DEBUNKING THE MYTH

OF

"THE WILL OF THE PEOPLE"

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In an age of populism, politicians and political leaders keep referring to 'the will of the people'. In 2013 the Abbott government in Australia said that any attempt by the Australian Senate to hold up repeal of the carbon tax was opposed to the will of the people. Campaigners against the Electoral College in the US say that it frustrates the will of the people because it can deny victory to the candidate with a majority share of the popular vote, as shown in the election of Donald Trump over Hillary Clinton. Marine Le Pen said that attempts by the French judiciary to examine the finances of the then National Front would be opposed to the will of the people. Campaigners for same-sex marriage in Northern Ireland say that opposition is against the will of the people. The UN Ambassador to the United Nations, Nikki Hayley, has said that Trump's recognition of Jerusalem as the capital of Israel 'did the will of the people'.

"THE WILL OF THE PEOPLE": A DANGEROUS MYTH?

In the UK invoking the will of the people has become more strident since the Brexit referendum in June 2016. As the UK's Secretary of State for Exiting the EU, David Davis repeatedly appealed to the will of the people as a way of warning MPs not to vote against the government's policy. On 15 December 2017, at the conclusion of the European Council meeting, Theresa May tweeted: 'We will deliver on the will of the British people and get the best Brexit deal for our country.' Foreign Secretary Boris Johnson, the person most likely to become the UK's next Prime Minister, claimed that those opposed to Brexit were determined to frustrate the will of the people, a refrain he keeps repeating in his campaign to lead the Conservative Party. Many other examples could be given. To listen to these voices, you would think that discovering the will of the people is like discovering the chemical composition of vinegar, a natural fact about the world. The will of the people, it seems, is something out there, a real thing that should guide and determine policy makers in their choices and behaviour. Yet it makes no sense to think in this way. There is no objective will of the people. To think of the will of the people as a fact about the world is to

be in the grip of a myth. It is like believing in unicorns, flying horses or the lost continent of Atlantis. What is more, it is a dangerous myth, and for three reasons.[1]

THE SUPPRESSION OF PLURALISM

Voting will only give you the will of a majority of the people, not the will of the whole of the people and so political pluralism is denied.

In a democracy, there is never a complete consensus. So voting at best only tells you what the majority opinion is. To be sure, majority voting is usually a fair, sensible and accepted way of making policy decisions. We are familiar with this in parliamentary democracies, where decisions are made in legislative chambers by majority voting. After a vote is taken, it is common to say that it was 'the will of parliament' to favour one policy over another. However, speaking in this way is really short-hand for saying that due process requires a parliamentary majority, and one of the alternatives secured a majority in the vote. It is obviously very long-winded to describe the process in detail, so we speak about the will of parliament to avoid the bother of a more detailed and accurate description. But it is a substitute way of speaking. That substitute way of speaking becomes dangerous once we start to talk about 'the will of the people' voting in a referendum. When people speak about the Brexit referendum as expressing the will of the people, they are confusing the 52% of those voting in favour of Brexit with the whole of people. The part is substituted for the whole - a familiar stratagem in populist discourse. For populists the vast mass of the people living in a country form a common body whose interests are being ignored by a minority who actually run the country – the bankers, the big companies, the out of touch and corrupt politicians, and so on. Particular groups among the people are made to stand for the whole: Main Street versus Wall Street, Britain's hard-working families, the small man, and so on.

The danger with this way of thinking is that continuing opposition to a referendum decision is then taken as a betrayal of the people. Speaking at the 2016 Conservative Party conference, Theresa May said that those who argued for a role for parliament in triggering Article 50 were not standing up for democracy but trying to subvert it. For her the referendum of June 2016 had expressed the will of the people, and it was not the place of parliament to undermine that will. You need to take a deep breath before any attempt to get your mind around this argument. It begins by equating the will of the people with the

outcome of the referendum. It goes on to equate government policy with the referendum result.   It ends up by equating government policy with the will of the people. In consequence parliament becomes the enemy of democracy to be replaced with government by executive decree. And all this in the name of the will of the people! As a citizen of a democratic country, you know you are in trouble when a political party - any political party – claims to embody the will of the people. One people; one will; one-party state.

THE THREAT OF EXECUTIVE CONTROL

Voting choices in referendums have to be defined by someone, and that someone is often the executive, and so the referendum is not an instrument of popular control.

At first sight it seems as if the referendum is the most authentic democratic device. After all, what could be more democratic than enabling the people to vote directly on an important matter of state without the intermediation of politicians?   In some people's mind referendum voting conjures up images of direct democracy in classical Athens, when the whole of the citizen body made important decisions about war and peace or the construction of public works. If only, if only, a certain sort of democratic nostalgia sighs, we could get back to that authentic form of decision making, how much more democratic would our society be. Yet, democracy in classical Athens was never a form of popular participation.   It is a Greek myth to suppose that it was.   Of a population of between 215,000 and 300,000 in around 430 BCE, a golden period of Athenian democracy, only 30,000 to 45,000 people comprised the male citizens who were entitled to vote. Even more striking is that of, say, the 30,000 entitled to participate in the citizens' assembly, only about one in five could have made it to the assembly area, which only held 6,000 people at a maximum.[2] If the referendum is supposed to be a modern replica of an authentic form of democracy originally found in classical Athens, then it is an attempt to replicate a myth. The myth of democratic authenticity about referendums fosters a dangerous illusion, particularly in countries like the UK where the constitution is defined only by convention. If there are no constitutional rules governing the timing and occasion of referendums, they become an instrument of executive manipulation. They become in effect plebiscites, with all the dangers that plebiscites have.

A plebiscite is in effect an executive calling on voters to ratify its policies and decisions. In the case of the Brexit referendum, it is well known that it was called by David Cameron, when Prime Minister, as a way of dealing with an electoral threat to the Conservative Party from the UK Independence Party, as well as a way of dealing with differences within the party. Similarly, in 1975 Harold Wilson called a referendum on a pretty meaningless renegotiation of the UK's entry into the European Economic Community, as the EU then was, as a way of dealing with divisions within the Labour Party. By contrast, when Prime Minister, Tony Blair did not call a referendum on ratification of the Lisbon Treaty, though he had promised one earlier.

This problem of executive dominance as to when referendums are called is compounded by the way in which the question is phrased. In the 2016 Brexit referendum, the alternatives given to the electorate were 'Remain' or 'Leave'. Yet, as should have been clear at the time but has become abundantly apparent over the last three years, 'Leave' was never one option. Instead, the alternatives ranged from being a member of the European Economic Area, the customs union or a number of looser arrangements. Claiming the democratic legitimacy of a referendum vote, but then formulating policy on the vaguest of mandates, the government gains the freedom to determine the meaning of the result. It is like telling the pilot of an aircraft that you want to go abroad, but then allowing the crew to decide which country you are going to.

MAJORITY VOTING CYCLES

Majority voting ceases to be a simple guide when there are more than two alternatives to consider.

At one time it used to be common to think of political competition in parliamentary democracies as a contest between parties of the left and parties of the right. However, in the last twenty to thirty years, the old cleavage between left and right has been supplemented by a new dimension of political competition focusing on social morality, over such issues as gay marriage, immigration and environmental protection. Those studying European politics for example have noticed that in addition to the old left/right spectrum in politics, there is now what is called the GAL-TAN spectrum, or the 'Green-Alternative-Libertarian' versus the 'Tradition-Authoritarian-Nationalist' spectrum. At one time political

parties could pitch their appeal on the assumption that 'It's the economy, stupid', but that is no longer enough.[3]

When new issues come onto the political agenda, there is a fragmentation of public opinion and no party's stance on the full range of issues a government needs to deal with is likely to be supported by more than a minority of the electorate as a whole. The result is that the leading parties of left and right suffer a decline in support as other parties take advantage of the new cleavage that have opened up, a pattern most vividly illustrated in the declining share of the popular vote for Germany's Social Democratic and Christian parties from around 80% in 2013 to 56% in 2017.

I have illustrated this fragmentation in an imaginary, but not unrealistic, simple example in the table below. Imagine that the former left bloc splits into a new left and an old left pair of parties and the right bloc splits into a new right and an old right set of parties. Different degrees of support are possible but I have illustrated one possible pattern in the table, which if anything exaggerates the persistence of left and right groupings.

Table. An Illustration of Four Party Politics

Old Left: 35%	Old Right: 40%
New Left: 20%	New Right: 5%

In this case there is no obvious answer to the question: what is the majority political preference? You can make a case for saying that the majority is the grouping with the single largest support, the so called plurality winner, in which case the majority view coincides with the Old Right body of opinion. You can make a case for saying that a majority has to be formed from a coalition of political groupings capable of gaining a majority. You can even make a case for saying that the Old Left programme coincides with majority opinion, since on the left-right cleavage a majority of voters are on the left, whilst on the old-new cleavage a majority of voters favour the old. But the point of principle is that you cannot conjure up an unambiguous criterion of majority preference, and if you cannot do this there is no simple majority that you might think corresponds to 'the will of the people'.

In fact, this negative result is even stronger. Suppose that the percentages in the table represent the number of seats each group has in the legislature. Suppose that to form a government requires a majority coalition. Then it is easy to show that any government formed by a coalition can be defeated by another coalition. For example, a New Left/Old left coalition could be beaten by an Old Right/Old Left coalition, which could be beaten by a reformed Old Left/New Left coalition, which could be beaten by a New Right/Old Right/New Left coalition. Coalition formation goes round in a circle. Such cyclical majorities show up in legislatures with fragmented party systems in frequent falls of government. There are ways of limiting the effects of cyclical majorities, and they consist of institutional rules, for example the constructive vote of no confidence, which limits the incentives for the 'outs' to entice some of the current 'ins' to defect and form a new coalition. Even the 'will of parliament' is not a natural fact, but the results of an institutional norm.

THE DANGERS OF "THE WILL OF THE PEOPLE"

The great eighteenth century philosopher, David Hume once said that whereas the errors in religion were dangerous, those in philosophy only ridiculous.[4] I suggest that errors in political philosophy can also be dangerous. The notion of the will of the people is an idea drawn from political philosophy that has now become a modern myth. It fosters the populist error that democracy means the direct determination of government policy by the people. Paradoxical as it might seem, that view all too often has the effect of putting more power into the hands of the executive. When parties in government purport to speak for the will of the people, they can manipulate politics to their own ends. When the idea of the will of the people is used to silence dissent about an important political choice, then a fundamental principle of constitutional democracy - that democracy is institutionalised debate in which competing views are expressed within a set of rules - has been lost. Any pervasive myth is dangerous in a democracy; the myth of the will of the people is particularly dangerous.

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[1] I have set out more of the reasoning behind this article in Albert Weale, *The Will of the People: A Modern Myth* (Cambridge: Polity Press, 2018).

[2] For these numbers, see Victor Ehrenburg, *The Greek State*, second edition, (London: Methuen, 1969), p. 31.

[3] See, for example, Herbert Kitschelt, 'Popular Dissatisfaction with Democracy: Populism and Party Systems' in Yves Mény and Yves Surel (eds.), *Democracies and the Populist Challenge* (Basingstoke: Macmillan, 2002), pp. 179-96. For a brilliant analysis of how the rise of new dimensions of political cleavage can transform a previously stable system, see Jack Nagel, 'Social Choice in a Pluritarian Democracy', *British Journal of Political Science*, 28: 2 (1998), pp. 223-67.

[4] David Hume, *A Treatise of Human Nature*, edited Ernest C. Mossner (Harmondsworth: Penguin, 1969, originally 1739/40), p. 319.

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