

## Democracy: positive and negative

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*“The changes which the meaning of the concept of democracy has undergone (...) are contributing (...) to deprive the term ‘democracy’ of clear meaning and turn it into a word-fetish used to clothe with an aura of legitimacy any demands of a group that wishes to shape some feature of society to its special wishes”*

Hayek, F., 1998, *Law, legislation and liberty* (Routledge, London), Vol. 3, p. 38

Generally speaking, it is possible to identify two opposite ideas of democracy. The first one is based essentially on majority rule. The second one is based on the continuous effort to limit the application of that rule (and therefore group decisions) as much as possible in society. On the one hand, these two ideas of democracy are based on very different concepts of law, of equality before the law and of liberty, among other things; on the other, they have quite different implications.

Democracy intended as that political system based on majority rule is essentially a very simple concept: the only limit to the existence of group decisions is the existence of a majority to support them. A decision approved by a majority is therefore considered “democratic” independently from the contents of that decision. Those who believe in this idea of democracy, of course, consider it, and therefore also majority rule and group decisions, to be something positive, so the more of it the better. As Professor Pascal Salin recently put it in an interview to Catalaxy Institute, these persons usually “like to put democracy everywhere”.

Vice versa, democracy intended as that political system in which majority rule is reduced as much as possible is a more delicate concept: the limits to the existence of group decisions are mainly, not the existence of a majority to support them, but the structural impossibility of uncoerced individual action, or of uncoerced agreement between different individual parties, without violating an accepted framework of general, abstract principles. In short, a group decision is democratic if it is unavoidable. As a consequence, those who believe in this idea of democracy consider majority rule and group decisions to be something negative, and therefore the less of it the better.

In some cases, it is clear that group decisions are unavoidable, and therefore that their application will be a necessary cost, the least evil; in other cases, it is equally clear that they are avoidable, and therefore that their application would be an unnecessary form of coercion (or a form of coercion necessary only to protect or promote particular interests by using the force of the state), and therefore a form of tyranny of the majority. Between these extreme cases there is however an area in which, whether a group decision is avoidable or not, is not as much straight forward and clear: this is why this concept of democracy is more delicate. It is by discovering more and more, also by trial and error, the border between those matters for which group decisions are not avoidable and those for which they are, that a society little by little learns the art of liberty.

Most enemies of freedom, that is most of “those ... who cannot conceive of anything serving human purpose that has not been consciously designed” (Hayek, 1999, p. 61), are likely at this point to ask: “but who decides and approves that 'framework of general, abstract principles' within which individuals should be free to make their own decisions without being coerced by majority vote? Would not these principles have necessarily to be approved by a majority?”. The answer is a simple “no”. In normal circumstances, these principles would have to be *discovered*, not “approved” or “made”. These principles are principles of justice, and therefore they exist *before* legislation (Hayek, 1998; Leoni, 1991; Bastiat, 2007): they are the result of a very long, spontaneous process of natural selection of those uses, conventions and institutions which in time have contributed to enhance the chances of survival of a group, for example by reducing internal conflicts such as the principle of inviolability of private property (Hume, 2007, pp. 307-322). They are not “decisions” of authority: if necessary, authority can only discover, enforce and protect them; how, is a different matter (see Dworkin, 1977, 1986).

This is why the idea of democracy based on the maximum possible limitation of group decisions is based on a negative concept of law (Bastiat, 2007), that is on an idea of law according to which this exists without decision, without authority, without command; an idea of law in which what matters is not the box (i.e. not the fact that it was approved by an authority), but the content, which the authority has, if necessary, the role to discover, protect and enforce.

Similarly, this is also why the idea of democracy based on majority rule and group decisions is based on a positive concept of law according to which this is the command of the authority and what matters is the box, not its contents. Therefore, for simplicity, perhaps we can name the first *negative democracy* and the second *positive democracy*.

Being based on a positive concept of law, positive democracy is also based on the relative concept of equality before the law, that is on positive equality before the law. This consists in arbitrarily forming some categories and in applying a command of the authority uniformly within them, the typical example being progressive taxation.

Vice versa, being based on a negative concept of law, negative democracy is also based on a negative concept of equality before the law. Unlike positive equality, negative equality implies equality before an abstract principle: that is, the same abstract principle (for example that of

the inviolability of private property, or that stealing is unjust) applies equally and *fully* to all citizens, without the authority having the power to discriminate between citizens on the ground of arbitrarily chosen categories, and therefore having the power to make stealing legal only for some categories of citizens, and only to some extent, so as to make for each individual the cost of rebellion against theft higher than the amount of money that is being stolen from him. A flat tax is an example of fiscal measure less incompatible with this negative principle of equality before the law than progressive taxation (see Nozick, 1974, p 170).

Positive democracy, as well as the positive concepts of law and of equality before the law which it implies, is also based on a positive concept of liberty, where this is essentially conceived as power: power to do something or even to buy something (Hayek, 1999, ch. 1; Berlin, 2008, pp. 166-217; Knight, 1982, p. 15).

Negative democracy, on the contrary, as well as the negative concepts of law and of equality before it that it presupposes, is based on a negative idea of liberty: this implies the minimum possible level of coercion of some by others, therefore also the minimum possible level of group decisions. Which is this minimum possible level and how it can be found, is a different question that lies beyond the scope of this article: some (Nozick, 1974) identify this “minimum” with specific activities that the government should carry on, such as the administration of justice for example; others (Leoni, 1991), not necessarily in contradiction with the previous ones, identify this “minimum” with the level necessary to prevent others from using arbitrary coercion; others, less precisely but in my opinion more adequately, identify this “minimum” with that required by the negative law, that is by a tradition of abstract, general, spontaneously selected principles which is to be discovered (Hayek, 1998) or by legitimate property rights (Salin, 2000, pp. 81-112).

This positive/negative scheme is surely an excessive simplification, but perhaps it may contribute to give a quick idea of how much opposite these two ideas of democracy can be. Many liberals (rightly, in my opinion) tend to emphasize that “democracy” is not an end, but a means to an end: the ends are negative liberty, negative law, negative equality before the law, among the most important ones. However, when some liberals claim this, they generally interpret the word “democracy” in the positive sense based on majority rule and group decisions, that is the one prevailing today, at least in Western countries.

In doing this sometimes they miss the opportunity to emphasize that there is a different kind of democracy, which, being that political system in which group decisions, and therefore

coercion, are limited and reduced as much as possible, incorporates the ends of negative liberty, negative law, and negative equality before the law, and therefore is itself an end.

It is true, and not surprising, that to the word “democracy” happened the same as what happened to the words “law”, “equality before the law”, “liberty” and others: the authority has deliberately and artificially changed their meaning with the specific purpose of making the largest part of the population follow its commands (Hayek, 2002, p. 161) so as to transform citizens in a “flock of timid and industrious animals of which the government is the shepherd” (Tocqueville, 1994, Vol. 2, p. 319), that is in subjects. Nevertheless, precisely because the classical liberal knows this and is so tenacious in remembering and reminding the original meaning of these fundamental words, I think that he should not concede to its totalitarian enemy the monopoly of the word “democracy” by using it without provocatively distinguishing the two opposite meanings of that word. The difference between positive and negative democracy, as well as that between positive and negative law, equality before the law and liberty, could never be emphasized enough.

I agree with Hayek when he claims that, at the cost of inventing or rediscovering a new name for it, we should preserve the original ideal of democracy (negative democracy) by distinguishing it from the current, distorted meaning of that word: “The changes which the meaning of the concept of democracy has undergone (...) are contributing (...) to deprive the term ‘democracy’ of clear meaning and turn it into a word-fetish used to clothe with an aura of legitimacy any demands of a group that wishes to shape some feature of society to its special wishes. (...) I feel more and more convinced that, if we are to preserve the original ideal, we may have to invent a new name for it. (...) The Greek word ‘democracy’ was formed by combining the word for the people (*demos*) with (one) of the two available terms for power, namely *kratos* (or the verb *kratein*). (...) *Kratein*, however, unlike the alternative verb *archein* (used in such compounds as monarchy, oligarchy, anarchy, etc.) seems to stress brute force rather than government by rule. The reason why in ancient Greece the latter root could not be used to form the term demarchy to express a rule by the people was that the term demarch had (at least in Athens) been pre-empted by an earlier use for the office of the head of a local group or district (the *deme*) and thus was no longer available as a description of government by the people at large. This need not prevent us today from adopting the term demarchy for the ideal for which democracy was originally adopted” (Hayek, 1998, Vol. 3, pp. 38-40).

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