

MAJORITY AND THE LIMITS OF DEMOCRACY

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ABSTRACT

It seems as if the majority principle permeated almost all walks of life within a differentiated society – to such an extent that it appears normal to associate it with the nature of democracy and to speak about democratic societies. Although early Christianity commenced with an acknowledgement of the conscience of an individual, the aim of church unity soon required that individuals sacrifice their autonomy. Was it necessary to assume that God always sided with the majority and do we have to distinguish between individuals as such and individuals as members merged into a whole? The apparent tension derives from the difference between *multiplicity* and *wholeness* revealing the role of two modes of explanation: number and space. It was the Roman jurists who asked questions about the grounds of validity of the majority principle by contemplating how the minority should abide by the decisions of the majority and what should happen to dissenters. In extreme cases *force* determined the issue. This explains why jural validity preferably required unanimity. Eventually the maxim for the minority was more modest: follow the majority by accepting the majority as having a will of its own. Within canon law the majority is treated *as if* it were the will of all. At the *Third Lateran Council* (1179) the number of required votes was established to have a two-thirds majority. The canonists were the first to introduce a distinction between the *free rights of individuals* and the particular *rights of corporations*. A new fiction now justified equating the major part (*major pars*) of an assembly of representatives with the *whole itself*. Within social contract theories the majority played an important role. But in the thought of Rousseau tension emerged between the general will and the will of all individuals. By interchanging the whole-parts relation with the relation of super- and subordination within the state, Rousseau's social contract theory terminated in assigning an absolute and unlimited power to the general will. It is argued that the majority principle is incapable of functioning as a yardstick for justice and truth – neither of which could be established by a majority vote. Assigning an unlimited legal power to the majority leads to a totalitarian and absolutistic view. The limitations of the majority principle are briefly demonstrated with reference to mathematics and biology. In text books of logic this impasse is designated as the *majority fallacy*. South Africa is currently facing protests with claims bordering on a dictatorship of the majority. The article is concluded with a brief exposition of the “organic” view of Gierke and with a hint towards an alternative view.

Keywords: majority; democratic; collective will; unanimity; social contract theories; absolutism and totalitarianism

1. INTRODUCTION: DOES THE MAJORITY DECIDE?

Practically within all walks of life the implicit assumption is that action ought to be taken based upon a *majority* decision. Electing representatives for Parliament, a provincial government or municipalities as a rule requires a majority vote. The same applies to many other societal contexts, such as when a Church council has to be elected, when a sport club is constituted, or when a university (or faculty) adopts an academic policy. The procedure of deciding by means of a majority vote is normally called “democratic.” It does look as if the idea of “majority rule” so thoroughly permeated society that we even frequently speak of *democratic societies* as such.

2. EARLY HISTORY OF THE MAJORITY PRINCIPLE

However, the above-mentioned view has its own history. The philosopher-sociologist, Georg Simmel, traces the history of this issue back to early Christianity. He reflects on an era that “has been characterized by the opposition of the individual conscience to the resolutions and actions of majorities” (Simmel, 1950:246). The striking situation is that during the second century resolutions discussed by assemblies on religious affairs “were explicitly not obligatory for the dissenting minority.” However, when the urge towards *unity* became dominant an insoluble conflict between the church and unique individuals appeared. Simmel points out that the church “sought to solidify itself by imitating the unity of the state” (Simmel, 1950:246). This process resulted in the initial Christian communities which sacrificed their autonomy by being fused “into a unitary total structure whose councils decided, by majority vote, on the contents of the faith” (Simmel, 1950:247). For the individual members this outcome violated the unity of their communities which was built upon the equality of the ideals and hopes that each one envisaged for herself or himself. Subordinating people in matters of faith to the will of the majority and even declaring dissenters non-Christian introduced something new and questionable: does “one have to assume that God was always with the majority” (Simmel, 1950:247).

The assessment of Simmel touches the core of the issue. He states:

That an opinion, only because its exponents are more numerous than those of another opinion, should encompass the meaning of the super-individual unit, is an entirely undemonstrable dogma. In fact, it is so little justified that without an auxiliary, more or less mystical relation between that unit and the majority, it remains suspended in mid-air; or else it is based on the somewhat weak foundation that, after all, one has to act somehow and, even if one may not assume the majority as such to know what is right, there is the less reason for assuming it of the minority (Simmel, 1950:247).

According to Simmel the required unanimity as well as the subordination of the minority to the majority is threatened by multiple difficulties. They highlight the problematic nature of

extracting “a homogeneous will from a totality which is composed of differently oriented individuals.”

Is the group unity, supposedly existing outside individuals, “the objectively necessary decision [which] is identical with that which is based on counting votes”?

3. INDIVIDUALS AS INDIVIDUALS AND AS MEMBERS OF A WHOLE GROUP

Simmel takes his concerns a step further by distinguishing between individuals *as* individuals and individuals as “elements” (members) of a (whole) group: “What is more, provided even the elements of the minority really dissent only as individuals and not [248] as elements of that group unity, nevertheless, they exist as individuals: after all, they belong to the group in the larger sense of the term; they are not simply obliterated by the whole. In some way or other, they enter the whole of the group even as dissenting individuals” (Simmel, 1950:247-248).

4. MULTIPLICITY AND WHOLENESS

The initial quantitative meaning of *more* and *less* (*majority* versus *minority*) is now suddenly transformed into a new perspective which is derived from the *whole-parts relation*. But it surfaces as a *problem*: how can a *part* obtain the same weight as the *whole*? This problem ultimately reflects the mutual intertwinement of *number* and *space*. Without an awareness of “greater and less” (which is a primitive *numerical* relation – see Russell, 1956:194; and also page 167), the notion of a *majority* would be incomprehensible. Likewise, without an awareness of the *whole-parts relation* the question how a *part* can obtain the same weight as the *whole* would be meaningless.

5. NUMBER AND SPACE

Bertrand Russell relates *greater and less* to the *discrete* quantitative meaning of *succession* while observing that “progressions are the very essence of discreteness” (Russell, 1956:299). He criticizes Bolzano for not distinguishing the “*many* from the *whole* which they form” (Russell, 1956:70). This distinction between *multiplicity* and *wholeness*, in turn, captures two key elements in the definition of a set provided by the founder of modern set theory, Georg Cantor. His circumscription touches both on the primitive meaning of *number* (a *multiplicity* objects/elements) and that of *space* (*wholeness*): “Under a ‘set’ we understand every collection [*Zusammenfassug*] *M* of specific properly distinct [*wohlunterschiedenen*] objects *m* of our intuition or thought (designated as the ‘elements’ of *M*) into a whole [*Ganzen*]” (Cantor, 1895:481). Paul Bernays, the co-worker of David Hilbert, acknowledges the irreducibility of the totality character of spatial continuity for according to him it is the *totality-character* of spatial continuity (*wholeness*) which resists a perfect arithmetization of mathematics (Bernays, 1976:74). Russell also underscores: “The relation of whole and part is, it would seem, an indefinable and ultimate relation” (Russell, 1956:138).

In passing we may note that individualism and universalism (atomism and holism) one-sidedly overestimate respectively the numerical and spatial aspects as modes of explanation.

6. THE TENSION BETWEEN THE *MAJOR PART* (MAJORITY) AND THE WHOLE

Although within the cultural world of the Greeks and Romans the majority principle ruled uncontested when large gatherings had to decide something, the political theory of the Greeks did not reflect on the *ground* and *validity* of the majority principle as such. It was the Roman jurists who started to search for these grounds of validity. Ulpianus and Scaevola formulated ideas anticipating later developments, in particular by making an appeal to an assumed *juridical fiction* by virtue of which the *majority* should be seen *as if* it is *all*, the *whole*.

The less developed Germanic law did not know the majority principle since it considered the *total will* to be the same as the *collective will* and the latter is the *will* of *all* those who are *brought together* (it therefore moves from the *Gesamtwille* to the *Versammlungswillen* and then to the *Willen aller Versammelten*). Similarly, in respect of the ruler, no distinction is drawn between the *individual personality* and the *position* (office) occupied by the head of the collectivity. All forms of communal law are therefore exercised by the collection of fully entitled associates acting at once in a unified and multi-headed way (Gierke, 1913:314).

7. THE DISSENTING MINORITY

When no unanimity is reached among the leading men in the national gathering, as a rule the opinion of the predominant majority is followed. But there was no juridical obligation to abide by the decisions of the majority. However, when the dissenting minority wants to stick to its contradictory view they were not bound by what the majority decided. The only problem was that the dissenting minority separated itself from the unitary totality of the others, as their enemy, subject to the powerful force of the majority. If the minority was strong enough to envisage a victory, the unanimous collective decision was confronted with a division in partial totalities, in the extreme cases decided by force (Gierke, 1913:315).

8. UNANIMITY

In Europe the formal validity of the majority principle was only established through a troublesome struggle. The same applies to the procedure holding for the acceptance of new members of a municipality, which required unanimity on the part of the *Gemeindegenossen* (Gierke, 1954-II:232). Even before the majority principle took hold of the higher levels of public life the decisions taken by market corporations and the estate of farmers required unanimity. Likewise, the decisions in all legal gatherings only obtained jural validity on the basis of the general consent of the members of the “Ding” (the assembly) (Gierke, 1913:316-317).

9. THE COMMUNAL AND UNIFIED WILL

During the second half of the middle ages the increasing acknowledgment of the majority principle was also in Germany established for assemblies, courts, provinces, cities and guilds. It acquired the form of the following formula: “The minority should follow the majority” (*minor pars sequatur majorem*). Although the majority will was not simply enforced upon the minority, the minority was legally obligated to will what the majority willed. It should concur and join the majority (Gierke, 1954-II:482; see note 19,

483). When the minority in this way gives up its opposing view by accepting the majority will as its own, then in spite of the initial split all are bound together in the communal and unified will.¹

10. DEVELOPMENTS WITHIN CANON LAW

Within ecclesiastical circles similar developments took place, particularly in connection with the way in which the pope was selected – and the same applied to offices with a lower rank, occupied by bishops, abbots and ecclesiastical office-bearers. Before the pope succeeded in assuming supreme power, bishops and abbots were basically controlled by royalty (emperors, kings and princes), or by feudal lords.

The Papal Revolution occurred when Pope Nicolas II convened a church council in 1059 in which a decree was issued conferring the principal role in selecting a pope to the cardinals of Rome. A hundred years later a new decree of Alexander III assigned the sole power to select a new pope to the cardinals. Whereas the decree of Nicholas II merely required a *simple* majority, it was qualified as a majority of *the greater and sounder part* of the electors. In 1179 the *Third Lateran Council* made “the number of required votes a two-thirds majority” (Berman, 1983:207).

From our preceding analysis it is clear that the way in which the majority principle is understood identifies the totality as unity with the multiplicity of all. A change only occurs when the decision of the majority immediately had effect as an expression of the will of the whole. This development emerged when the concept of a corporation reached the level of the concept of a *body* (see Gierke, 1954:573 ff.). From the *Corpus Juris Civilis* the Legists derived a *fiction* by virtue of which majority decisions are legally appreciated *as if* it was the *all*. While the glossators still believed that the whole is the sum of individuals, the post-glossators made a distinction between *omnes ut universi* and *omnes ut singuli* (*all as a whole* and *all as everyone*) (Gierke, 1954-III:220, the two Latin phrases are on page 391). The competence of the assembly to make decisions, under the influence of Roman law, was dependent upon the presence of two-thirds of the members. Yet the rights of the individual continued to be problematic.

Within church law the view is often defended that the minority may turn into the *major pars* (major part) owing to its seniority. The canonists wanted to claim universal validity for this view, but retreated to a position where it is seen as a peculiarity of church law. Ultimately the victorious view was the *major et senior pars* was inadmissible and that the dominance of number and the value of voices should coincide (Gierke, 1913:323-324).

11. THE DISTINCTION BETWEEN INDIVIDUAL AND CORPORATE RIGHTS

In their doctrine of individual rights the canonists introduced for the first time the distinction between the *free rights of individuals* and the particular *rights of corporations* (*jura singulorum* . and *jura universitatis*) (Gierke, 1954-III:297). A new fiction justified equating

¹ “Wenn aber so die Minderheit ihre Widerspruch aufgab und den Willen der Mehrheit zum ihre machte, so waren es zuletzt trotz anfänglicher Zweiung dennoch Alle, welche einen gemeinen und einigen Willen erklärte” (Gierke, 1954-II:483).

the major part (*major pars*) of an assembly of representatives with the *whole itself* (Gierke, 1954-III:223).

12. THE MAJORITY IN SOCIAL CONTRACT THEORIES

Since the Renaissance theories of natural law embarked upon a hypothetical social contract, supposedly constituting the transition from a state of nature to a condition in which the state prevails. John Locke adheres to a long tradition when he explains that if no number is set “assemblies empowered to act” are instances where “the act of the majority passes for the act of the whole” having “by the law of Nature and reason, the power of the whole.” Consenting with others “every man” contributes to making “one body politic under one government” thus putting “himself under an obligation to everyone of that society to submit to the determination of the majority. ... [N]othing but the consent of every individual can make anything to be the act of the whole” (Locke, 1966:165 – paragraphs 96, 97 and 98).

13. THE IMPASSE IN ROUSSEAU'S CONCEPTION OF THE MAJORITY AS “GENERAL WILL”

Rousseau attempts to avoid the problem of equating the majority with the whole by assuming unanimity at least initially, at the conclusion of the social contract: “The law of the majority voting is itself something established by convention, and presupposes unanimity at least at one point in time” (Rousseau, 1966:11). This is the case because “every man being born free and his own master, no one, under any pretext whatsoever, can make any man subject without his consent” (Rousseau, 87-88). Furthermore Rousseau holds that “[A]part from this primitive contract, the vote of the majority always binds all the rest” which follows because Rousseau elevates the general will to be the norm for collective action: “The constant will of all the members of the State is the general will; by virtue of it they are citizens and free” (Rousseau, 1966:88). But when a law is proposed in the general assembly, approving or rejecting is not the issue “but whether it is in conformity with the general will, which is their will” (Rousseau, 1966:88). The general will is also designated as the sovereign which is a collective being (*qu’un être collectif*) (Rousseau, 1975:250).

There is a difference between the *general will* and *the will of all* [the will of everyone (*la volonté de tous*) and the general will (*la volonté générale*) (see Rousseau, 1975:252).] The latter concerns the common interest while the former is no more than “a sum of particular wills” (Rousseau, 1966:23). This distinction coincides with our earlier remarks about number and space: the general will is a genuine *whole* with indivisible parts (the spatial characterization), while the “sum of particular wills” reflect the quantitative meaning of *number*. In respect of the social contract Rousseau holds: “Each of us puts in common his person and all his power under the supreme direction of the general will; and in return each member becomes an indivisible part of the whole.” Straight away, while replacing the particular individuality of each contracting party, “this act of association produces a moral and collective body, composed of as many members as the assembly contains voters, and receiving from this act its unity, its common identity (*moi*), its life, and its will” (Rousseau, 1966:13).

With this shift from the sum of individuals (number) to a collective whole (space) with its own identity, life and will it is not surprising that Rousseau assigns an absolute power to the body politic over all its members: “As nature gives every man absolute power over all its members, the social pact gives the body politic an absolute power over all its members also; and it is this same power which, when controlled by the general will, bears, as I said, the name of sovereignty” (Rousseau, 1966:24).

Since every individual is supposed to be an indivisible part of the whole (the *general will*) any minority which does not accept the general will is actually contradicting its own will: “freedom is obedience to a law which we prescribe to ourselves” (Rousseau, 1975:247). Rousseau does not hesitate to draw the totalitarian consequences breaking apart of his entire construction, because he holds that only when the minority is forced to conform to general will, which is supposed to be their own will (as indivisible parts of the whole), will it be free. Just compare his well-known famous statement: “This means nothing less than that such a person would be forced to be free” [“... ce qui ne signifie autre chose sinon qu'on le forcera à être libre” (Rousseau, 1975:246)].

14. MAJORITY AND SOME PRACTICAL CONSEQUENCES FOR DEMOCRACY AND JUSTICE

Elevating the general will to the final yardstick for public justice at once demonstrated in Rousseau's thought that the opposite of what was aimed for was reached. It is simply impossible to settle matters of justice through a majority vote. In fact the term “democracy” (or the adjective “democratic”) has a well-specified and properly limited scope and applicability. It is normally restricted to a constitutional stipulation according to which, on the basis of a general election, a government is put in office. Once in office the government has to pursue principles of public justice and maintain a public legal order exceeding what Rousseau designated as the general will. For example, within criminal law modern states apply the fault principle. Within the legal system there are appropriate built-in procedures to ensure that justice should prevail. But finding a person guilty of murder beyond reasonable doubt is not something that could be decided by a majority vote. Interestingly, recently within ANC circles in South Africa the courts (judges) were criticized because they were not elected by the majority. This position represents a fall-back to the same totalitarian implications attached by Rousseau to the general will.

Likewise, church denominations are not democratic in the sense in which a state is. Whereas church denominations split owing to incompatible confessions of faith, a just state allows for opposing political parties, each with its own political confession of faith. This freedom would threaten the core business of religious denominations, for multiple (conflicting) confessions of faith within a particular denomination would fall in the category of *heresies*.

What about the nuclear family? Is it meaningful to characterize the relationships between father, mother and children as democratic? The absurd implication is the children would have there before the (to-be-elected) parents.

Although voluntary associations (such as sport clubs) do show similarities with the co-determination and co-responsibility present within a just state their operation still cannot be identified with the democratic process within the state. Membership within associations belongs to the domain of non-civil private law, restricted to those who share in this *ius privatum*). This differs fundamentally from the *ius commune* (communal law) of the state, because citizenship cuts across all non-political ties.

It is clear that the adjective “democratic” does not fit society at large because such a designation ignores the distinct structure and function of non-political societal entities. Perhaps the most important reason why contemporary political theorists still frequently speak of *democratic societies* is that in their thought the state is promoted to be the all-encompassing whole of society embracing all non-political societal entities as integral parts. This practice once more implicitly falls prey to a *totalitarian* understanding of the state.

15. MAJORITY WITHIN THE CONTEXT OF ABSOLUTISM AND TOTALITARIANISM

Sometimes the terms *absolutist* and *totalitarian* are employed as synonyms, although the first term is older than the second one. It has been applied to the absolute monarchies of the period between 1648-1789, the age of absolutism. The rise of the modern state during the 18th and 19th centuries indirectly benefits from the consolidation through the enhancement of the authority of the monarch. The most important feature of the rise of the modern state lies in acknowledging that the state by its very nature is a *res publica*, a *public concern*. Whereas a monarchy belongs to its King, the state, as a public legal institution, belongs to the citizens (the public).

The impasse in speaking of democratic societies can only be avoided if the idea of structurally different societal collectivities is taken seriously – each with its own “inner laws” – as it surfaced in the thought of prominent contemporary scholars (such as Rawls, Habermas, Münch, Walzer and Dooyeweerd). Moreover, it should also be noted that this insight calls for a more detailed and well-founded analysis of the distinct nature of all the societal realities of a differentiated society.

It should be noted that the term *absolutistic* characterizes a state in which there is no political co-determination or co-responsibility (i.e. no political freedoms), while the term *totalitarian* actually concerns the absence of civil and societal freedoms (i.e. the freedoms of civil and non-civil private law). A true power state (German: *Machtstaat*) is therefore both *absolutistic* and *totalitarian* – and it is found both in atomistic (individualistic) and holistic (universalistic) theories of society. The idea of an all-encompassing societal reality, such as the state, the church or the “people” (the *Bewegung* of Hitler and his party) is as old as holistic or universalistic theories of human society. The recent emergence of a new name for this phenomenon, namely *totalitarianism* (the *total state*), does not detract anything from its long history.² From his orientation as a methodological individualist Karl Popper is quite at home

² Designating our awareness of wholeness with the term *totality* already surfaces in the political philosophy of Hegel and Adam Müller at the beginning of the 19th century; Marx spoke of a “total revolution.” In addition, it should be pointed out that before 1931, Germans and Italians started to

with the term “totalitarian” when he formulates what his discussion of Plato's thought aims at: “I am, rather, bent on destroying what is in my opinion mischievous in this philosophy. It is the totalitarian tendency of Plato's political philosophy which I shall try to analyze, and to criticize” (Popper, 1966-I:34).

16. THE MAJORITY PRINCIPLE AND TRUTH: THE LIMITS OF THIS PRINCIPLE

If *justice* is not the outcome of a majority decision the next question is whether the (“democratic”) majority principle can serve as a criterion of *truth*?

In general universities in their academic functioning do not operate on the basis of “majority rule.” Only when science and scholarship in universities are organized in a societal collectivity do elements of academic co-determination and co-responsibility emerge. But since this does not entail that students have the competence to appoint their teachers, the relation of super- and subordination within academia is not democratic. The presupposition of the teaching within academic institutions is that there are learned and learning people. Curricula ought to be taught by competent scholars appointed in the office of teachers. No “democratic vote” can transform someone not having this competence into having it.

17. A MISTAKEN MAJORITY?

It is not difficult to find historical examples of convictions about certain things that later on turned out to be false, even though the majority of people at the time believed them to be true. Consider for example that the majority of people once believed that the surface of the earth is flat; that the majority once believed that motion is in need of a cause (whereas the current conviction is that only a *change* in motion needs a cause); that different laws apply to things on earth and things in space (Newton's law of gravitation demonstrated the opposite); that rational human thinking could be independent of bodily actions (physical processes accompany thinking); that the infinite can never be seen as an infinite totality (the idea of infinite totalities dominates since Cantor, particularly in the school of axiomatic formalism); and so on.

Merely looking at the history of the various academic disciplines therefore reveals how supposedly true convictions eventually turned out to be false. The founder of environmental science (*Umweltlehre*), Jacob von Uexküll, once said: “The science of today, is the error of tomorrow.”³

18. IS MATHEMATICAL TRUTH DEMOCRATIC?

employ the term *totalitarian/totalitarianism* (*Totalitarismus; Totalitario*). Apparently as correspondent A. Paquet used the term *Totalitarismus* in the Frankfurter Zeitung in 1919. (Paquet Book: *Im kommunistischen Rußland*, appeared in 1919.) Likewise, G. Amendola mentioned the “*systema totalitario*” of Mussolini in 1923. A theoretical explanation of the totalitarian characteristics of Fascism is found in a work by L. Sturzo – *Italien unter Faschismus*, published in 1926 (see Kapferer, 1998:1296).

³ “Die Wissenschaft von heute, ist der Irrtum von morgen” (quoted by Kiontke: <http://www.siegfriedkiontke.de/> – accessed on September 8, 2016).

In 1972 Herbert Meschkowski edited a work on the foundations of mathematics: *Grundlagen der modernen Mathematik*. The last contribution to this work is from Meschkowski on the question: *What is Mathematics?* At a certain point in his argumentation he refers to Paul Lorenzen who once remarked that at least 99% of the mathematicians are *formalists*. This leaves a modest place for the intuitionists (such as Kronecker, Brouwer, Heyting, Weyl, and Troelstra) and the logicians (such as Russell, Frege and Gödel). But would one be justified in concluding that the truth about what mathematics is all about will always be contained in the conceptions of the majority of mathematicians?

In his attempt to find out what mathematics is, Meschkowski addresses this issue with a view on “democracy.” He states: According to the game-rules of democracy the mode of thinking of the (majority) formalists should be close to the truth. Yet he then proceeds: “But democracy, according to a word from Max Weber, ought to be applied where ‘it belongs,’ certainly not in the exposition of foundational problems” (Meschkowski, 1972a:256).

The majority principle is not justified in the context of scientific truth. The classical positivist conviction that scholarship ought to be “objective” and “neutral” highlights this issue. According to the positivist view only those participants who accept the “rules of the game” are accepted within the domain of science. The “rules” that ought to be followed are the logical principles of identity, non-contradiction and the excluded middle.

However, the intuitionist school in mathematics rejects the universal scope of the logical principle of the excluded middle. This trend of thought accepts the normative demand of the first two principles. The principle of identity stipulates that A ought to be identified with A and the principle of non-contradiction stipulates that A ought to be distinguished from non-A. The crucial question is therefore simply: does intuitionism (with its logic) constitute a valid standpoint in mathematics? Suppose that these three mentioned logical principles are applied to this situation. We then assume that only those who accept all three logical principles qualify to play the “game of science” (with an allusion to Wittgenstein's idea of “language games”). The principle of the excluded middle then entails that intuitionism either is or is not a valid mathematical standpoint – there is no *third* possibility. This observation presupposes the principle of non-contradiction, entailing that affirming and negating the scholarly status of intuitionism cannot both be true at once.

However, the three mentioned logical principles do not provide *sufficient grounds* for the truth or falsity of two contradictory statements – such grounds inevitably point beyond logic. Yet, on the basis of the initial argument (entailing the acceptance of the first three logical principles), the only other option left (next to disqualifying intuitionism as an acceptable mathematical standpoint), is to accept it as a valid standpoint in spite of the fact that it partially truncates the principle of the excluded middle (it questions the validity of this principle only in the infinite case). In other words, if the answer to the question: whether or not intuitionism is a valid standpoint in mathematics? is affirmative, then the principle of non-contradiction is violated. When it is negative, a new problem arises: Why is it not the case that the minority of mathematicians represents the valid mathematical standpoint (intuitionism) rather than the Cantorian (or axiomatic formalistic) orientation (representing

the majority of mathematicians)? Is it unacceptable because the *majority* of mathematicians are not intuitionists?

Unfortunately this option introduces a new “principle,” namely the *majority principle*.

19. DOBZHANSKY ON THE MAJORITY AND MINORITY IN BIOLOGY

Dobzhansky is known as a geneticist and a prominent member of the “New Synthesis” in Darwinian thought. He refers to the German biologist, Hans Driesch, who, at the turn of the 19th to the 20th century, “made ingenious experiments on the development of sea urchins.” Dobzhansky specifically mentions that “the embryos of these animals possess a remarkable capacity of regeneration of missing parts; isolated cells may develop into diminutive but fairly complete larvae.” Driesch interpreted these phenomena, in the words of Dobzhansky, as being “guided by something for which Driesch borrowed Aristotle's word ‘entelechy’ ” (Dobzhansky, 1967:18).

How did Dobzhansky, being one of the majority neo-Darwinian biologists, handle these diverging views? He categorically rejects the *majority* as criterion of truth: “Scientific problems should not, however, be settled by majority votes. The notions of the heterodox minority who find biology too crudely materialistic for their taste deserve a fair hearing” (Dobzhansky, 1967:20). He continues by practicing what he preaches by providing us with a quotation that would give us a good idea of what Driesch has in mind: An “organized system, maintained by the regulatory control of its activities, implies the presence within it of something to which these activities tend [21] to conform, a norm, a standard, a goal or end, what the philosopher would call a telos) inherent in the whole living mass” (Dobzhansky, 1967:20-21). He even refers to the neo-vitalist biologist E.W. Sinnott as “a distinguished biologist” who is “at home with the present state as well as the history of biology” (Dobzhansky, 1967:21).

This open-minded attitude of Dobzhansky is at odds with much of the contemporary debate between (neo-)Darwinists and those critical of it, such as biologists and scholars from related fields who advance the idea of *intelligent design*. The reason why the majority as such can never be a yardstick for truth could be illustrated with a brief explanation of the majority fallacy.

20. THE MAJORITY FALLACY

What is the logical status of the majority principle? Closer scrutiny reveals the fact that the appeal to the majority as a criterion for truth inevitably leads to an *infinite regress*. The following questions demonstrate this fact.

Did the majority decide that what the majority believe is true?

And:

Did the majority decide that the majority decide that what the majority decide is true?! ...

and so on *ad infinitum*.

Clearly, accepting the existence of universal principles for thinking as inevitable, does not entail that there is no room left for disagreement about specific principles of reasoning. Our argumentation not only demonstrates that the claim concerning the objectivity and neutrality of scholarship is self-defeating, but at the same time it also opens up space for diverging scientific orientations within all the academic disciplines. Therefore enforcing one specific school of thought upon others merely because it is supported by the majority, ultimately surrenders to a totalitarian over-estimation of a particular standpoint.

Text books on logic discusses many (formal and informal) fallacies. In their work on logic, *Bowell and Kemp* discusses various “rhetorical ploys and fallacies,” including the “fallacy of majority belief” (*Bowell and Kemp*, 2005:131 ff.).

21. THE “ORGANIC” SOLUTION OF GIERKE

Earlier we noted that one of the problems attached to the majority principle is found in the jump from a mere (quantitative) *majority* to a (major) part which is then seen as or identified with the *whole*. In the thought of Rousseau the social contract mediates this tension, for while the contract is preceded by a *multiplicity* of autonomous individuals, the outcome of the contract embodies the transformation of these autonomous individuals into indivisible parts of a new moral-collective whole, with its own communal will, self and identity. This approach caused Rousseau to replace the typical relation of super- and subordination within the state (government and subjects) with the whole-parts relation. Providing institutions for a nation therefore requires a transformation of every individual, who in herself or himself is a complete and independent whole, into part of a greater whole, from which he receives in some manner his life and his being (*Rousseau*, 1966:32).

Since our awareness of *multiplicity* derives from the primitive meaning of the numerical aspect of reality and our understanding of *wholeness* stems from the primitive meaning of space, we briefly stated that an individualistic (atomistic) approach overestimates the quantitative meaning of number and that a universalistic (holistic) view overestimates the meaning of space. According to individualism society (and the state) is nothing but the *sum of individuals* and according to universalism it is a whole encompassing each individual as a mere part of this totality. Most of the time holistic views explore the biotic mode of explanation as well, in which case the additional qualification coming into play is given in the term “organic.”

Gierke is a representative of such an “organic” view. He first points out that Rousseau did not succeed in explaining why the general will should be seen as identical to the majority will. Gierke holds that the fiction of unanimity at the original contract does not explain anything. He remarks that some natural law theorists also struggled with this problem inherent to individualism (*Gierke*, 1913:330-331). During the 19th century the individualistic explanation of the majority principle lost its repute accompanied by a revitalization of the Germanic idea of an association (*Genossenschaft*). The *Genossenschaftliche* (associational) conception *der menschlichen Verbände* (of human collectivities) is carried through in opposition to the administrative understanding of the state and corporations. Gierke speaks of the *historical-organic Verbandsaufassung* (organized societal collectivity) which is founded upon the

theory of associations (*Genossenschaftstheorie*) (Gierke, 1913:332). On the next page Gierke explains that human societal collectivities (*Verbände*) are social organisms (*soziale Organismen*) which brings to the fore independent living entities by unfolding over and above the individual existence the existence of a kind as persons of a higher order than individual persons. They cannot, from the perspective of natural law theories, be seen as a mere accumulation of individuals into collective unities. But they should also not be seen, in the sense of fiction theories, as artificial individuals that could be separated from the connected totalities (*Gesamtheiten*). They are much rather real total persons, independent communal entities with an immanent vital unity, an organic whole constituted by individuals [*Einzelwesen*] but never coinciding with the sum of its parts. Legal norms determine the constitution and structuring of the branches as they are organized into a unified whole. In this way the juridical concept of constitutional organ originates. Through organs and only through organs the state and every other corporational *Verband* [collectivity] appears as a willing and acting communal being (*Gemeinwesen*) (Gierke, 1913:332).

A majority decision is embedded in the existential ordering of the collectivity and therefore equating the majority with totality is neither sufficient nor necessary. The validity of a majority decision is simply a part of the legally-ordered structuring of an organ as a constitutional means enabling a unified assembly action. It is an element of the organization of a unified organ. The majority principle does not have an absolute validity but only a relative, historically determined value. What is always required next to the decisions of the majority of voters is ruling organs so that a communal entity is endowed with the competence to act. Somehow, by the division of functions, the majority principle is completed through the authority principle (Gierke, 1913:333).

This shows that Gierke, in spite of his use of the idea of a *social organism*, realized that the right to vote and the competence entailed in voting presupposes the typical structure of the state as a public legal community with its peculiar relation super- and subordination on a culturally delimited territory. The constitution of a just state (“democracy”) assigns this specific and limited competence to the electorate, encapsulated in the House of Representatives. But once this right is exercised during a general election, the government with its multiple tasks continue to operate within the boundaries of its own relation of super- and subordination. The three tasks to be properly distinguished are the legislative, the jurisprudential and the executive functions.

Ultimately the “majority” never “rules” – they merely dispose over a constitutionally specified competence to put a government in office and then to govern the state in a just way. When constitutional guidelines are not followed, manifest in the claims of various striking groups and (currently violent) student protests, the threat of a *dictatorship of the majority* becomes quite serious, reminding us of the totalitarian implications entailed in Rousseau's *general will*.

22. CONCLUDING THE DISCUSSION: TOWARDS AN ALTERNATIVE VIEW

The totalitarian threat enclosed in Rousseau's conviction that law is an expression of the general will can only be overcome when the *limited* legal competence of the state is acknowledged. If law expresses the general will which can only manifest itself in the state, there is no room left for the original spheres of competence of non-political societal entities. This totalitarian implication is embodied in article 6 of the *Declaration of the Rights of Man and the Citizen* of the French Revolution, where we read: "Law is an expression of the General Will."

Only when the majority principle is embedded in an understanding of law that opens up room for the structural principle of the state as a public legal community, with its inherent relation of super- and subordination, and when our view of the state allows for the internal spheres of competence of non-political societal entities, will it be possible to avoid the totalitarian and absolutist consequences oftentimes attached to democracy in the unlimited sense of majority rule.

The way in which Rousseau assigned an absolute authority to the (universalistic) general will on the basis of his social contract theory indeed gave birth to the State-*Leviathan*, i.e., the state as all-destructive mythical monster (compare the portrayal of the *Leviathan* in the Book of Job in the Old Testament), which ultimately proceeds from the (rational) contractual construction of human society according to the requirements of the classical science ideal (the motive of logically reconstructing the universe from its simplest elements, the individuals).

An unqualified appeal to the majority principle in the final analysis could not avoid the antinomic consequences entailed in its ultimate starting point, as already realized by Rousseau who without any hesitation conceded that those who are not willing to submit themselves to the all-powerful general will, should be *forced* to be *free*. We are therefore fully justified to accept the verdict of Mekkes who concludes in this connection with the remark that the culmination point of the humanistic democratic freedom ideal is at once its deepest down-fall (Mekkes, 1940:315)!⁴

23. FINAL REMARK

An analysis of the contours of the modern idea of the just state exceeds the scope of this article, but a first orientation is found in a recent article published in the *South African Journal of Philosophy* (see Strauss, 2015). Gierke provides us with an important starting-point for an alternative understanding when he emphasizes that there are legal limits to the collective power of every societal collectivity because such societal entities can embrace the lives of those who function within them only partially, since every individual still disposes over an original sphere of personal freedom.⁵

⁴ "Het culminatiepunt van het humanistisch-democratisch vrijheidsideaal is tegelijk zijn diepste val" (Mekkes, 1940:315).

⁵ "Selbstverständlich wird endlich durchweg die Geltung des majoritätsprinzips durch die Unantastbarkeit der Sonderrechte begrenzt. Hier aber handelt es sich um die Schranken, die im Sinne unserer Rechtsordnung aller Verbandsmacht überhaupt gezogen sind, weil jeder Verband die ihm

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eingegliederten Menschen nur hinsichtlich eines Teiles ihrer Wesenheit in sich schliesst und darüber hinaus ihre freie Einzelpersönlichkeit unberührt lässt? [Of course throughout the validity of the majority principle is curbed by the inalienability of the special rights. But here it concerns the limits set in the sense of our legal ordering to the power of all collectivities, since every collectivity embraces the people as members of it only in respect of a part of their being leaving their free individual personality which exceeds it untouched.] (Gierke, 1913:334).