

# MINORITY RULE IN AMERICA

BY CHARLES A. BEARD

A LONG time ago, in the eighteenth century, a strange person by the name of Jean Jacques Rousseau announced in France a startling doctrine. It is that for political purposes all heads are equal and alike, and that anything decided by a majority of these heads is rightful law. To be sure, the idea was not entirely new. Some plaintive hints of it had been heard from time to time in history, but Rousseau formulated it positively, and just at the right moment in human affairs to make an uproar.

To kings, nobles, and bishops, well entrenched in power, the doctrine was idiotic. They were enjoying the privileges of government, with all the emoluments thereunto attached, and naturally did not want anybody to question the constitutionality of their special position. Besides, the idea flew in the face of known facts: heads are not equal, and to entrust government to majorities would be to set out on a stormy sea of popular passions. Nevertheless, the idea was taken up, especially by the bourgeois and other plain people who enjoyed neither the privileges nor emoluments of government. To them the novel doctrine seemed fairly sound—at all events, useful in unhorsing kings, nobles, and clergy.

So, caught up by the commonality in revolt, Rousseau's doctrine set fire to the old order of classes, and spread throughout the world. Perhaps no other idea in the armory of propaganda has had a more

profound influence on the course of political development. Before a hundred years had passed it became so entrenched in the West that denial of the creed was unsafe for any one with political ambitions. As the years passed the voices of scoffers and doubters sank lower and lower until they almost reached a whisper. At the end of the nineteenth century, the creed of equality and majority rule seemed on the point of universal acceptance, even in distant places of the Far East.

But, although it has been the fashion for uninformed writers to attribute to Rousseau both Jefferson's ideas and the democratic theory in America, there is no support for it in the records of history. No doubt French levelism exerted some influence in the United States, particularly after the outbreak of the French Revolution and during the popular disturbances of the nineteenth century. The doctrine of the Declaration of Independence, however, stems from John Locke rather than from Rousseau. And it was not taken too seriously by many of the men who signed or cheered that immortal proclamation of freedom and equality. It was a good stick with which to beat George III, and was so widely read and cherished that many who first laughed were compelled to pay at least lip service to it. Like most great theories, there was something in it, at all events for operating purposes in the United States. After independence was won, government by a

king or military dictator seemed out of the question. Sovereign authority could be vested only in "the people". And if in the people, why not in all the people? When government by classes was repudiated, the cat was out of the bag and nobody dared to take the risk of trying to put it back again. John Adams, Alexander Hamilton, Gouverneur Morris, Fisher Ames, and other Fathers of the Republic never accepted the pure creed of equality and head-counting, but in spite of their misgivings and warnings, it got into general circulation, and, like strong wine, went immediately to the heads of the masses.

If on the surface, however, the idea appeared simple, its practical application proved to be difficult. According to the strict logic of the creed, in each geographical area, from the township to the nation, all adults are equal; each officer chosen for the area must be elected by a counting of heads and by majority vote; and each representative in the legislature, chosen by majority vote, should represent an equal number of heads. This is the theory of equality and majority rule carried to its extreme limits.

Now the men who framed the Constitution of the United States had scant respect for such an idea. Certainly their chief concern was not to put it into effect. On the contrary, they were particularly interested in preventing the actual realization of any such theory of equality and head-counting in the Government of the United States. Nor could they have put it into effect if they had so desired. In nearly every state the right to vote was restricted to property owners or taxpayers, who would not have ratified a constitution depriving them of their privileges. And there was another powerful consideration. Even staunch advocates of

majority rule, if any such there were in 1787, would not surrender their local privileges to win equality and head-counting for the nation at large. For example, the voters of Connecticut might elect hog reeves by majority vote, but they would never consent to having the United States Senate based on the principle of equal heads. Far from it. Each state must have two Senators. There were 59,000 people in Delaware in 1790 and 747,000 in Virginia; thus in the Senate one Delaware voter was equal to twelve Virginians.

Many Fathers from the big states, such as Massachusetts and Pennsylvania, did not like this arrangement. They were not madly in favor of equality, but they did not want such evident inequality. Yet they had to take the bitter with the sweet, if they were to form a closer union at all. As John Sharp Williams once remarked, no gentleman ever makes an ass of himself in an effort to be logical. The Fathers were determined to have a new government endowed with certain powers over finance, commerce, and matters of common interest, and they took what they could get—being sagacious persons. In the shuffling and dealing, trading and compromising, they put together a Constitution which, on examination, proved to be fearfully and wonderfully made, from the point of view of the equalitarian, head-counting democrat. There were some parts that indicated a gesture toward equality of heads, mainly for the purpose of preventing the little states from running over the large states: members of the House of Representatives were apportioned roughly on the basis of population (counting three-fifths of the slaves); and the number of presidential electors to be assigned to each state was to be equal to the number of its representatives and senators combined.

But these concessions to equality and head-counting did not guarantee a realization of the perfect scheme of Rousseau. Far from it. There was no assurance that a majority of the presidential electors would represent a majority of the popular vote cast for electors, if the choice were vested in the people by the state legislatures. Nor was there any guarantee that the majority in the House of Representatives would, in fact, speak for a majority of the voters, taking the vote throughout the country as a whole. And as for the Senate, it did not represent heads anyway; it represented states without regard to population. There was some majority mathematics in the Constitution, but nothing precise and accident-proof.

Moreover, in apportioning members of the House of Representatives among the states according to their respective numbers, the Fathers took total population, not the number of voters, as the basis. It is easier to take a general census; for how shall the number of voters be determined? By the total number of persons entitled to vote under the various qualifications imposed by state law? As most states had property restrictions in 1787, the discovery of the number actually entitled to vote would have meant a minute survey of all property owners and taxpayers. The difficulties of such a survey are obvious. Shall the number of voters be fixed on the basis of the actual number who go to the polls at the election immediately preceding the census? There are numerous and valid objections to this method. The number of voters who go to the polls varies with issues, personalities, excitements, tempers, distempers, and especially the sharpness of the political campaign. So it must be conceded that the Fathers took the easiest way out when they counted all free heads and added three-fifths of all slave heads.

If the large states were to be proportionately represented in the House, that was a rough and ready way of attaining the end.

In truth, if the constitutional Fathers had wanted a perfect system of popular equality and head-counting they could not have wrung it from the small states, for the vested interests of those corporations and of the local politicians were too strong. If the Fathers had insisted upon it, they would have broken up the Union. In one respect, at least, they were like Edward Harriman, Theodore Roosevelt, and V. I. Lenin. They were practical men and ready to make a compromise if they could gain something in the trade.

And as a matter of fact they feared equality and head-counting even more than they feared original sin, for many of them were Deists. Elbridge Gerry, later a great Jeffersonian Democrat, doubtless summed up their philosophy when he said that the less the people have to do with government the better—for others and themselves. Their principal problem was how to frame a government on a popular base, and at the same time to prevent a majority from getting immediate possession of it. They looked forward, with James Madison, to the time when the majority of American people would have no property at all and might cut loose from their mentors and play havoc with the prudent, thrifty, and fortunate possessors of good things.

## II

It was to forestall and postpone, if not to prevent for all time, any such outcome that the Fathers constructed a complicated five-story government. They sought to check, balance, and refine the passions expressed on the hustings and at the polls. Only the House of Representatives was to

be elected directly by the voters. The Senate was to be chosen by the state legislatures. The presidential electors were to be chosen as the state legislatures might determine, and the electors were to elect the President. Then there was to be a Supreme Court holding office for life and completely removed from contact with anybody elected directly by the voters. The judges were to be selected by the President and Senate—authorities removed one or two degrees from the polling places of the multitude. As far as political machinery is concerned, this was the Fathers' supreme piece of artistry.

Besides introducing inequalities in the representation of heads in the federal government and setting up a system of checks and balances, they took due account of the time element. Since there were no kings, nobles, and clergy to found government, the people had to come into the picture, and the federal government had to rest on the elective principle. But there was peril in sudden actions at the polls. In the midst of a great excitement the voters might do something disturbing to society—or at least to those persons who imagined themselves to constitute society. Hasty decisions must be prevented. So ingenuity provided an effective scheme. All members of the House of Representatives were to be elected every two years. Senators were to hold office for six years, and one-third were to be renewed every two years. The term of the President was fixed at four years. Judges were to hold office during good behavior. Hence it is impossible for any majority to get possession of all branches of the federal government at a single election.

Again and again in American history, the President and Senate have been of one party and the House of Representatives controlled by another. A Republican

President may be confronted by a Democratic House, or, indeed, a Democratic Congress. Or the position may be reversed. If the latest popular majority means anything, then many an administration in mid-term has been utterly repudiated by the country at the polls in a congressional election. In this case a minority continues to rule in its place of entrenchment. If the Republicans win the Presidency and the House of Representatives in a general landslide this year, it will be 1940 or 1942 before they can capture the Senate, unless something extraordinary happens. Thus, under the American system, it must be said of the majority that it rules only in the long run, if at all. That is, it must be a compact, determined, coherent majority capable of common action over a term of from four to twenty years, or longer. Fly-by-night majorities do not count. This is another feature of majority rule often overlooked by proponents of mere head-counting.

All these features of the federal system were well known to the early leaders of the American Republic. Federalists had slight respect for majorities. But Jeffersonians professed great confidence in the people and paid high tribute to the idea. There was something vital and necessary in the theme, given the social scene in the United States. Jefferson formulated it in his first inaugural—"absolute acquiescence in the decisions of the majority, the vital principle of republics, from which there is no appeal but to force, the vital principle and immediate parent of despotism". This is government within the framework of law, by proposition, discussion, and popular decision. This is the system characterized by fascist and Nazi writers as liberal, bourgeois, outmoded, and contemptible. For this system, with its inconveniences and weaknesses, the fascist substitutes what

Jefferson called "force, the vital principle and immediate parent of despotism".

Though Washington and Jefferson had never heard of Hitler or Mussolini, they had heard of government by "the sword-bearing élite". In fact, they were rather familiar with the idea. After studying various systems of government tried again and again in history, the Fathers came to the conclusion that force was the parent of despotism and that despotism was no guarantee of order, security, or anything else in the long run. They were fully aware of the role of force in human affairs, but they refused to bow before it. They were not "pure rationalists", but they rejected the cult of irrationality. So they insisted on giving the people a voice in government, refining that voice, and limiting the power or force of government. Such is the background of majority rule in the American system. When Jefferson spoke of acquiescence in majority decisions, he merely meant "in accordance with the forms of law limiting and controlling the application of the principle in practice".

In practice, popular rule in most state and local elections is plurality rule. The candidate who receives the highest number of votes is declared victorious and elected. The two or three candidates enlisted against him may together receive two-thirds of the total vote. His vote may be a minority vote; yet he is the victor according to law. In some cases an absolute majority is required, but exceptions merely prove the rule. Nothing but the fairly even balance of parties, therefore, prevents the almost continuous rule of the minority in many communities. In practice, under the forms of the Constitution, we frequently have minority rule, if we use as our point of reference the latest actual expression of national opinion at

the polls. Examples are scattered throughout American history.

The House of Representatives is apportioned according to population, without reference to the number of voters. In the states which have a large alien population, the number of voters is smaller in proportion to population than in states with few alien residents. In the states which restrict the suffrage by one device or another, the proportion of voters to population is smaller than in the states which confer the vote on practically all adult citizens. It must be remembered that the literacy test applied in several Northern states works a reduction in the number of voters quite as automatically as the various tests applied in Southern states to exclude Negroes from the polls. Then, within states, congressional districts are gerrymandered, so that the number of voters per district will vary even within the same state. Hence the conclusion: While the House of Representatives is apportioned according to population, the number of voters per thousand of population varies widely from state to state. Thus, in one congressional election, 2217 votes were polled in a Georgia district, and 79,782 votes in an Illinois district; in this case one Georgia head was worth about forty Illinois heads. In addition, each state has one representative in Congress, no matter how small it is. Nevada had 91,000 inhabitants in 1932 and Nevada had one representative, although the average quota of population for each representative throughout the country was about 280,000.

As a result of this system, a party that has cast a majority of the popular votes in a national election may have a minority of the representatives in Congress. Indeed, seldom, if ever, is there a close relation between the number of representatives

controlled by a party and the total number of its popular votes. For instance, in the congressional election of 1932, a proportionate distribution of representatives on the basis of popular votes would have given the Democrats 268 seats instead of the 313 they captured, and would have correspondingly increased the number of Republicans.

In the Senate there is no pretense at equality in head-counting. Each state has two senators. Nevada with 90,000 inhabitants has the same weight as New York, with 12,500,000. It takes eighteen of the less populous states, with thirty-six senators to their credit, to equal New York State in population — New York with only two senators. Ten states have within their borders about one-half the inhabitants of the United States, and yet command less than one-fourth the senators.

Nor does the equality-and-majority principle govern presidential elections. The President is elected by electors. Each state receives two electors corresponding to its senators, and an additional number of electors corresponding to the number of its representatives. As we have seen, neither the senators nor the representatives are apportioned among the states according to the number of voters. Besides, in each state the electors are chosen on a general ticket, and the party that carries the election gets all the electors of the state, no matter how large the minority or minorities.

Hence a victorious candidate for President may not receive a majority of the total popular vote cast in the national election. If there is a party split, the system may create an extraordinary situation. In 1860, Lincoln was elected President by a popular vote of 1,868,000, as against 2,815,000 polled by his opponents. In 1912, Woodrow Wilson fell short of a

majority by about 2,000,000 votes, although his plurality was more than 2,000,000 above the vote cast for his nearest competitor. Two Presidents, Hayes and Harrison, did not receive even a plurality; that is, they stood lower in the scale of the popular vote than their two principal rivals.

### III

Why do the people and practical politicians continue a system which so often deprives the majority of the fruits of victory? Many answers to this question have been advanced.

In the first place, under the Constitution, no state can be deprived of equal representation in the Senate without its consent. Imagine the task of making Delaware, Rhode Island, or Nevada give up its equality! Besides, the "practical inconveniences" of the system are not so glaring. In interest, Rhode Island is fairly well assimilated to its larger neighbor, Massachusetts; the interests of Delaware are not exactly opposed to those of New York and Pennsylvania. In fact, the senators from the small states are never lined up together against the large states. So the economics of politics does not run against minority rule in the Senate. No change is in prospect.

Under the Fourteenth Amendment, Congress can reduce the representation of any state that deprives adult male citizens of the right to vote; and the reduction shall be "in the proportion that the number of such [disfranchised] male citizens shall bear to the whole number of male citizens twenty-one years of age in such state". This rule applies to Northern states which restrict the suffrage as well as to Southern states. Some attempts have been made in Congress to enforce this pro-



vision; that is, to apportion representation according to voting population, but all have failed, and for reasons that call for no enumeration here.

Once in a while, loud complaints are made against the system of minority rule. When the sparsely-settled agrarian states threaten the populous states with a tariff reduction, the glaring inequalities of the American system are sure to be exposed — without results. So, too, when the income tax is discussed, bitter references are usually made to the unequal representation of the aforesaid agrarian states in the federal government — without bringing about results.

From historical experience it seems reasonable to infer that no material changes will be made in the American system unless minority rule disturbs more profoundly than hitherto the basic eco-

nomie interests of the populous states. Even then the establishment of anything like equality of representation among all states and regions could not be accomplished without constitutional amendments, and one-fourth of the states plus one can always block such changes. In other words, as a matter of practice, complete regional equality cannot be brought about by constitutional means.

Still more to the point, is anybody likely to get excited about free and equal heads and absolute majority rule — at least, excited enough to move the mountain of constitutional barrier? It would take something more than devotion to logic and mathematics to stir the nation to such a titanic constitutional effort. It seems, then, that nothing short of a long-time obstruction of some clear majority resolve can ever effect the change.



## FALL OF RAIN

BY DANIEL W. SMYTHE

I STRUCK out into it; above me the cloud was gray shadow.  
I splashed the water that once was in the air.  
Think of it! All the brooks that have found the meadow,  
Above my head in the darkness — they have been there.

These are on lips to taste — to yearn for and follow:  
The upper air is a moisture that comes with a sweep  
Loosening the stone, caving the side of the hollow;  
And the tree is dark whose caress it could not keep.

And this immensity I love. . . . It finds me leaning  
To the rain-wind over the wet-blown leaf and root.  
The ground slips, the air fills with eternal meaning,  
And what we have craned to in space runs underfoot!