's assumption is seemingly that a minority will not strike if the threat of future reversal would make the strike futile. This is erroneous, however; it overlooks the collateral costs that the minority may inflict. Even if the rules allow eventual reversal by an absolute majority, the sequence of minoritarian enactment and majority reversal imposes opportunity costs on the majority. Time, the most precious resource in legislatures, must be spent merely to restore the status quo ante the minority's Napoleonic victory. This may be a large cost to the majority if, as often happens, the constitution or some other legal rule mandates a cut-off date for the legislative session – in which case the minority wins so long as it can delay adverse action long enough.

Thus in the US House of Representatives, as mentioned above, minorities have often attempted to concentrate their forces at a particular committee meeting for an attack on overstretched majorities. In some cases the minority's goal is simply to block committee

[27] Bentham, *Political Tactics*, p. 62.

[28] *The Records of the Federal Convention of 1787*, edited by Max Farrand (New Haven, Conn.: Yale University Press, 1966), p. 252.

[29] See Robert, *Robert's Rules of Order*, p. 79.

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approval of the majority's programme, but in others it is to secure affirmative (albeit minoritarian) action from the committee, such as an amendment to a bill or the initiation of a hearing or investigation. In such cases, I conjecture that the minority is under no illusion that the full House would enact a minority-favouring bill, or would otherwise assent to the committee's action. The point of the attack, however, is presumably just to disrupt the ordinary schedule of business, and in general to throw sand into the gears of the House's majoritarian machine.

Quorum rules and quorum-breaking. Although quorum rules do partially promote the aim of majoritarian control, they do so only in a sharply limited fashion. As indicated by the previous example, in which twenty-six legislators outvote twenty-five representatives of an overwhelming but dispersed majority, the standard majority quorum requirement is simply too weak to prevent the concentration tactic. Likewise, although Rule XI of the US House of Representatives provides that '[a] measure or recommendation may not be reported by a committee unless a majority of the committee is actually present',[30] that majority may be composed mostly of minority members. The basic problem is that under a simple majority voting scheme with a standard majority quorum minimum, absenteeism or abstention by members of the absolute majority does not contribute to defeating a minoritarian proposal; a quorum rule does nothing to address this problem.

To be sure, standard quorum rules do allow quorum-breaking by the rump majority as an ultimate tactic of majoritarian control. Where Napoleonic tactics are feared, all the majority members who are present may physically absent themselves or abstain to ensure that the quorum minimum is not satisfied. In the running example of a 26–25 vote, if the quorum is defined by votes cast rather than by those physically present, the twenty-five members of the dispersed absolute majority may simply decline to vote rather than voting in the negative, and can thus shut down the body altogether until reinforcements arrive. Even if the quorum is defined by those present, the rump majority can leave the building altogether. This tactic – postponement of the legislative session to defeat a concentrated minoritarian attack – presumably also underlies the rule, recently adopted in the US House of Representatives, that a committee chair may postpone a vote until a future date certain.[31] The tip-off here is the further provision that, when the committee reconvenes, the proposal will be open for amendment by majority vote, even if a majority of those attending the first session already ordered the previous question.[32] A committee chair who realizes that her troops from the majority side have failed to turn out can thus choose to fight another day.

Quorum-breaking is a sword with two very sharp edges, however. Historically, majorities have benefited by the standard quorum rule, which counts all those physically present as contributing to the quorum. In the US House of Representatives before 1890, the quorum rule was defined by the number of votes cast, rather than by physical presence. When the majority party could not muster enough members, this allowed minorities to employ the 'disappearing quorum', remaining silent in order to break the quorum and thus to block action. Speaker Thomas Reed ruled that those present but not voting counted

[30] House Rule XI (h)(1).
[31] House Rule XI (h)(4)(A).
[32] House Rule XI (h)(4)(B).

https://doi.org/10.1017/S000712340700035X Published online by Cambridge University Press

towards the quorum, thus putting the minority to the much less appealing choice between being outvoted or physically absenting themselves from Congress.[33]

Once put in place, however, the Reed rule binds the majority as well as the minority. Where the majority puts the Reed rule in place at a given time, majoritarian quorum-breaking at a later time requires that the rump members of a dispersed absolute majority not merely abstain, but actually stage a public walkout.[34] This version of the quorum-breaking tactic is politically more costly, because more obviously strategic; I will give an example shortly. The walkout tactic is also risky, because it requires high co-ordination and compliance among majority members. If even some of the majority's members defect (by participating in the minority-dominated vote), the result will be the worst-case scenario from the majority's point of view: a quorum will be established, but with the minority in voting control.

Similar issues are presented by a closely related tool of majoritarian control, which is to adjust the quorum rule upwards while retaining a simple-majority voting rule. Consider a scheme, used in a few legislatures, that combines (1) a simple majority voting rule with a standard present-and-voting multiplicand and (2) a supermajority quorum requirement, such as the presence of two-thirds of the membership. Under this scheme, the minority's concentration of force in our running example would be inadequate. The cost of this hybrid scheme, however, is that minorities may exploit the disjuncture between the quorum rule and the voting rule to block action by an absolute majority or even a supermajority. Under this scheme, if sixty-six legislators favour a measure, and thirty-four oppose it, the measure will not be defeated if the minority votes against it but will be defeated if the minority withdraws from the legislature to defeat the quorum. Thus in a legislative struggle over redistricting in the state of Texas, a legislative chamber with 150 members, a quorum minimum of a hundred and a majority party of eighty-eight was temporarily paralysed by the walkout of fifty-one dissenters.[35] Importantly, however, the high political costs of this conspicuously strategic behaviour soon forced the minority's return[36] – underscoring the limits of the walkout tactic as a tool of majoritarian control.

Supermajority multipliers. If a standard quorum rule and standard quorum-breaking tactics are not well-suited to block Napoleonic tactics by minorities, another option is to make an upward adjustment in the voting rule multiplier. One might, that is, adopt (1) a standard quorum minimum, (2) a supermajority multiplier, and (3) a standard present-and-voting multiplicand. Many legislatures use such a scheme for some issues, although few use it generally for all issues. The larger questions about such a scheme, of course, involve the

[33] See Sarah A. Binder, *Minority Rights, Majority Rule: Partisanship and the Development of Congress* (Cambridge: Cambridge University Press, 1997), pp. 125–8. The celebrated first example of a disappearing quorum occurred when Rep. John Quincy Adams and supporters refused to answer the roll-call during voting on a pro-slavery bill, precluding a quorum. See Roger H. Davidson and Walter J. Oleszek, *Congress Against Itself* (Bloomington: Indiana University Press, 1977), p. 23.

[34] Note that, when concentrated minorities have the upper hand because of majority absenteeism, it is too late for the majority to attempt to change or suspend the Reed rule itself – even apart from the blatantly strategic character of such a course.

[35] See 'Texas house paralyzed by Democratic walkout, redistricting at issue', 19 May 2003, available at http://www.cnn.com/2003/allpolitics/05/13/texas.legislature. For similar European cases, see Rasch, 'Parliamentary Voting Procedures', p. 497.

[36] See Michael Martinez, 'Dems' flight was wrong, many El Pasoans say', *El Paso Times*, 20 November 2003, p. 1A; 'GOP gets quorum in Texas Senate: Democrat breaks ranks, facilitating remapping effort', *Chicago Tribune*, 16 September 2003, p. 10l.

https://doi.org/10.1017/S000712340700035X Published online by Cambridge University Press

costs and benefits of supermajority rules. A chamber majority that creates a supermajority multiplier to protect itself from affirmative minority action will pay a price when obstructionist minorities block action that the majority would desire to take. But the same is true of an absolute multiplicand, which dampens the risk of affirmative minority opportunism while increasing the costs of organizing to overcome obstructionist minorities.

The narrow point of interest here is this: in so far as the majority's aim is just to minimize the risk of affirmative Napoleonic minorities, upward adjustments to the multiplier are generally inferior to adjustments to the multiplicand, on essentially mathematical grounds. The effect of large changes in the multiplicand will frequently swamp the effect of small changes in the multiplier. The difference between half of all those present and voting and two-thirds of the same multiplicand, on the one hand, will often be much less than the difference between half of those present and voting and half of all members, on the other. With a hundred members and a standard quorum rule, as we have seen, only a voting rule with *unanimity* in the multiplier will duplicate the effect of an absolute voting rule if the number of those present and voting is equal to the quorum minimum of fifty-one. (If any of those present do not vote, the absolute majority rule cannot be satisfied even by unanimity.) This is not a realistic case, because participation will usually not be so low. The larger point, however, is that if the asymmetries in absenteeism are serious, one may need a very high multiplier to duplicate the majority-protecting effect of an absolute majority rule. In a legislature of a hundred members divided 50–50 on the relevant issue, where seventy-five participate and all absentees are from one group, even a two-thirds supermajority rule would permit an enactment by the fifty voters from the other group (i.e. by a vote of 50–25), although the enactment would fail under full participation, a simple majority rule and standard tiebreaking rules.

Proxy voting. Finally, there is the possibility that majorities can use proxy voting to maintain control while permitting their members the desired rate of absenteeism. In the House of Representatives before 1995, 'proxy voting was simply a means of ensuring majority control over committees as subunits of the House and preventing such control from succumbing to the whims of committee scheduling or flukes of members' absences'.[37] When in 1995 the Republican majority abolished proxy voting in committees,

> [T]he Republicans endured immediate political pain for their decision. They were forced to conduct numerous simultaneous committee meetings and House floor votes to ensure prompt passage of the legislative agenda promised in the election campaign, while struggling to maintain voting control with the narrowest House majority in forty years … [T]he Republicans eventually loosened some of the other restrictions they had passed on the number of committee and subcommittee assignments members might hold, so they would be able to place enough majority members in the right places to ensure control.[38]

This point dramatizes that, in the absence of control devices such as proxy voting or an absolute majority rule, majorities will be forced to maintain a lower rate of absenteeism than they would otherwise desire. Proxy voting lowers the cost of majority absenteeism, as legislative minorities often point out in high-minded fashion.

[37] *Guide to Congress*, p. 552.
[38] *Guide to Congress*, p. 553.

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Why then is proxy voting not more common? Although some legislatures permit it at the committee level, most do not, and it is all-but-universally prohibited at the level of voting in the whole legislature (the main exceptions being Brazil, France and some of the francophone nations of Africa).[39] The standard conjecture, which I accept here, is that there are tight political constraints on proxy voting. On this view, the politically active public understands that full participation in every case is an unattainable and indeed undesirable goal, and will thus tolerate some level of absences and abstentions. But representatives who both absent themselves and conspicuously cast a proxy vote will be seen as irresponsible. If the proxy was given before the relevant proposal was placed on the agenda, the proxy vote will be and seem to be uninformed, rather than being a ministerial arrangement.

The overall claim is that absolute legislative majorities will favour absolute majority rules where the insurance benefits of absolute majority rules outweigh the greater organizational demands and transaction costs. An absolute majority rule raises the costs of assembling a coalition to enact laws, and thus makes it harder for majorities to overcome obstructionist minorities, but it also provides protection against tactics that might allow opportunistic minorities to obtain affirmative enactments. No alternative measures for securing majoritarian control are equally effective.

These are *ceteris paribus* points. They neither show nor are intended to show that absolute majority rules are superior to simple majority rules in all circumstances. One must net out the costs and benefits indicated above as facts dictate in particular settings and compare them to the net costs of the alternatives. But the prospect of affirmative strategic behaviour by minorities counts against the standard simple-majority scheme and makes absolute majority rule a real alternative.

III. EXPRESSIVE MAJORITARIANISM

I now turn to a different justification: absolute majority rules combine supermajoritarian effects with expressive or symbolic majoritarianism. At the Philadelphia constitutional convention of 1787, some delegates disliked the proposal, which eventually prevailed, to require a two-thirds majority of senators present in order to ratify a treaty. Wilson 'thought it objectionable to require the concurrence of 2/3 which puts it in the power of a minority to controul the will of a majority'.[40] Some time later, Sherman moved to amend the proposal to say that 'no Treaty be made without a Majority of the whole number of the Senate'. In response to an objection that '[t]his will be less security than 2/3 as now required',[41] rather than criticizing the dubious calculation underlying the objection,[42] Sherman argued that the absolute majority rule '*will be less embarrassing*'.[43] Although the amendment was defeated, the argument is interesting. A rule cast in majoritarian form would sidestep, at least in appearance, the sort of majoritarian objection to the supermajority multiplier that Wilson had offered.

[39] See *Parliaments of the World,* pp. 479–93.

[40] *The Records of the Federal Convention of 1787*, p. 540.

[41] *The Records of the Federal Convention of 1787*, p. 549.

[42] Williamson meant, presumably, that the costs of assembling an absolute majority of the Senate's members would be less than the costs of assembling a two-thirds supermajority of the senators present. Given that the Senate initially had twenty-six members, an absolute majority would be fourteen, so Williamson's claim would hold true if and only if less than five senators were absent or abstained (because two-thirds of twenty-one is also fourteen).

[43] *The Records of the Federal Convention of 1787*, p. 549.

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We may interpret this justification from the standpoints of both legislative majorities and legislative minorities. Minorities might favour absolute majority rules over supermajority rules with equivalent or roughly similar effect because the absolute majority rule makes the minority's power to block change less conspicuous to the public. Majorities constrained by politics to adopt a voting rule with minority-protecting effect might prefer the absolute majority rule on the same grounds. The political appeal of majority rule may be decisive for both camps, holding constant the actual supermajoritarian effect of the rules.

Let us first put aside one issue. We have seen that, relative to a simple-majority voting scheme, absolute majority rules produce a status quo bias, just as supermajority multipliers do. This point does not depend upon the possibility under simple majority rule that minorities can obtain countermajoritarian enactments, as discussed in Section II. Even if absenteeism is always distributed proportionately, so as to preserve the majority's ratio and thus majority control, an absolute majority rule always raises the costs of assembling a decisive coalition in favour of enactments, because it forces the chamber majority to organize and assemble a larger fraction of its membership.

The status quo effect of absolute majority rules varies in magnitude. Where legislative majorities are large it is less important, but the same is true of a supermajority multiplier. It is hard to generalize about whether absolute majority rules or a supermajoritarian multiplier produces a greater status quo bias. In what follows, I will assume that the expected costs of assembling a decisive coalition are similar under the two alternatives to the simple majority scheme. The assumption serves to isolate the issue on which I wish to focus, the different formal and expressive properties of supermajoritarian multipliers and absolute majority rules.

Assuming equivalent status quo effect, why might majorities or minorities prefer absolute majority rules to rules with a supermajority multiplier? The basic difference is in the relative public or political appeal of the different voting rules. By assumption, both an absolute majority rule and a supermajority multiplier have supermajoritarian effect, relative to the baseline of a simple-majority scheme. They differ in their public face, not in their intralegislative effect. The suggestion I will pursue is that absolute majority rules may be favoured by minorities or majorities or both precisely because they are nominally majoritarian. I assume throughout that the legislative process is fully transparent, but that does not mean that the law's expressive or public face does not matter. Where publics are rationally ignorant or cognitively constrained, or where they value law's expressive attributes independently of material consequences, there can be political advantages to majorities or minorities in adopting rules that are nominally but not substantively majoritarian.

Majority rule has strong political appeal even where there are good normative arguments for supermajority multipliers. Psychologically, majority rule has a strong focal-point quality. Where all vote, and where voting rules are unspecified, the common intuition is that more should defeat fewer. Groups organizing themselves into new voting bodies, such as constitutional conventions or legislatures, often assume majority voting as a matter of course. Even where voting rules are controversial and explicitly debated, different self-interested factions may each prefer different self-interested deviations from majority rule; majority rule may then be each faction's second choice, and emerge as the compromise winner.[44] Under supermajority multipliers, by contrast, it often smacks of

[44] Jon Elster, 'Majority Rule and Individual Rights', in Susan Hurley and Stephen Shute, eds, *On Human Rights: The Oxford Amnesty Lectures 1993* (New York: Basic Books, 1993), pp. 175–216, at p. 178.

https://doi.org/10.1017/S000712340700035X Published online by Cambridge University Press

inegalitarian privilege that fewer votes can defeat more, even if the usual normative arguments for supermajority rules apply.[45]

The political appeal of majority rule is an indeterminate political force, not a hard political constraint. It can be and is overcome in some political settings. It is striking, however, that the political appeal of majority rule often reasserts itself even where supermajority multipliers or other minority-veto schemes are in effect. When President Bush was attempting to obtain the UN Security Council's assent to the second invasion of Iraq, the voting rules required (1) a supermajority of the council's voting members and (2) no vetoes by any permanent member. Anticipating that this high threshold could not be overcome, American diplomats thought it crucial to world opinion to obtain a simple majority of votes on the Council in any event.[46] Likewise, in legislatures where supermajority multipliers are in effect, majority leaders will often force explicit votes even if they know that a supermajority cannot be formed. The public embarrassment attendant upon defeating a proposal, or a nominee to office, with only a minority of votes is a cost to the minority ex post; the majority's threat to impose that cost, if credible, has a disciplining effect *ex ante*.

In these examples, the political appeal of majority rule imposes a cost on the voters or groups who otherwise benefit from supermajority multipliers. Conversely, avoiding the public costs of open minoritarianism is a benefit to the same groups. Where there is equivalent minority-protecting effect from increasing the multiplier and from adopting an absolute multiplicand, or where the benefit to the minority from increasing the multiplier above a simple majority is less than the political costs of doing so, minorities may prefer absolute majority rules. In dynamic terms, minorities may fear that the open counter-majoritarianism of supermajority rules will eventually produce a public backlash. An implication is that, at any given level of supermajority multiplier, an absolute voting multiplicand increases the minority-protecting effect of the voting rule without further flaunting of countermajoritarianism, if multiplicands are generally less visible to the public than are multipliers.

Less intuitively, even the majority might sometimes prefer an absolute multiplicand to a supermajority multiplier, on several grounds. First, in intralegislative bargaining with a powerful minority over what the voting rules shall be, a majority that must grant concessions in the form of a minority-protecting rule may prefer an absolute multiplicand to an avowedly supermajoritarian multiplier, if the former helps to disguise the majority's weakness. For the same reason, even if a supermajoritarian multiplier is already in place or must also be conceded, the majority may prefer that further concessions come through varying the multiplicand.

Secondly, holding constant the degree of minority-protecting effect, an absolute multiplicand differs from a supermajority multiplier in that the latter produces a variable threshold for success of a proposition or motion, while the former produces a constant threshold. The certainty provided by the former benefits the majority as well as the minority. In fact this benefit is greater to the majority, which incurs higher costs in assembling the members of its coalition, and thus derives greater value from knowing the precise target it has to meet.

[45] For an overview of such arguments, see Dennis Mueller, *Constitutional Democracy* (New York: Oxford University Press, 2000), pp. 150–8.

[46] Peter Singer, *One World: The Ethics of Globalization,* 2nd edn (New Haven, Conn.: Yale University Press, The Terry Lectures Series, 2004).

https://doi.org/10.1017/S000712340700035X Published online by Cambridge University Press

Thirdly and finally, an absolute majority rule might be desirable, both to the majority and to others, because it expresses a symbolic commitment to majoritarianism that is absent from a supermajority rule with equivalent minority-protecting effect. Let us imagine an institutional designer who (1) favours majority rule in some relevant domain on sincerely-held normative grounds, but who (2) is constrained by an entrenched minority to agree to voting rules with minority-protecting effect. On one hand, such a rulemaker might prefer to do so by agreeing to an absolute majority rule, in order to produce or maintain a symbolic adherence to majority voting.

On the other hand, it might be better to more clearly expose the supermajoritarian effect of the voting rule to public view by adopting an expressly supermajoritarian multiplicand. This is just an instance of a well-known conundrum: whether a state of affairs that is actually bad and symbolically good is better or worse than a state of affairs that is actually bad and transparently bad. I have no general answer to offer, but certainly it is a respectable view that one should choose the symbolically good over the transparently bad, either for intrinsic reasons, or in the hope that over the long run the good symbolism will capture peoples' hearts and minds and thus produce a political revulsion against the bad practice. Conversely, an impartial rule-designer who sincerely believes that supermajority rules are superior (in the relevant domain) will not face the conundrum at all; from that point of view, an explicit supermajority multiplier combines good substance with good symbolism.

CONCLUSION

My thesis has been that absolute majority rules prove superior both to simple majority rules and simple supermajority rules, under plausible conditions. A very different approach, represented by mathematical voting theory, is to assume away institutional problems of transaction costs, political constraints and strategy, and expressive or other non-instrumental considerations. But that procedure sacrifices the richness of institutional arrangements for the sake of mathematical tractability. I have tried to steer a middle course between the extremes of formalized voting theory on the one hand and thick description on the other, with the aim of offering normative arguments that take account of real institutional problems. Such arguments suggest that constitutional designers, rule designers and legislative majorities would do well, in identifiable circumstances, by considering absolute majority rules as an alternative to the standard approach of varying the voting multiplier.

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