

The Perfection of Democracy: Constitutional Design and the Theory of Mixed Government¹

Richard Barron Parker²

The Problem

When we say in ordinary conversation that a country is a democracy, we usually mean that the citizens of that country can use regularly scheduled elections to turn their leaders out of power. Call this "elementary democracy." Countries such as China or Cuba are not yet democracies because such elections are not yet available. In countries without elementary democracy, violence of some sort is usually required to remove those in power. Elementary democracy is such an obvious benefit to any human society that it is spreading rapidly throughout the world. The problem I deal with in this paper is what comes after elementary democracy has been achieved. How should democracy be perfected?

In countries that have been democracies for centuries and those where elementary democracy has recently been achieved, most of the problems of the perfection of democracy have their root in the exponential expansion of the number of citizens eligible to vote. In the United States, that number has grown from less than two million in 1790 to more than two hundred mil-

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2. Professor of Law, Hiroshima Shudo University, Hiroshima, Japan. Haverford College (B.A., Philosophy, 1962); Brown University (M.A., Philosophy, 1963); University of Chicago (Ph.D., Philosophy, 1968); Harvard Law School (J.D., 1971). Fulbright Lecturer in Law, Tohoku University, Sendai, Japan (1983-84). Visiting Professor of Law, Osaka University, Osaka, Japan (1985-87). Professor, Hiroshima Shudo University, since 1990.

lion in 1999, a one hundred fold increase. Japan's population of people eligible to vote is over ninety million. The European Union is wrestling with the problem of a "democratic deficit" in a voting population that is larger than the United States.³ In India there are more than six hundred million eligible voters. United States policy toward China is premised on the hope that China can become a democracy with one billion eligible voters. There are general problems to be solved of how these enormous entities can be democratically governed even after elementary democracy has been achieved. If the problems of the perfection of democracy cannot be solved in the United States with a voting population of two hundred million, they are not likely to be solved in India or China.

To understand what the problems of perfecting democracy are, I propose to use examples drawn from the constitutions and governing procedures of Japan and the United States, with occasional comparisons to the United Kingdom. These three countries are among the largest and most successful democracies in the world, yet each has problems with its political and constitutional structure that have emerged as major public issues. In Japan, a new election system has been put in place in an attempt to generate a two party system more responsive to public opinion and to strengthen a government chronically unable to make hard policy choices. In the United States, the devolution of power from the federal government to the individual states, and attempts to increase popular control of government by, for example, limiting the terms of office people can serve in Congress, have been major political issues. In the United Kingdom, devolution of power to Scotland and Wales, the need for a Bill of Rights, and the proper role of the monarchy and the House of Lords in contemporary Britain have become the focus of parliamentary action. In all three countries, the financing of political campaigns, the role of the media in politics, and the influence of "special interests" on public policy have been of central concern. The percentage of citizens participating

3. See Deirdre M Curtin, *Postnational Democracy: The European Union in Search of a Political Democracy* (The Hague: Kluwer Law International, 1997) for a good discussion of the European Union's "democratic deficit."

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in elections has been declining, especially in the United States and Japan, the two largest countries, where citizen apathy and hostility to political processes and the national government are increasing.⁴

4. For Japan, see Susan J. Pharr, "Public Trust and Democracy in Japan," in *Why People Don't Trust Government*, ed. Nye, Zelikow, and King (Cambridge, Mass: Harvard University Press, 1997) pp. 237-252. Professor Pharr notes that the Japanese like their national government even less than Americans do, and the dislike has been constant in the post-war period, not just increasing recently as in the United States. The rest of this excellent collection of essays and empirical studies tries to determine the causes of American disaffection with government.

Survey data collected by political scientists in the United States documents the depth of American disaffection with their national government. See, for example, John R. Hibbing and Elizabeth Theiss-Morse, "Too Much of a Good Thing: More Representative is Not Necessarily Better," *PS: Political Science and Politics* 31 (1): pp. 29-30 (March, 1998).

"However, the public *does* want institutions to be transformed into something much closer to the people. The people sees a big disconnect between how they want representation to work and how they believe it is working. Strong support of populist government (not direct democracy) has been detected in innumerable polls during the last couple of decades. That the public looks favorably upon this process agenda is beyond dispute."

After listing some of the reforms such as a reduction in congressional salaries and term limitations, the authors continue,

"What ties these reforms together is the public's desire to make elected officials more like ordinary people. In focus groups we conducted at the same time as the survey, participants stated many times that elected officials in Washington had lost touch with the people. They supported reforms believed to encourage officials to start keeping in touch. Elected officials should balance the budget just like the people back home. Elected officials should live off modest salaries just like the people back home. And elected officials should face the prospect of getting a real job back home rather than staying in Washington for years and years. These reforms would force elected officials to understand the needs of their constituents rather than get swept up in the money and power that run Washington."

Curiously, after giving their evidence of apathy, discontent, and hostility, Hibbing and Theiss-Morse caution against reform on the grounds that Americans do not realize how deeply divided their country is on many issues. They believe that more representative government would reveal the depths of those divisions and make people even more disillusioned with their government. This conclusion seems to me short-sighted and too pessimistic, too close to the view that the people cannot be told the truth.

Do these problems have common threads or origins? Is there some useful general framework in which these countries and their problems can be placed that will enable us to see more clearly the problems and the possible solutions? Or is constitutional design so dependent on local historical, economic, and cultural conditions that no general theory for the perfection of democracy is possible.⁵ The availability of some genuinely useful general theory for the perfection of democracy would make democracy more attractive to nations that do not now enjoy it and would help insure the permanence of democracy in nations that have achieved elementary democracy.

The General Theory

The desired useful general framework may exist in the old theory of "mixed" government that teaches that the best government for a city or country is a government which combines the virtues of monarchy, aristocracy, and democracy. Under this theory, many problems of government, including all those we have mentioned above, result from an insufficiency or an overabundance of one or more of these three elements.

The idea of mixed government developed first in classical Greece. Perhaps the large number of small city states made easy and natural the classification and comparison of forms of government.⁶ As early as Aristotle (384-322 B.C.), the three fold classification of monarchies, aristocracies, and democracies and their degenerate forms — tyranny, oligarchy and mob rule — had been formulated along with the notion that some combination of forms

5. For an interesting summary of mankind's experience in democratic constitutions since the 18th century, see Robert A. Dahl, "Thinking About Democratic Constitutions: Conclusions from Democratic Experience," in *Political Order: Nomos XXXVIII*, ed. Ian Shapiro and Russell Hardin (New York: New York University, 1996) pp. 176-206. Dahl would seem to doubt the usefulness of a theory as general as the one I present here.

6. Plato (427-347 B.C.) in *The Republic* offered a five fold classification of governments with government by philosopher-kings as the best, followed by, in descending order, timocracy (rule by lovers of honor), oligarchy, democracy, and tyranny. See Plato, *The Republic*, Book VIII, translated by Alan Bloom (New York: Basic Books, 1968), pp. 221-249 (543a-569c).

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was better than any one of the pure forms alone. Aristotle argued in the *Politics* that the best government was a mixed government, one which combined the virtues of democracy and aristocracy and centered around a large middle-class.⁷

The Greek historian Polybius (200-118 B.C.) set out a natural cycle of political revolution, "the law of nature according to which constitutions change, are transformed, and finally revert to their original form."⁸ According to Polybius, states originated out of anarchy as monarchies which then degenerated into tyrannies, which were replaced by aristocracies which deteriorated into oligarchies, which were replaced by democracies which deteriorated into anarchy, from which again monarchies emerged. Impressed by the stability and longevity of the Roman Republic, Polybius attributed Rome's escape from the natural cycle of revolution to the fact that the three beneficial forms of government were combined in the Roman Constitution.

"...[I]f we were to fix our eyes only upon the power of the consuls, the constitution might give the impression of being completely monarchical and royal; if we confined our attention to the Senate it would seem to be aristocratic; and if we looked at the power of the people [to elect the holders of public office and to control the courts] it would appear to be a clear example of a democracy."⁹

Machiavelli (1469-1527 A.D.) adopted as his own Polybius's natural cycle of revolution and its cure in mixed government:

"I say, therefore, [after discussing all six forms of government] that all these kinds of government are harmful in consequence of the short life of

7. Aristotle, *Politics*, Book IV, Jowett translation (New York: Random House: Modern Library, 1943) pp. 168-208.

8. Polybius, *The Rise of the Roman Empire*, Book VI, "On The Forms of States," translated by Ian Scott-Kilvert (London: Penguin, 1979) p. 309.

9. Polybius, *The Rise of the Roman Empire*, Book VI, "On The Roman Constitution at Its Prime," translated by Ian Scott-Kilvert (London: Penguin, 1979) p. 312.

the three good ones and the viciousness of the three bad ones. Having noted these failings, prudent lawgivers rejected each of these forms individually and chose instead to combine them into one that would be firmer and more stable than any, since each form would serve as a check upon the others in a state having monarchy, aristocracy, and democracy at one and the same time."¹⁰

The development of the theory of mixed government culminated in the late eighteenth century in the United States Constitution and *The Federalist Papers*. The drafters of the Constitution were very much under the influence of the theory that the best government was a mixed government. The United States Constitution was consciously designed to incorporate the monarchical (the president) the aristocratic (the Senate and the judiciary) and the democratic (the House of Representatives).¹¹

10. Niccolo Machiavelli, *Discourses Upon the First Ten Books of Titus Livy*, Book One, translated by Daniel Donno, in *The Prince with Selections from The Discourses*, (New York: Bantam, 1981) p. 92.

11. "Jefferson [who was not in Philadelphia in 1787] contributed indirectly by shipping to Madison and Wythe from Paris sets of Polybius and other ancient publicists who discoursed on the theory of 'mixed government' on which the Constitution was based. The political literature of Greece and Rome was a positive and quickening influence on the Convention debates." Samuel Eliot Morrison, *The Oxford History of the American People, Vol. 1: Prehistory to 1789*, (Oxford: Oxford University Press, 1965) p. 395 in the Mentor Edition.

European and America political philosophy parted ways at the end of the eighteenth century. Europeans went on to Hegel and Marx and Nietzsche, to colonialism, fascism and communism. America remained in the eighteenth century. Americans are still governed by an eighteenth century constitution and the core political beliefs of Americans remain those of the European eighteenth century. Because of the current hard and soft power of American civilization, this tradition is being given new life. The rebirth of the tradition of natural rights, especially human rights, on a world-wide basis is part of the resurgence of the eighteenth century European political tradition of which the theory of mixed government is a major part. Europe itself is about to embark on a political experiment even more daring than that of the Americans in 1789. Reviving the theory of mixed government in its original European home might be of major assistance in handling problems such as "the democratic deficit."

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During most of the history of the development of the theory of mixed government, the various forms of government represented actual social classes. Mixed governments were found to be stable because no one social class dominated the others. A major change in the theory in its American incarnation was that the theory of mixed government became more and more a theory of the optimal structure of government independent of its reflection of social classes. In America, the idea was added that the only justification for the power of government was the consent of the governed population. This gave an increased importance to the democratic element as legitimating the entire constitutional structure.

In the general theory of mixed government offered here the forms of government are expressed as capabilities. The monarchical element provides the capability of quick decisive action. The aristocratic element provides wise and careful deliberation over how a country can achieve its goals. The democratic element ensures that the goals chosen are those of the many rather than the few, and confers legitimacy and authority on the government. The combination of forms prevents any of these capabilities from functioning without the others. Quick decisive action (the monarchical) is worse than useless unless there is good deliberation about the best means to achieve given ends (the aristocratic). Decisive action combined with good deliberation about means to ends is bad if the ends chosen benefit only a few (the absence of the democratic). If the ends are correct (the democratic), but the means are ill-chosen (lack of the aristocratic), or even if both the ends and the means are well-chosen, but there is little capacity for decisive action (lack of the monarchical), the result will be far from optimal. Good government requires a constitutional structure that features all three capabilities, the monarchical, the aristocratic, and the democratic, in proper balance.

The general theory offered here makes certain fundamental assumptions about human nature and the way things work in all human societies. This list is not exhaustive, but all interpretations and applications of the general theory share at least these assumptions.

The first is the mildly pessimistic assumption that people in power, individuals or elite groups, will, over time, unless checked, take advantage of their position and advance their own individual or elite group interests at the expense of the rest of the citizenry. In addition, their desire to maintain their privileged position will cloud their judgement of what policies and goals are best for the society as a whole. The second is the mildly optimistic assumption that people, both individuals and groups, are, over time, the best judge of their own self-interest.

These two assumptions support a third assumption that, over time, the citizenry as a whole will make better judgements about the larger goals of the society than any elite can make. These three assumptions explain the need for the democratic element in the general theory of mixed government. The general theory holds that the government must be the agent of the general citizenry, not its supervisor, and this will not happen unless the constitutional structure ensures that it happens. If elites could be trusted, over time, not to take personal advantage and also trusted to choose the larger goals of the society, then the monarchical and aristocratic elements would be sufficient for good government. The democratic would not be needed. A person believing this does not agree with the general theory of mixed government I offer here.

A major feature and advantage of my modern general theory of mixed government is that it does not rely on either the virtue of governors or the virtue of citizens as an essential component. The notion that the virtue of governors was the key to the proper functioning of government found major expression in Plato's *Republic*. Plato closely identified forms of government with the states of the souls of those governing.¹² This Platonic identification of the quality of government with the quality of those governing is inherently at odds with the notion of mixed government which distinguishes questions of what sort of governmental structures are best from the question of what sort

12. Plato, *The Republic*, Book VIII, translated by Alan Bloom (New York: Basic Books, 1968), pp. 221-249 (543a-569c).

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of governors are best. This distinction is what allowed Western political thought after Plato to separate out questions of constitutional structure and study them independently of evaluations of the virtue or character of those who govern. In the last parts of *The Republic* and in *The Statesman* and *The Laws*, Plato conceded the need for the rule of law in a world where men of sufficient caliber to govern by virtue alone are not available or, if available, cannot be expected to gain or to retain power, but it was Aristotle who made the move to mixed government.

The extensive development of the theory and practice of mixed government was unique to Classical and then Western European civilization. Chinese political thought went through the two Platonic stages of relying on the virtue of rulers and then recognizing the need to add the rule of law, but there was no theorist analogous to Aristotle in the Chinese tradition to work out a theory of forms of government and then add the idea of mixing the forms to produce the best result. In the absence of such a theory, the Chinese and the Japanese have been handicapped by a reliance on the virtuous ruler or elite as a necessary condition of good government.¹³

Although there was much talk of republican civic virtue in the tradition that produced the United States Constitution, the modern general theory of mixed government makes the realistic assumption that people will be no better than average. Americans expect their governors, and their fellow citizens, to be a mixed combination of intelligent and honorable men and women, knaves, and fools. Good government does not depend on the presence of the extraordinary person or class of persons. Americans typically do not completely trust their governors as individuals, either their honesty or their judgement, but most Americans do trust the elaborate system of checks and

13. "Virtue" is a difficult term that has shifted meaning over the centuries and is different in the Classical, the Western European, and the Chinese traditions. See Lee Yearley, *Mencius and Aquinas: Theories of Virtue and Conceptions of Courage* (New York: SUNY Press, 1990), a fine example of cross-cultural comparison on a difficult subject.

balances that make up the structure of the American Constitution.

Despite the fact that many Americans in the last seventy years have viewed the president as a father figure (FDR) or as a young prince (JFK), the deeper American tradition does not trust in the virtue of presidents. This explains in part the patience of Americans with President Clinton's lack of personal virtue. Americans trust the Constitution. They have generally never trusted the men who hold constitutional office. The structure of the Constitution itself, with its elaborate balances and checks against concentrated power, expresses this lack of trust in the virtue of those who govern.

In contrast, most Japanese are not adherents of the theory of mixed government. They do not regard the government as their agent but as their supervisor. Believers in mixed government accept the existence of some knaves and fools in government, and depend on constitutional structure to keep them in check. But in Japan, when the University of Tokyo graduates at the Ministry of Finance turn out to be knaves or fools, cynicism sets in. Many Japanese long for an end to "politics" which they see as government by people lacking virtue. They keep hoping for a better class of ruler. Many Japanese do not understand the assumptions underlying their own Constitution. This is not surprising since the Japanese did not write their Constitution.¹⁴

Application of the General Theory

To illustrate the usefulness of the old theory of mixed government in assessing the problems of modern democracy and suggesting solutions, I will use its terms to describe two pressing problems in the perfection of modern democracy and present two practical solutions in the form of particular applications of one interpretation of the general theory of mixed government.

14. See Kyoko Inoue, *MacArthur's Japanese Constitution: A Linguistic and Cultural Study of its Making* (Chicago: University of Chicago, 1991) for a detailed account of the creation of the present Japanese Constitution.

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The first problem is the weakness of the democratic element caused by the enormous size of modern electorates. I shall examine this problem mainly in the American context because, as the second largest democracy in the world (only India is larger), America suffers more than most democracies from this problem. To solve the problem in America, I propose a statute restoring the ratio of members of the House of Representatives to citizens to something closer to what it was in 1787. This requires enlarging the House of Representatives by a factor of twenty to 8700 members, a change that does not require a constitutional amendment.

The second problem is the weakness of the monarchical function in large democracies. I take the chronic inability of the Japanese government to make hard policy choices as my example. Despite the use of the word "monarchical" in the general theory, the application I propose does not involve any enlargement in the role of the Japanese emperor. Instead I propose a constitutional amendment providing for a prime minister directly elected by the people. I do not propose a separate executive branch as in the United States, but rather a modest modification of the Japanese parliamentary system to strengthen the office of prime minister and thus the monarchical capability.

It is the mark of a good general theory that all sides in a dispute on which reasonable minds can differ can use the theory's vocabulary as a general framework within which to argue. A good general theory should not by itself decide hard cases or dictate exactly how it should be applied. Thus a good general theory for the perfection or fine-tuning of democracy should allow people sharing allegiance to the general theory to differ over how it should be applied.

The reader should keep in mind that the ability of the theory of mixed government to provide a useful perspective on the problems of modern democracy is independent of the soundness and usefulness of the two particular proposals I advance below. Opponents of my particular proposals should be able to use the terms of general theory to argue against my proposals.