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THE PLEBISCITE IN MODERN DEMOCRACY

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Introduction

Over 200 years ago, in 1819, Benjamin Constant presented his famous lecture in Paris on *The Liberty of the Ancients Compared with that of the Moderns*. Writing in the aftermath of the French Revolution, Constant framed the concept of liberty around the form of governance that differentiated the relation of the governed to the direction of society. For Constant, the "liberty of the ancients consisted in exercising collectively, but directly," several parts of the over-all functions of government, coming together in the public square for common deliberation and decision (Constant [1819] 1988, 311). By contrast, the modern conception of liberty was premised centrally on the autonomy of the individual, the freedom from arbitrary use of state authority, and the capacity to participate in the selection of those to whom governance is entrusted. The modern citizenry "no longer experience political participation as an intrinsically rewarding form of action" (Holmes 1984, 33).

This contrast in the relation of the citizen to governing institutions continues to define the divide between directly participatory and legislative forms of governance, or in modern parlance plebiscitary and representative forms of governance. Direct participation eliminates the problem of agency but introduces the limitations of experience, time, and wisdom among the lay generalists that must make all decisions. Representative government filters decision-making through institutional actors that can draw on broader knowledge but introduce the costs that invariably arise between principals and their agents. For Madison, writing in *Federalist no. 10*, the intermediation of representation was a virtue that allowed the expanded geographic scale of the Republic to overcome the passion and parochialism associated with the small domain of direct decision-making (Madison 1787).

Framed this way, the tension in the two democratic forms continues to reflect the risks associated with the limited capacity of modern citizens to engage the complexity of contemporary governance on the one hand, and the increasing divide between the citizens and remote bureaucratized governors on the other. To this well-understood democratic divide, we add the complications born of the modern era. First, the past several centuries of Western democracy has largely been organized around institutional forms of channelling citizen input, primarily political parties and other instruments of civil society that intermediate between the individual and the state. Those intermediaries are now in a state of serious disrepair and this in turn

lends an increasingly plebiscitary air to even formally representative democracies. Second, the Madisonian insight on the scale of the Republic defeating factional interests because of distance and complexity of sectional interest is also now under serious challenge. Technology shrunk the geographic divide and allowed the modern political parties to exist across broad territories. But the rise of digital communication has allowed a plebiscitary world to engage the citizens directly and frequently.

Our argument is that much of the divide between liberty of the ancients and the moderns is now under realignment. The forms of representative government of the era of the Republic are under challenge in all democratic countries, yet governance under direct command has not yet emerged. Citizens may not trust their representative institutions or their government, but it is an extraordinary demand on the complexities of modern life that they be forced to assume the full-time task of governing. In turn, the rise of increasingly plebiscitary forms of governance undermines the interest-group trading vision of party-led democracy. The concern for illiberalism that defines this volume is exacerbated when dominant groups can claim a plebiscitary mandate that goes unchecked in the slower precincts of parliamentary give-and-take.

The Traditional Debate

We begin with terminology and taxonomy. Although much recent theoretical attention to direct democracy has focused on its participatory and deliberative forms, the dominant model of direct democracy implemented today is the ballot measure (Matsusaka 2005, 187). Issues, questions, and proposals are drafted and placed on a ballot for a yes or no vote by the electorate in local, regional, state, or national elections, often alongside the familiar slate of candidates seeking elected office. The results of the ballot measure may be either binding or advisory. Much turns on the mechanism by which the ballot measure is introduced.

There are two primary "citizen-initiated methods of direct democracy" (Altman 2010, 2). The *initiative* is a novel proposal placed on the ballot by citizens or interest groups who acquire the required number of signatures. By contrast the *referendum* is a citizen-driven vote on a law that has already been considered and passed by the legislature. Also worth mentioning is the *recall* election available in some jurisdictions, through which an elected official may be ousted. While the character of the question put to the vote varies, the common feature of these mechanisms is that the citizenry itself precipitates the subjection of the question to a popular vote.

The other dominant category of ballot measure is the *legislative measure* or *referred measure*. These are proposed laws or constitutional amendments drafted by the legislature, and put to the electorate for a yes or no vote. Jurisdictions vary on whether such measures are binding, as well as on whether certain sorts of questions *must* be referred to the electorate. Even when it is not obligatory, legislatures might decide it to be prudent to seek a consultation of the people on particularly fraught questions, or when they suspect the margin to be wide and hope to establish a mandate.

The literature debating the merits of the various mechanisms of direct democracy is massive, and has a history as long as humanity's sometimes halting, more than two-millennia experiment with democratic forms of governance. Proponents of direct democracy lay claim to this form of citizen engagement as the default form of democracy, deviation from which – due, say, to practical limitations – requires special justification. It is conceived as the "pure" form of democracy: a form of government in which the *demos* exercises *kratia* without intervention or interference. This claim grounds arguments for and against direct democracy.

Where societal complexity compels government by intermediaries, the various methods of citizen-initiated direct democracy allow the people to correct for the deficiencies of the

legislature in its attempt to be a faithful representative of the people's will. A referendum may rebuke a legislature which has embarked on a legislative agenda contrary to the people's interest. More interestingly, an initiative allows a channel through which the people can force a policy decision in areas in which the legislature is structurally unlikely to act. In the US, term limits and the creation of independent districting commissions are prominent examples of topics on which incumbency tends to be an insurmountable obstacle for representatives to enact hugely popular reforms. Indeed, the rate of success for referendums and initiatives dealing with "government and political process issues" is significantly higher than for any other topic (Gerber 1999, 118). In British Columbia in 2004, a Citizens' Assembly was enabled to propose reforms to the provincial election system, a topic which incumbent representatives were especially unlikely to tackle.

But incumbent elected officials are not alone in their susceptibility to the pathologies of governance. Ballot measures have three highly salient vulnerabilities. First, they are expensive; intensely motivated interest groups are often the only groups capable of employing them, and are moreover highly incentivized to do so. Interest groups routinely use paid signature-gatherers ("circulators") in order to place their preferred policies on the ballot via initiative (a tactic that enjoys constitutional protection in the US). In 1988, voters in California confronted five initiatives dealing with automotive insurance. The insurance industry spent $88 million attempting to influence the election, a sum greater than that spent by either of that year's US presidential candidates (Schrag 1996, 61).

Second, the lack of procedure and deliberation renders minority groups subject to majoritarian tyranny. The fate of same-sex marriage provides a useful illustration. The history of popular initiatives and referendums on same-sex marriage in the US has been overwhelmingly one of backlash against judicial and legislative efforts to expand the legally-recognized marriage right, with only one state – Maine – expanding the right via direct democracy measures.

Third, and likely most serious, is the historic use of referendums to bypass or eviscerate democratic institutions altogether. Quoting former Labour Prime Minister Clement Attlee, Margaret Thatcher famously dubbed the referendums of the twentieth century "a device of dictators and demagogues" in a speech in Parliament. Both Mussolini and Hitler had used referendums to rouse their supporters and disband constitutional limitations on power. In 2014, occupied Crimea held a referendum that putatively endorsed annexation by Russia. The list goes on but the point is simple: constitutional structures necessarily fractionate political power. Tyrants find such limitations on consolidated rule an impediment and have used referendums at moments of social crisis as a way to consolidate power. Whereas representative institutions reinforce compromises generated by repeat interactions, plebiscites reduce all decisions to a yes/no threshold that does not force repeat play.

The defense of representative government focuses not so much on the potential misuse of the referendum but on its inherent governance limitations. Representative institutions offer a "compromise" born of the complexities of governing a large and diverse multitude, as evidenced by Madison and the American founding (Dahl [1956] 2006, 4). This compromise can be seen at least as far back as the Athenian Democracy, which confronted the conflict between "plebiscitary" – as we term all forms of direct democracy – and representative institutions. The Assembly, which encouraged participation by all free male citizens of Athens, was a form of plebiscitary democracy within the circumscribed definition of citizenship. Yet the domain over which the Assembly exercised its powers was significantly circumscribed. Much of the quotidian governance was performed by a governing cohort consisting of magistrates, often selected by lot for fixed, non-renewable periods of time (Manin 2010, 8).

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The reason for this may seem obvious. As the amount of time and expertise required to carefully make decisions affecting a large and diverse multitude grows, a sensible division of labor suggests itself. While the vast majority devote their time to economic and domestic affairs, others are tasked with carefully attending to the public weal. Yet the relationship between these two groups has always been a problem. The people remain the ultimate fount of political legitimacy as the indispensable *demos* of democracy. Ultimately, however, attention to political decision-making is limited; football is more engaging than deciding on the gauge of sewer pipes, and the other demands on time and energy from family and economic life all too often force a choice between the two.

Representational "compromise" takes many forms but always consists in the institutionalized answers given to the questions of how often, in what way, and on which topics are the people to be consulted. The Athenian response was to draw the leaders from the people, and to minimize the risk of agency costs by imposing short terms, and frequent rotation of offices. Aristotle thought this rotation between ruling and being-ruled in turns was the defining characteristic of a democracy (Aristotle 1998, 1317b). This tended to align the interests of "the people" and the officeholders (Elster 1999, 253; Finlay 1973, 49). In large modern democracies, this idea has been more difficult to sustain, and the search for compromise has taken shape in the context of a professionalized class of officeholders of much longer tenure, whose interests may or may not be aligned with those of the people.

What unifies these various forms of democratic governance is the role of elections as prospectively setting policy and retrospectively assessing governance. The universal plebiscite is perhaps the "purest" source of democratic legitimacy. For this reason, even the most elitist theorists of democracy reserve a place for a universal plebiscite on the basic question of consenting to the formation of a political community (Locke [1968] 1960). More contemporary elite theories of democracy maintain a role for regular electoral consultations on the question of who shall assume the role of governor (Schumpeter 1942; Przeworski 1999). On this view, while the election may be for representatives who will staff the government, the function of the elections is to allow a collective vote up or down on the stewardship of the state. This form of plebiscite is appropriate for an up-down vote on a question prepared not by but rather for the people.

More complicated forms of decision making are often thought to be inappropriate for plebiscitary consultation. Perhaps the most important step – articulating the contours of the *demos* – may even seem impossible for the plebiscite. This is why the origins of political communities are often imagined in terms of a divine or at least god-like lawgiver, or a mythical original contract. Consider the difficulties in determining which is the appropriate population to which to submit one of the most common topics of legislative referendum: annexation and secession (Buchanan 2003, 331). Which is the relevant *demos* to consult? Clearly, says Grotius, "the part which is alienated" (Grotius [1625] 2005, 570). But what of Pufendorf's suggestion that "the people which continues to be with the old king" must also have its say? (Pufendorf 1729, 59) What of the important trading partners? (Qvortrup 2018, 13).

There are more mundane problems as well. Plebiscites are constantly hostage to agenda-setting biases. In addition to the lack of general knowledge on the technical needs of governance, there is the issue of which questions will be submitted to the people and when, and how those questions will be phrased and interpreted – these are all problems that must of necessity be settled outside of the plebiscite itself. And with this comes of course the possibility of manipulation and mischief. As experience with opinion polling has revealed, even slight changes to the wording of a question can yield significantly different responses. The typical up-down ballot measure is also ill-suited for registering intensities of preference, or for accommodating the sort

of compromise and log-rolling that is often thought necessary to secure consensus on questions involving difficult value trade-offs.

The lack of accommodation of outvoted minorities is particularly important in divided societies in which a narrow preference on the part of a largely indifferent majority voting bloc may defeat an intensely held preference of a disfavoured minority. Certainly, the capacity of minorities to leverage intensely held preferences for gain against the passive majority forms the heart of the public choice critique of voting preferences. But at the same time, satisfaction of the intensely held preferences of a minority may be key to accommodation and stability in complexly divided societies. Put another way, when the majority is determined by one election, a defeated minority is politically vulnerable.

These criticisms can be summed up in the observation that a plebiscite poorly serves to facilitate deliberation and political compromise. In response, the defenders of direct democracy argue against conflating direct democracy with a simple cast of a ballot. Attractive forms of direct democracy, it is urged, involve a healthy dose of deliberation, a process through which horizons are expanded and enlightened preferences are developed (Gutmann and Thompson 1996; Fishkin 2002, 128). Moreover, recent epistemic democrats incorporate a long history of decision theory to argue that, under the right conditions, a large population is more likely to get the "right" answer than their necessarily much smaller group of representatives, even if the smaller group has a high density of so-called "experts" (Estlund 2008, 15). One may be skeptical whether expert direction of popular discourse as proposed by Fishkin, or whether the simple bipolar decisional axes presumed in Condorcetian voting conditions, can capture the complexities of governance. But each retains a claim to popular engagement with issues that resists the alienation of suffrage to distant bureaucratic rule.

If we term the above family of criticisms "process criticisms," because they impute to plebiscitary institutions an inability to cope with the complex process of governance in mass society, we should also mention briefly a family of "substance criticisms." These criticisms suggest that even putting aside the apparent deficiencies in the mechanisms available in plebiscitary consultation to deliberate and to consult experts, the unconstrained nature of the plebiscite exposes at least some of the polity to intolerable risk. The basic issue is whether plebiscitary institutions are capable of ensuring respect for minority rights, or whether the threat of majority tyranny will triumph.

Such criticisms tend to implicate the debates between "constitutional" and "popular" democracy, or "liberal" and "illiberal" democracy (Zakaria 1997; Dahl [1956] 2006; Issacharoff 2015; Müller 2016; Waldron 2016). We can understand each of these issues as disagreements over where to locate the compromise of representative democracy; over which issues should be taken off the table for plebiscitary decision making, and which should remain, in principle, up to the discretion of the people. It is here where the central premise of plebiscitary democracy – namely that the will of the people is the ultimate source of political legitimacy – is most directly challenged by those who claim that insofar as the people's will undercuts equal treatment, it is to that degree undemocratic and illegitimate (Dworkin 1996, 16).

Failing Institutions and New Technologies

A striking failure of the American constitution was its effort to structure representation based on elections but with no mechanism for direct citizen engagement with the act of government. Some of the citizens voted but the only protection against state excess was "ambition countering ambition" among rival sources of power in government. The effort to remove intermediaries ("the constitution against factions") failed with the first contested election in

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1796 and then succumbed to the stabilization of modern American governance under the control of modern political parties, beginning in the 1830s. By contrast, beginning in the late nineteenth century, all modern democratic constitutions allow a privileged role for political parties (Elkins 2019, 9–11).

These intermediary organizations, particularly political parties, play a central transmission role between popular preferences and the ultimate outputs of the political process. Their combined representation of the electorate, the permanent party officials, and the party leaders in elective office allows the popular will to be registered even in the absence of a formal consultation of the electorate, except through scheduled elections. Moreover, the modern political parties as they emerged from the nineteenth century were deeply rooted in other institutions that in turn drew in the broad party base. Thus Labor and Social Democratic parties were based in the trade unions, the Conservative parties had foundations in business associations, the Christian Democratic parties were closely drawn to the Church, and so forth. So central is the role of party intermediation that, as famously formulated by E.E. Schattschneider, "political parties created democracy and … modern democracy is unthinkable save in terms of the parties" (Schattschneider 1942, 1).

These intermediary institutions, most notably the party, helped bridge the divide between citizen engagement in the process of governing and the need for delegation to address complexity. The political parties provided an independent check on the agency costs that could be extracted by isolated governors. And they allowed for a form of direct participation through the more accessible mechanisms of smaller associations. In Tocqueville's early assessment of the American Republic for example, it was not so much the formal attributes of government that occupied him – even during the extreme presidentialism of Andrew Jackson. Rather it was the propensity of Americans to form associations and organize their civic life through them that he found as the most unique and unexpected key to American democracy (Tocqueville [1835/40] 2010, 915).

Even at the electoral level, so long as the parties lined up along the major social cleavages, partisan elections for representative office could serve a form of direct citizen consultation. Whether in proportional representation systems or in the single-peaked elections that limited effective party formation, stable parties permitted an indirect but nonetheless robust transmission of electoral preference to broad governing platform.

The party-based model that defined the golden age of Western democracies from the nineteenth to the end of the twentieth centuries faces significant challenge today. The historic institutional foundations of the parties in the trade unions, the small business associations, and even in the churches dried up as all these groups faced significant erosion in popular engagement. The role of the parties in securing patronage for partisan activists and financial support for candidates dwindled as legal reforms created uniform civil service appointments and state-based party financing – except in the US, where the legal reforms pushed the financial centre of campaigning to superPACs (large political action committees) and other independent electoral actors. In the US, the modern party reforms removed the party power to nominate and left that to a primary process operating largely independent from the party mandate.

Weak parties yield weak legislatures: "Quite simply, a partyless legislature is a collective action nightmare" (Masket 2016, 18). Parties promote legislative discipline and allow a coherent policy agenda to emerge in response to revealed voter preferences. Established political parties represent long-term commitments to policy objectives that "allow them to recruit new members and place those members into office, even as existing members of the coalition may exit political life due to, say, an electoral loss, term-limits or death." (Simmons 2016, 36) With few and only partial exceptions, the legislatively-dominated model of representative democracy

has withered if not collapsed. Governance is increasingly a matter of administrative regulation and executive decree. In the US, the commanding role of the executive at the beginning of the modern presidentialist era could be depicted as "a plebiscitary republic with a personal presidency[,] … a virtual cult of personality revolving around the White House" (Lowi 1985, vi).

To this we may add the technological disruptions of the modern era, primarily the rise of social media. Much of the strength of parties reflected their ability to overcome coordination barriers to operating on the geographic scale of the modern nation-state. The simple act of raising money, or of communicating with distant voters, or of mobilizing active partisans to shoulder the administrative burdens of an election campaign required organization. Only the party had the name recognition, the cadres to carry out a political campaign, and the affiliated organizations to propagandize the collective viewpoint. The European parties historically presented themselves through the party newspapers, through the social clubs and sports teams they organized, and through their multiple auxiliary institutions. Today, all those functions have collapsed. Candidates run for office on social media platforms that allow direct mass communication and are premised on different economic models from the traditional forms of direct outreach of the mass-based political parties. Even traditional parties and candidates are desperately trying to harvest the tools of social media to organize their electoral platforms.

As a result, the plebiscitary element of representative democracy has gone from a secondary feature to an increasingly defining organizational form. In the absence of organizationally-coherent political parties, elections have more the form of a plebiscitary affair organized around the election of the chief executive. Populism both thrives in this environment and promotes it. In some circumstances, as with the Venezuelan constitutional referendum organized by Hugo Chavez in 2007 and parallel developments in Bolivia and Ecuador, the plebiscite is used to extend the terms of office of the head of state, and consolidate power away from formal checks and balances. Similarly, elections in Poland or Hungary are in all but name just plebiscites on continued unchecked authority of Jaroslaw Kaczyński or Viktor Orbán. But even in the stable democratic countries, the collapse of the traditional political parties turns elections into a vote of approbation of a Macron or Johnson, even if they do not represent a rupture with the traditional liberal values of modern democracy.

Plebiscitary Administration

In the absence of a robust legislative branch, representative politics takes on a decidedly plebiscitary hue. Modern democracies are dominated by the executive, and in a presidential system, the presidency is the most prominent plebiscitary institution. Even in the US, a regime not as presidential in design as the French Fifth Republic or the constitutional regimes of Latin America, since at least Andrew Jackson American presidents have claimed their national election to mandate their role as the unique representative of the American people. The American case offers a nice window into the ascendant reconfiguration of the compromise between plebiscitary and representational democracy, and consequently the fate of liberalism's balance of the two.

In designing the electoral college system to require a presidential candidate to earn nationwide support while not being directly elected by the people, the American Framers thought they were creating a system in which neither playing the factions of Congress nor mastering the "popular arts" of pandering to the people would suffice to win the presidency. Nevertheless, the nominating process democratized – albeit somewhat uneasily – throughout the history of the republic, and in its present form entails the direct nomination of a presidential candidate by the members of the two major political parties. (Pildes 2019). By 1972, "the election process

had been transformed into what is essentially a plebiscitary system" (Caeser 1979, 215). While a successful presidential candidate still depends on a formal party nomination, the nominating process itself is open to a candidate who can make direct appeals to the people. Thus in 2016 the Republican Party nominated Donald Trump over the open disdain of party insiders, while the Democratic Party, in both 2016 and 2020, flirted with nominating Bernie Sanders, who has never formally bothered to join the party.

The claim that electoral success gives legitimacy to presidentialism is the common theme of populist leaders, and has found its way into broader democratic discourse. In particular, we are beginning to observe attempts to understand the delegation of governing authority to a powerful executive as a grant of legitimacy heretofore reserved for party-mediated representative institutions. This presents a new frontier for the compromise between self-rule and the alienation of day-to-day governance.

In her most influential work before her nomination and confirmation to the Supreme Court of the United States, then-Professor Elena Kagan lays out a model and justification for what she calls "presidential administration." Kagan's thesis is that the national electoral base of the president may justify a heavy dosage of administrative direction of the state. Despite the lack of an electoral mandate tied to specific outcomes, administrative power extends to everything from forest management to whether sexual orientation discrimination should be treated as a prohibited form of sex discrimination. From a policy-making perspective, an administrative system that relies primarily on top-down orders from the president and his political allies and advisers can lay claim to the benefits of efficiency in transmission of preferences to mandates. Any system that bypasses the multiple veto points of legislative oversight will achieve its ends more directly. But the other claim, which Kagan stresses, is the prospective political accountability imposed by an ever-looming upcoming election of the singular executive. (Kagan 2001, 2331). In effect, the periodic election of the head of an executive-dominated state gives a plebiscitary legitimacy to bypassing the separation of powers associated with representative institutions.

Such a presidential administration is not characterized solely by efficiency and popular accountability, but by an enormously complex web of laws and norms which inform, constrain, and channel the president's capacity to shape policy: civil service laws which shield much of the bureaucracy from direct political influence; standards and expectations of expertise for top agency officials; provisions for judicial review of agency decisions. Each of these features, considered on its own, can be accused of being anti-democratic, at least in the sense that taken together they impose stable norms and decisions from previous political coalitions on newly-ascendant majority preferences. The inherited limitations on presidentialism impose institutional boundaries that distinguish modern bureaucratic leadership from simple decretal authority. However, in spite of all of these institutional constraints on the exercise of the executive power, the president – along with the plebiscitary heritage and the prospective accountability of a coming election – possesses overwhelming control.

Despite the constraints and channelling provided by administrative procedures, such claims of presidential legitimacy must abandon the institutionalized function of representation. One of the main purposes of executive branch agencies is to implement more general legislation passed by a representative body. Implementation is one way in which a democratic process like a referendum or an election is translated into governance norms. It is in this sense that what might appear as the constraints of administrative law in the US may nevertheless be procedures required in order to effect the democratic will. If that is so, the new compromise may be a happy one. Trouble arises, however, when two factors coincide: when legislative efforts by representative bodies taper off, and when plebiscite is conducted at a level too general or too

abstract – when there is too much conceptual terrain to traverse and too many intermediate political decisions to make between the input of plebiscitary choice and the output of ultimate governance norm.

One of the great advantages of representative government is that incumbents have to run based on the deliverance of benefits while in office (Schumpeter 1942). On one view, government by administration rather than representation may hollow out local elections, tempting voters to respond ideologically and incentivizing cast more ideological ideologically charged campaigns over symbolic issues with little direct accountability for success of failure in office (Mair 2013, 115). In the extreme form, Spain can survive a year without a government, and Belgium almost two years, yet the administration of the state continues reasonably effectively. The problem arises from overtly ideological plebiscitary consultations, with little or no intermediary institutions capable of translating the abstract decision of the people into governance norms – capable, in other words, of enabling and implementing the popular will.

The repeated cataclysms over Brexit well illustrate the problem. The plebiscitary referendum to Leave provided little direction on how to structure innumerable trade, tax, transportation, and migration laws and agreements. As several years and several Prime Ministers have revealed, however, the consequences of leaving the complex directives merely implicit in a plebiscitary decision the government has vowed to respect are quite severe. The path from a Leave vote to Britain's structured exit from the EU is an ongoing source of governmental instability.

British politics worked best when the dominant parties divided along the major political cleavages of the polity. Parliamentary elections had a broad plebiscitary legitimacy in setting the basic agenda between the welfarist impulses of Labour and the market orientation of the Tories. The resulting election would set the broad policy goals of government, to be implemented by the expertise held at the Cabinet and administrative levels. Where the parties could not internalize the broad social divisions, parliamentary norms collapsed and Britain would be forced to turn to the imprecise mechanisms of the plebiscite. On this view, a ballot initiative could serve as a "people's veto" over vexatious legislation imposed by a parliamentary majority or as a corrective to the failure of parliament to take up the pressing matters of the day (Dicey [1885] 1982, 96–97).

Specifically, with Labour and the Conservatives each internally divided over Brexit, Britain struggled without a government capable of claiming a mandate for any course of conduct. This disrupted the customary balance by which elections served as:

> the mechanism by which one party obtains both a public mandate and a majority of seats in the Commons. Over many years the system worked pretty well. On most big questions the two parties had different views which could be put before the electorate. And elections ensured some rotation of the party in power and gave voters the opportunity to throw out governments that were seen to have failed.
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> *King 2019, 2*

Properly institutionalized elections performed both the plebiscitary and representative functions of democracy – so long as the institutions held.

Conclusion

The tension between representative and plebiscitary forms of democratic governance ultimately is one of permitting long-term expertise in governance while allowing direct democratic checks on potentially unaccountable governors. Our central thesis is that the intermediary

institutions that shaped democratic governance over the past two centuries have bridged the gap between the twin evils of too much and too little popular sovereignty. The plebiscitary turn in formally representative governing institutions will pose new challenges to all liberal democracies as the influence of mediating institutions like political parties continues to wane. This is hardly a new challenge for democracy. Hobbes warned that citizens in a representative assembly would be vulnerable "to evil counsel, and to be seduced by orators" (Hobbes [1651] 1994, 110), an observation on the fallibility of popular impulses in the absence of mediating institutions that dates back at least as far as Thucydides in his accounts of the ultimate fall of Athens in the Peloponnesian Wars (Thucydides 1972).

The receding of mediating institutions between the people and those appointed to temporarily govern the people does not imply that the relationship is now immediate. We still live in a world characterized by Constant's liberty of the moderns even if Twitter and Facebook offer immediate but fleeting engagement with any issue of the day. In such a world we will continue to see alienation of governing authority to a distant elite. The question now is whether, and in what way, the institutions of democratic governance can be refashioned to an age of popular immediacy. Modern democracies have channelled elements of plebiscitary consultations through institutional mechanisms that can claim a popular mandate yet deliver forms of governance that safely assume a detached citizenry. The plebiscitary tradition of direct democracy best measures governmental performance against the immediate preferences of the citizenry, informed or not.

We would be remiss, however, in not returning to the claim by Prime Minister Thatcher that the referendum as a mobilizing device in politics is associated with the antiliberal horrors of the twentieth century. While the strong ideological forces of fascism or communism are not the present concern, referenda rise alongside non-liberal or antiliberal strongmen. In Europe a new enthusiasm for binding referendums has been expressed by the UK Independence Party (UKIP), Five Star in Italy, Alternative for Germany (AfD), and Geert Wilders' flatly illiberal manifesto for the Netherlands (Mounk 2018, 50). There were at least seven major referendums in South America in 2018. The pattern has been to use referendums to avoid limitations on presidential terms or executive power, with examples in the past decade including Venezuela, Colombia, Brazil, Ecuador, Mexico, and Bolivia. In each case, the attempt to bypass political institutions was accompanied by a realized or threatened assault on liberal constitutional protections (see Landau 2021).

As with Brexit, the claimed need for a plebiscite was that extraordinary political decisions could not be handled in light of the political incapacity of fractionated power in representative bodies. In the era of declining political institutions, democracies are challenged to find alternative electoral arrangements that can provide adequately concrete directives to and constraints on those who wield the enormous power of administrative and bureaucratic governance.

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