

The Problem of the Changing Demos – A Necessary Feature of a Real-World Democratic Association

By Jonathan Schött

Abstract:

This paper is inspired by Robert A. Dahl's theory of the democratic process as presented in chapters 6 to 9 of his 1989 book "Democracy and its Critics". It will introduce the "Problem of the Changing Demos" (POCD). This problem necessarily occurs in a system that Dahl would hold to be fully democratic. It denotes a potential for violation of the principles that justify the adoption of the democratic process for making binding collective decisions. The POCD arises when the demos changes after a decision has been made, i.e. within a legislative period. The POCD and its implications will be explored in detail. After this, improvements to Dahl's criteria that a political process should fulfill, will be proposed. These improvements explicitly aim to reduce the occurrence and severity of the POCD.

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1. Introduction

This paper will introduce the “Problem of the Changing Demos” (POCD), a potential for a violation of the fundamental principles that justify a democratic decision process that arises when the demos changes after it has made a decision. The POCD will be discussed in the context of Robert A. Dahl’s theory of the democratic process as presented in the chapters 6 to 9 of his 1989 book “Democracy and its Critics”. In these chapters, he aims to provide a justification for adopting a democratic process for making binding collective decisions, as well as to provide criteria that specify a democratic political order.¹

I will begin by stating the fundamental assumptions and principles on which Dahl's theory rests. In the second part the “Problem of the Changing Demos” will be introduced and discussed. It will be shown that this problem necessarily arises when one implements a democratic decision process according to Dahl's criteria. It will be argued that the POCD is also relevant in the framework of many other theories of the democratic process and that it has implications on how a democratic

¹Dahl, 1989, p. 83.

process ought to be practically implemented. Dahl's list of criteria of a democratic process will then be expanded, explicitly addressing the POCD. Finally, we very briefly examine the new criteria's normative implications on how to handle the current event of Brexit.

2. Dahl's Argument

2.1 Dahl's fundamental Assumptions

Dahl's argument starts from the assumption that “in order to live together in an association, the members of the association will need a process for making decisions about the association's principles, rules [...] and so on”.² A member of an association is defined precisely as a person on whom these collective decisions will be binding.³ His aim is to provide a justification for the adoption of a democratic decision process for making these binding collective decisions.⁴

The first basic tenet of his theory is the idea of intrinsic equality.”⁵:

[...] “all men are, or ought to be considered, equal in some important sense”⁶.

There are ambiguities about this principle that Dahl recognizes. Firstly, how exactly should persons be treated equally? In Dahl's argument the idea of intrinsic equality takes the expression of the “Principle of Equal Consideration of Interests” (PECI). It holds that persons are to be

² Ibid., p. 83.

³ Ibid., p. 83.

⁴ Ibid., p. 83.

⁵ Dahl, 1989, p. 84.

⁶ Ibid., p. 85.

treated equal in the sense that their interests and good should be weighed equally when it comes to making a decision that will be binding on them.⁷ What exactly should count as “human interests” and “goods” is debatable, but of no immediate interest for the argument.

The principle of intrinsic equality is not by itself sufficient to justify a democratic process. In case that one member of the association would know the best way to treat everyone equally, they should make all decisions.⁸ This changes with the adoption of the “Presumption of Personal Autonomy” (PPA):

“In the absence of a compelling showing to the contrary everyone should be assumed to be the best judge of his or her own interest”⁹

If one generally accepts the PPA, then PECI is most likely to be satisfied if every member (who is in fact qualified) has an equal say on which policies should be binding on all members of the association. To accept the PPA and PECI, together with the explicit requirement that decisions are only to be made by persons who will be bound by the law, implies that in making binding collective decisions, a democratic political order is justified.¹⁰ The validity of this argument is not immediately clear. Firstly, it presumes that it is possible to fairly aggregate individual preferences into a social preference order. The point that this might not be possible was raised, among others, by William H. Riker.¹¹ Also raised by Riker was the point that strategic voting and agenda manipulation will often distort the outcomes of a democratic decision process. If this was

⁷ Ibid., p. 86

⁸ Ibid., p. 88.

⁹ Ibid., p. 100.

¹⁰ Ibid., p. 108.

¹¹ Riker, 1982

true, it would cast doubt on the claim of the democratic process being the most viable method for making binding collective decisions that reflect the members' equally considered interests. But Gerry Mackie argued that the practical relevance of Riker's arguments is very limited.¹² We must therefore not immediately reject Dahl's framework.

2.2 Dahl's Five Criteria of the Democratic Process

From these principles he derives five criteria that a political order should satisfy. Dahl claims that to reject one or more of the criteria would mean to reject the presented principles, and to accept the principles is to accept the desirability of these criteria.¹³ He refers to the association as "state" and its members as "citizens".

- 1.) *Throughout the process of making binding decisions, citizens ought to have an adequate opportunity, and an equal opportunity, for expressing their preferences as to the final outcome. [...].*¹⁴

This criterion could be interpreted as a calling for general freedom of expression and equal, good access to resources allowing members to disseminate their opinions.

- 2.) *At the decisive stage of collective decisions, each citizen must be ensured an equal opportunity to express a choice that will be counted as equal in weight to the choice expressed by any other citizen. [...].*¹⁵

This criterion requires that every citizen's vote must have equal weight in determining the outcome of the decision process. The specific implementation of this depends on the decision rule that is used.

¹² Mackie, 2003

¹³ Dahl, 1989, p.108

¹⁴ Ibid., p. 109.

¹⁵ Ibid., p. 109.

- 3.) *Each citizen ought to have adequate and equal opportunities for discovering and validating (within the time permitted by the need for a decision) the choice on the matter to be decided that would best serve the citizens interest.*¹⁶

According to Dahl, this criterion makes it hard to justify institutions that would cut off or hide information from citizens. Further, it implies that there should not be vast differences in access to information of importance.

- 4.) *The demos must have the exclusive opportunity to decide how matters are to be placed on the agenda of matters that are to be decided by means of a democratic process.*¹⁷

A system in which the demos could only democratically decide on a very limited range of issues, due to a non-democratic entity's decree, could not be called fully democratic. The demos should decide which matters should be placed on the agenda.

- 5.) *The demos must include all adult members of the association except transients and persons proved to be mentally defective.*¹⁸

There are certainly ambiguities about who should be defined as an “adult” or “mentally defective” but these are not very relevant in the context of this paper. Later, I will present a working definition of a transient.

Dahl is convinced that these criteria “fully specify the democratic process and fully specify what we ought to mean by political equality”. A decision

¹⁶ Ibid., p. 112.

¹⁷ Dahl, 1989, p. 113.

¹⁸ Ibid., p. 129.

process meeting these criteria would be a fully democratic process.¹⁹ He recognizes that it might not be possible for a real-life association to be fully democratic, but still asserts that the criteria can serve as a guide for judging the merit of an association's political system.²⁰

3. The Problem of the Changing Demos

The "Problem of the Changing Demos" which is about to be introduced is, in the context of Dahl's theory, a potential violation of the PEI, and thus the idea of intrinsic equality. It occurs, when the demos changes, after it has made a decision binding on its members. Under certain circumstances these changes lead to an actual violation of the PEI when the binding collective decisions are not in the equally considered interest of the demos' members. I argue that three kinds of changes of the demos lead to the POCD: Firstly, when at least one formerly non-member is added to the demos. Secondly, when at least one formerly member leaves the demos. Thirdly, when the interests of at least one member undergo a profound change. As I will show, it must necessarily arise in a system that Dahl would hold to be fully democratic.

3.1. The Nature of the Problem of the Changing Demos

Let us now discuss the POCD in the context of the first kind of change of the demos: The adding of an additional member after a decision binding on the demos has been made.

Let us consider a democratic association that is designed in accordance with all of Dahl's criteria. All adults (from the age of 18) except for

¹⁹ Ibid., p. 130.

²⁰ Ibid., pp. 130-131.

transients and the mentally disabled are allowed to partake in the political process and the time-intervals between elections are one year long. Let us further consider the case that a member turns 18 on the morning after an election. It seems that the now-adult is now a part of the demos, as they satisfy the fifth criterion. However, they have never had, and have not at the moment, any chance to defend their own interests. The now-adult is technically qualified to partake in the binding collective decisions, but does not have any such power in practice, as there is currently no decision process in which they could partake. This particular adult is bound by the decisions, but their interests were not respected in the making of it.

If such a situation is possible in a political system, there exists the possibility that the laws in place will not be in the equally considered interest of the demos: Imagine a hypothetical situation in which so many children with dissenting views become adults after the election that if the demos held a vote again, the outcome would be different. In this case, the violation of the requirement causes an actual disparity between the law that is in the equally weighed interest of the members of the demos, and the law that is binding on it. This misrepresentation violates the principle of equal consideration of interests, and thus the fundamental idea of intrinsic equality.

Given that a fluctuation in the membership of the demos exists, the kind of violation just presented could only not occur in a perfect theoretical democratic system, in which decisions can be made constantly, repealed instantly and implemented instantly, depending on how the demos changes. This constant decision process would thus be theoretically required by Dahl's theory. But in reality, we face several constraints in implementing a democratic decision process. Most importantly these are

time, resources and space. These constraints always exist and will always affect a real-life democratic process making it impossible to achieve this ideal. Therefore, the POCD must necessarily exist in a real-life political system, no matter how short we design the length of the decision cycles. Even if there were only infinitesimally small time-intervals between, two decisions, the demos could change leading to a violation of PEI through misrepresentation of interests.

It is important to note that the POCD does not only exist in the framework of Dahl's theory. It necessarily exists if one accepts a general principle: That binding collective decisions should be reflective of a demos' members' interests. How exactly it is determined who these people are should not be important, as long as it is possible that this demos change in one of the ways described. If one accepts this premise, the POCD would exist even if one rejected the principle that every member's interests are to be weighed equally in every. One could just as well want to give more weight to the interests of those members who are going to be affected much more by a decision than others. It is also not necessary to accept the PPA. One could reject this presumption and assume that some other mechanism of interest-aggregation than democratic voting would lead to better results. Still, the described changes of the demos could lead to discrepancy between the laws in place and the laws that would be in the aggregated interests (by means other than voting) of the demos' members. Thus, the POCD can be relevant, even if one rejects the adoption of a democratic process for the making of binding collective decisions.

3.2. The Problem of the Changing Demos and the Case of Transients

The POCD and its importance can be further explored by examining the case of transients. A transient will be defined as an adult who temporarily lives in a country or passes through a country and will be bound by the country's law during his or her stay. When a transient enters a real-life association, the same situation occurs, as in the children-turned-adult case: The transient will be bound by a decision that was made without equal consideration to their interests. Just like in the former case, this causes a potential of a violation of PEI, as the demos' members' equally weighted interests might be out of touch with the laws that are binding on it.

But transients can also cause the second POCD inducing change in the demos by leaving the demos after they have taken part in a decision, but while the law is still in place. When a former member leaves the demos, the laws they helped to decide on stay in effect for some time. The remaining members will have to follow a law that was not just decided by them, but also persons that are not bound by it anymore. In a situation where the binding law would not be in touch with the remaining members' interest anymore, PEI would be violated.

Of course, this can only happen, if transients are allowed to take part in the decision in the first place. Transients are usually not included in the decision-making process of contemporary democratic countries, and Dahl also excludes them in his fifth criterion. I argue that his argument is flawed. For this purpose, let us have a closer look at the fifth criterion. This claims that *“The demos must include all adult members of the association except transients [...]”*. Dahl's argument for the exclusion of transients is mainly based on the premise that a transient might not be subject to the

laws which they helped to bring about and is as such not a member of the association.²¹ However, there are often cases, in which transients stay in other countries both during periods of decision making and the implementation of these decisions. Accordingly, they will be bound by those decisions. As Dahl's theory demands that all persons that are bound by collective decisions should enjoy equal consideration in these decisions, their strict exclusion from the demos is not theoretically justified. Rather, transients should have a say in the decisions of the demos, but just for the exact time that they are part of it.

But this would require it to be possible to revise all decisions, whenever a transient enters or leaves the demos. Of course, this is not possible in real-life, due to the already discussed constraints. If one would nonetheless include transients in a real-life decision-making system, the first and second kind of the POCD would occur. From this realization, one could argue that the exclusion of transients from the democratic process would be in so far justified, as it would lessen the potential for the POCD or lessen the arising severity of the violation of PECL. This approach differs from Dahl's in that it does not negate the transients' general claim to equal consideration of interests, as long as they are part of the demos. This basic argument will be form the basis for a revised criterion 5 that is presented in section 4.

3.3. The Problem of the Changing Demos caused by a Change in Interests

A situation where the interests of one or more members of the demos undergo a profound change is quite similar to the physical changes of the

²¹ Dahl, 1989, pp. 354-55.

demos presented before. The only difference is that the interests of the concerned members of the demos were already considered once at the beginning of the decision-cycle. A profound change of interests can happen when the circumstances change greatly, or the members attain new information as to the impacts of their decision, after a decision has been made. But when the interests of at least one member of the demos change, and this member's change in interests is not reflected in the laws binding on the demos, there is the potential that the binding law is not in the demos' members' equally considered interest anymore.

4. Dahl's Criteria Revised

4.1. Reflections on the Previous Part

The “Problem of the Changing Demos” is a potential for a violation of the PEI which occurs when the demos, on which a decision is binding, changes after a decision has been made. If one accepts the principles presented above, especially the idea of intrinsic equality, a decision process which potentially violates the PEI would not be fully morally justified. This in turn means that a decision-making process is only morally justified if the POCD cannot occur. This would demand an ideal, constant decision process in which decisions could be initiated, made, and repealed whenever the demos changes. But, as a real-life decision process is always subject to constraints by time, space and resources it is impossible to design such decision process that completely eliminates the POCD. One must conclude that no real-life decision process can be designed which is fully morally justified.

Our task is to design a real-life democratic process that at least approximates the ideal that cannot be achieved. To this end, we must answer the question: How can we minimize the potential of misrepresentation, caused by changes of the demos, and this misrepresentations severity, in a real-life political order.

4.2. Dahl's Criteria Revised

A very straight-forward way to reduce the POCD is the introduction of some procedural demands on a decision-making system, so that it will more closely resemble the "constant decision process" in which the POCD cannot occur. By this, the potential for misrepresentation is lessened with regards to all three possible changes of the demos:

A decision-making system should oblige several procedural imperatives: The decision cycles should be kept as short as practically possible, and the hurdles of repealing decisions in a later vote should be kept as low as possible. There should also be a very low threshold for citizens to be able to call for an immediate decision on certain issues they deem to be important.

This very broad criterion could be accommodated in contemporary approximately democratic systems by shortening the election cycles and introducing new kinds of voting mechanisms, making use of technology. An example would be a constant voting mechanism via internet where people could adjust their support for a decision in real-time. To lower the threshold for citizens to initiate a decision on an issue they deem to be important, one could implement laws that allow citizens to trigger a referendum with a low number of initial signatories. While this is probably the best way of decreasing the occurrence and severity of the POCD, one could potentially reduce it further by implementing some specific measures.

There is a potentially large number of these measures, addressing the different instances of changes in the demos, and each of those would be justified in as far as it leads to a better satisfaction of PECI over time.

Let us explore some of these possible measures in the following. Firstly, let us establish that the actual misrepresentation (due to changes in the demos' membership) mostly arises when large scale demographic shifts occur. This is, because it seems reasonable to assume that the interests of one age group stay very similar, at least in the time-frame of a couple of years. Those who were 18 years old three years ago presumably had rather similar values and interests to those who are 18 years old now. Similarly, those who were 80 years old three years ago held similar values to the ones' who are 80 years old now.

Under this assumption, when a group of formerly 17-year-olds comes of age shortly after an election, its interests were somewhat represented in the decision making by the previous group of 18-year-olds. They practically take the place of those now 19-year-olds and if those groups were similar in size and interests, misrepresentation is unlikely. But if the numbers of persons in these age cohorts vary greatly, or they have radically different interests, then it is quite possible that misrepresentation occurs. If the following age cohort is much larger than the previous one (that partook in the decision) then its interests might be underrepresented. If it is much smaller, then its interests might be overrepresented. Accordingly, one could, in anticipation of these demographic shifts, add to or remove votes from certain groups to minimize the potential for misrepresentation over time.

The case of transients could potentially also be addressed in such a specific way. As we have seen, adult transients theoretically ought to be

included in the decision-making. They are bound by the law and in general qualified to participate. Excluding them would mean to ignore their interests in every decision that is made, potentially leading to a violation of PECI. But including them might also lead to such a violation, in the case that many of them leave the demos after a decision has been made. This can be characterized as a demographic shift similar to the ones described above where one group leaves but is not replaced by a sufficiently similar group. But if it were certain that they would always be replaced by a sufficiently similar group of other transients (both in numbers and interests) it would not be a problem if a transient left the demos. Their vote would not unduly impact the laws in place, but would be in the interest of following transients, as well. If we can safely say that such a situation exists, then it is required to give transients the right to vote, as it would lead to a better satisfaction of PECI over time.

But, such a situation is not always likely. Instead, the numbers of transients might vary quite a lot, and thus their interests might become overrepresented, if a large group (which voted) is replaced by a small group. It is also quite possible that the transients that voted and the ones that replace them have quite different interests. To let transients vote would also create undesirable opportunities and incentives for outsiders to affect the vote according to their own preferences. This creates an obvious and severe potential for misrepresentation. So, while we must give them some representation, letting every transient vote is not a very feasible option. An alternative idea would be to give voting rights to transients that stay for a certain minimum amount of time. This would largely eliminate the potential for manipulation by outsiders. One could even consider giving them more votes to also represent all the other short-term transients. This would happen under the assumption that

these long-term transients are sufficiently similar to the short-term transients, which must not necessarily be true.

We can try to formulate a revised version of the fifth criterion that addresses some of the considerations just presented:

The demos must include all adult members of the association except for persons proven to be mentally defective. Predictable demographic shifts should be addressed by giving additional, or less weight to the votes of some members who are sufficiently similar to those group of persons causing the demographic shift. Transients, who are members of the association for a certain threshold of time should be included in the decision making.

Again, there are possibly many criteria like this, and their justification would depend on their effectiveness in decreasing the occurrence of the POCD and the severity of the potential misrepresentation.

The whole previous discussion happened under the assumption that all decisions are fully repealable. But obviously there are many decisions that a demos can make, which are essentially not repealable, at least not in their consequences. These will necessarily affect future members of the demos without equal consideration to their interests. An example of this would be current legislation on climate change. To explore the relevance of the POCD and to design criteria that aim at reducing the POCD with regard specifically to these kinds of decisions is a task that should be attempted in a different place.

5. Implications

Accepting the presented criteria has normative implications on how to handle some current phenomena. One interesting example is the decision of the British people to leave the European Union (Brexit). At the time of the decision, the majority of those who voted was in favor of Brexit. At this point in time, it is not quite clear, whether the British people would decide this way again, if the referendum was repeated.²² The 6th criterion and the considerations leading to its adoption would support the call for a second referendum, as this would more accurately capture the will of the demos. To hold a second referendum and follow its outcome would be more *democratic*, than not to hold it and follow the decision expressed in the earlier referendum.

An argument against a second referendum could be made on other grounds: The confusion that could arise for businesses and people in Britain and Europe would the decision be overturned again. This argument touches on the question whether this more accurate representation would be actually desirable. Surely it would lead to less violation of PECE through the passing of laws that would be more in touch with the demos' interests. Still, one must consider the effects that a practical implementation of these criteria would have on other aspects of our lives. One such impact is the potentially higher cost that a decision process like this would cause. Another would be a decline in reliability of expectations. If every binding law is only tentative and easy to repeal, it would become very hard for companies, people and governments to make long-term decisions as they could never be sure about future political conditions. Consequently, many desirable investments might not be made in such a political order. Finally, the possibility of adding or

²² Icmunlimited.com. (2018).

removing weight to people's votes might be highly undesirable, as it is generally assumed to be one of the great merits of the democratic political system that it guarantees certain political rights to every citizen. This indicates that we might have to find a balance between the equal consideration of interests of the members of an association, and other important values.

6. Conclusion

In this paper, I introduced the “Problem of the Changing Demos”. This problem is the potential violation of the principles that justify the adoption of the democratic process that arises when the demos changes after a decision has been made. It was argued that this problem necessarily arises when one implements a democratic decision process according to Dahl's criteria. It was explained that the reason for this are the practical restraints that we face in organizing a democratic process. It was further determined that this problem is relevant within a potentially large number of theoretical frameworks. We then introduced a new version of the Dahl's fifth criterion and an additional sixth criterion that aim to reduce the severity of the POCD. Finally, it was established that these criteria have normative implications on how current phenomena, such as Brexit, should be handled.

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