

The Competency of the Majority
Our Best Chance for the Best Society

By Sterling Lynch

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For Little Palm Beach

“But he has nothing on at all,” said a little child at last.

The Emperor's New Suit.
Hans Christian Andersen, 1837.

It was right in everyone's face, Tyler and I just made it visible.
It was on the tip of everyone's tongue, Tyler and I just gave it a name.

Fight Club.
Screenplay by Jim Uhls.
Based on the book by Chuck Palahniuk.
Dir. David Fincher. Twentieth Century Fox, 1999.

Introduction

“How can society be best organized?” It’s a fundamental question and, among contemporary political philosophers, there are two different kinds of answers.

For some, the aim of inquiry is the identification of the correct moral principle or set of principles with which to organize society. On this view, once the correct principle or principles are identified, society is best organized when its organization accords with the identified principle or principles. For others, the aim of inquiry is the identification of the morally correct practice or practices. On this view, once the correct practice or practices are identified, society is best organized when its organization results from the identified practice or practices.

Although these two approaches are different, they are crucially similar insofar as each approach answers the question of how best to organize society with a claim about the priority of a particular value or set of values and how that priority should be understood in theory and practice. Because claims about the priority of value, and how that priority is to be understood, are precisely the kinds of claims for which it can be expected that there will be intelligent, plausible, and lasting disagreement, it seems to me, these value-based approaches are unhelpful for the realities of an actual living, breathing, reasoning, and believing society of persons. Like claims about the one true religion, I don’t think claims about the one true political morality are a useful answer to the question, “How can society be best organized?”

Instead, I think, a different approach is needed which, at minimum, is not grounded in a claim about the priority of value and, more ambitiously, is not grounded in any claim for which there can be intelligent and plausible disagreement. In what follows, I will identify and defend

such an approach to society's organization -- an epistemic approach grounded in the fundamental insight that what is best can and will only ever be identified by competent human judgment.

The approach to society's organization I propose and defend originates in a claim about the best method for the resolution of disputes. No society exists without disputes and, for this reason, whatever other higher purpose society might serve, society's organization must -- before all else -- make possible the effective resolution of disputes. If all or most disputes are resolved with the best method of dispute resolution available, it can be expected that society's best organization will emerge from the systematic resolution of disputes over time. Furthermore, if the best method of dispute resolution does not depend upon a claim about the priority of value or any claim for which there can be intelligent and plausible disagreement, when society's organization emerges over time from the accumulated decisions of actual disputes resolved in accordance with the identified method of dispute resolution, it will not itself be grounded in or depend upon a claim about the priority of value or any claim for which there can be intelligent or plausible disagreement. If it should happen that society's best organization involves, as a matter of historical fact, some claim about the priority of value or a claim for which there can be intelligent and plausible disagreement, so long as those claims can be challenged and revised in a fashion that accords with the identified method of dispute resolution, society's organization itself can not be said to depend upon those claims.

The notion of dispute resolution I identify and defend is called *populist arbitration*. It works like this: in the event of a dispute between two or more competent persons, a sufficient number of sufficiently competent persons should be nominated to act as an arbitrating tribunal. Each party to the dispute proposes a course of action on how best to resolve the dispute. If a

member of the arbitrating tribunal is unsatisfied with the courses of action proposed by the disputants, she may also propose a course of action. Once all the proposed courses of action are presented to the arbitrating tribunal, a simple majority vote based on a secret ballot will decide which of the proposed courses of action should for the time being win out and be monitored and enforced by all persons. If the parties abide by the decision and the decision is monitored and enforced, the dispute is resolved.

I call the proposed method of dispute resolution ‘populist arbitration’ for two reasons. First, I describe it as an instance of ‘arbitration’ to emphasize that it relies on the *actual* judgments of living breathing persons to resolve the dispute. No non-human entity, structure, or process determines which of the proposed courses of action in a dispute should be favored. Although the decision of the arbitrators may turn on their opinion of what such entities entail, actual human judgment alone ultimately decides the matter. Second, I describe the arbitration as ‘populist’ in order to distinguish it from other forms of arbitration with which it might be confused. By ‘populist’ I mean only that, as a rule, the resolution of disputes should rely on the judgments of more rather than fewer persons of sufficient competency.

In the first chapter, I argue that persons have two good and compelling reasons to employ populist arbitration to resolve disputes, to abide by its outcomes, and to monitor and enforce its outcomes, whether or not they regard the outcome as best. First, all persons in society have an epistemic interest in ensuring that coercion is not employed as a method of dispute resolution and this means that a non-coercive method of dispute resolution must be identified, employed, and enforced. Second, Condorcet’s Jury Theorem demonstrates mathematically that a majority decision based on the independent judgments of a sufficiently large number of sufficiently

competent persons is the best estimation of which of two or more proposed courses of action is the best available. These two reasons, I argue, are sufficient and compelling reasons for persons to employ populist arbitration and to abide by and enforce its outcomes. I also demonstrate that the argument for populist arbitration does not depend upon a claim about the priority of value or any claim for which there can be intelligent or plausible disagreement.

Once my proposal for society's organization is identified and defended, what then? A crucial feature of an epistemic approach to society's organization is that it cannot predict in advance what shape society will eventually take and whatever shape it does take will always be open to further reconsideration. For this reason, the practical task at hand is *not* to predict what society will look like, if it is organized in accordance with the idea of populist arbitration. Instead, the practical task is to identify the changes that can and should be made in society's organization, institutions, and practices to make it possible for more disputes to be resolved in accordance with the idea of populist arbitration. Accordingly, in the second chapter, I identify three changes that can and should be made. First, I recommend that a new institution, modeled on the notion of populist arbitration, should be incorporated into society. Second, I identify how the procedures and practices of contemporary parliamentary democracy can be modified to be in greater accord with the idea of populist arbitration. Third, and finally, I explain how a person can use the notion of populist arbitration when she confronts difficult choices.

1: The Basic Argument.

In this chapter, I outline the argument for my claim that populist arbitration is the best means for the resolution of disputes. I present the argument by considering a series of choices that must be made by the parties to a dispute when they are deciding how best to resolve it. Through a careful consideration of each choice the parties to the dispute must face, and by arguing for what I take to be the best conclusion at each stage, I conclude that the parties have good reason to resolve a dispute by employing populist arbitration, to abide by its outcomes, and that persons not party to the dispute have good reason to monitor and enforce its outcomes. At no stage in the argument do I rely on a claim about the priority of a particular value or set of values and how that priority is to be understood. To conclude this section, I also argue that the argument for populist arbitration is not grounded in any claim for which there can be intelligent and plausible disagreement

This chapter is divided into seven sections. In each section, I consider one choice the parties to a dispute must make when deciding how to resolve a dispute. I always begin with the assumption that the dispute involves only two parties and two proposed courses of action and, then, after drawing a conclusion about which decision the parties have good reason to make, I consider whether or not my argument holds when I drop this assumption. By carefully considering each choice the parties to a dispute must face when deciding how to resolve a dispute, I show that they have good reason to employ, abide by, and enforce the outcomes of populist arbitration.

1.1 What is a party's objective in the resolution of a dispute?

The first choice each party must make with respect to the question of how best to resolve a dispute concerns her aim with respect to its resolution. A party's aim with respect to the resolution of a dispute is determined by her assessment of the merits of her proposed course of action and the merits of the other party's proposed course of action. It is assumed here that a party to a dispute has reasoned carefully and conscientiously and that she has, in good faith, carefully and conscientiously considered the other party's proposed course of action. In these circumstances, there are three categories of assessment relevant to a dispute.

1. a party is sure her proposed course of action is the best available and is sure the other's is not;
2. a party is unsure her proposed course of action is the best available and is sure the other's is not;
3. a party is unsure her proposed course of action is the best available and is unsure the other's is not.

These three categories are the only relevant assessments. The other logical possibilities either entail there is no dispute or are best treated under one of the three identified categories. For example, in any situation where one of the parties is confident that the other person's proposed course of action is the best available, there is no dispute in need of resolution. Alternatively, if a party is confident her proposed course of action is the best available and is unsure that the other's is not, for all practical purposes, this circumstance is rightly subsumed under category one.

For a category one assessment, the party's objective is clear. Because she believes her proposed course of action is the best available, she should aim for it to win out. Another person disagreeing with her proposed course of action does not in itself count as sufficient reason to doubt the veracity of her own judgment. The other person may have only reasoned differently or even incorrectly. For category two, a party's objective is equally clear, if somewhat more complex. She should not want the other party's proposed course of action to win out but she

should accept an outcome in which her own proposed course of action does not win out when sufficient reason is provided to her. As with a category one assessment, another person's judgment that a particular course of action is best does in itself not count as sufficient reason for some other person to regard it as best. Again, the other person may have only reasoned differently or even incorrectly. Because the assessing party is unsure herself about the merits of her own proposed course of action, she should accept any other proposed course of action for which good and compelling reasons are given. In a category three assessment, a party's objective is less obvious but still clear. She should accept an outcome in which either proposed course of action wins out or an outcome in which neither wins whenever sufficient reason is cited.

Based on these three categories of assessment, six different types of disputes can be identified.

Dispute Type	Party A's Assessment	Party B's Assessment
Hard	1	1
B	1	2
C	1	3
D	2	2
E	2	3
Uncertain	3	3

In what follows, the argument for populist arbitration will be specifically addressed to the resolution of hard disputes. These are disputes involving two or more parties who, after careful and conscientious reasoning, draw incompatible judgments about some course of action, and think, all things considered, their proposed course of action is the best available. It is also assumed that some kind of decision must be made about the matter under dispute. I will focus on hard disputes because they seem to me the most difficult to resolve. Also, a convincing proposal

about a method of dispute resolution for hard disputes can be extended to the other kinds of disputes. Consequently, in the argument that follows, it will be assumed that each party's objective for the resolution of the dispute is for her own proposed course of action to win out because she thinks it is the best.

The conclusion that a party should aim for her proposed course of action to win out in a hard dispute because she thinks it is the best available does not change when the dispute involves more than two parties or more than two proposed courses of action. So long as she is certain her proposed course of action is the best available and certain that the others are not, she should always aim for her proposed course of action to win out. If she reasoned carefully and conscientiously, she has every reason to trust her own judgment. When she herself favors more than one course of action, she should aim for whichever course of action she thinks is best overall. When she has two proposed courses of action for which she has equal conviction (as can happen for choices between two goods which are for her incommensurable), so long as she thinks them both better than the other party's proposed course of action, it can still be said, for the purposes of the argument, that she should aim for her proposed course of action to win out because she thinks it is the best available. Because hard disputes remain our present concern, even when there are more than two parties to the dispute or more than two contested courses of action, it remains the case that each party can be said to want her own proposed course of action to win out because she thinks it is the best available.

1.2 Should a party employ coercion to resolve a hard dispute?

The second choice each party must make concerns whether or not to employ coercion (either violent or non-violent) as a means to resolve the dispute. Because a person is sure her

proposed course of action is best, it may seem there is good reason to employ any means necessary to secure it. Furthermore, in some circumstances, the employment of coercion may seem to be a highly effective means to the resolution of a dispute in favor of a proposed course of action. When the balance of power favors one party, when the on-going cooperation of the other party is not required either for the enactment of the proposed course of action or for any other purposes, killing or coercively forcing the acquiescence of the other party seems to be an effective way for the more powerful party to ensure her proposed course of action wins out. The option may even seem entirely warranted when a person's proposed course of action involves something of great value to her and the proposed alternative seems to her particularly heinous.

The employment of coercion to resolve a dispute, however, has serious drawbacks. First, the other party to the dispute may be more powerful than anticipated. When this is the case, the employment of coercion may lead to the death or coercion of the instigating party and this will mean that, from her perspective, the best course of action does not win out and for reasons which are neither convincing nor relevant. An inability to enact the best course of action successfully through coercion is not a good or even relevant reason for the best course of action not to win out. Second, the employment of coercion always involves an element of risk. Misfortune and accidents occur even to the most powerful in circumstances of coercion and violence. Again, the best course of action may, as a consequence, lose out and, again, for no convincing or relevant reason. Third, even when a party is sure she is more powerful and is unlikely to suffer misfortune in the resolution of *this* dispute, in future disputes, she may not be similarly situated. Employing coercion in this instance sets a precedent and may encourage other persons to employ coercion in disputes when she is not so powerfully situated. Using coercion to resolve a dispute now only

increases the chance that in other instances of hard dispute the best course of action will not win out and for reasons which are neither convincing nor relevant -- a person's ability to coerce another's acquiescence on some matter has no connection to the quality of her judgment. So, not only is the employment of coercion an uncertain means by which a party to the dispute can achieve her objective now, but, by contributing to an environment of coercive dispute resolution, she also increases the chance that other proposals about disputed courses of action, regarded by her as the best available (whether they are her own or not), will not win out in the future. The employment of coercion as a method of dispute resolution is always an uncertain means to ensure the best course of action always wins out. Because a party's objective in the resolution of a hard dispute should be to ensure that the best course of action does win out, she has good reason not to employ coercion to resolve the dispute.

Furthermore, coercion is not even an effective means to resolve *all* instances of hard dispute in favor of the best course of action. In some circumstances, for a party's proposed course of action to be enacted, the continued cooperation of the other party is required or, alternatively, her cooperation may be required for other purposes. Killing the other party, in these circumstances, is not a feasible option. Forcing the other party to acquiesce will also be similarly ineffective because her continued cooperation is unlikely unless the coercion and surveillance is constant. This is likely to be costly and unsustainable. Over time, a person may be coerced or trained to acquiesce willingly, but, in the short-term, a party coerced into acquiescence is likely to defect at the first opportunity. The ineffectiveness of coercion for the resolution of disputes that require the on-going cooperation of the other parties also counts against its employment as a method of dispute resolution. Because a party's aim is for the best course of action to win out,

she has no reason to employ a method of dispute resolution which, when successfully employed, may make it impossible for the best course of action to be enacted.

All things considered, I think, the parties have no good reason to employ coercion as a method of dispute resolution. Even in circumstances where one party is clearly more powerful than the other and no further cooperation is required, the employment of coercion creates unnecessary risks. Not only does it in no way guarantee that the best course of action will win out now, it can also be predicted that it is less likely that the best proposed courses of action will win out in the future as well. No party is, after all, likely always to be the most powerful party in a dispute when she is sure she has proposed the best course of action available. Nor can it be assumed, more generally, that the most powerful will always propose the best course of action available in a dispute because there is no connection between the coercive power at one's disposal and the quality of one's judgments. Each party to a dispute, therefore, has good reason not to employ coercion to resolve a dispute because it is an uncertain means to securing the best course of action in a dispute now and in the future.

The decision not to employ coercion as a method of dispute resolution is, I think, crucial. It is this decision that forces the parties to employ a method of dispute resolution acceptable to both of them. So long as both parties think there is good reason to employ coercion as means to the resolution of disputes, there will be little motivation to cooperate on any matter and little reason to expect such cooperation to be sustained or lasting. Notice first, the parties need only agree not to employ coercion specifically for the resolution of disputes. Coercive practices could (if necessary) continue to play a role in other aims and purposes, such as securing peace and security or enforcing the decisions made in the non-coercive resolution of disputes. Notice also,

the parties need not hold each other in any kind of special or moral regard in order to make the decision. Both need only think that the best course of action in a dispute is not likely to be successfully enacted when coercion is employed to resolve it. So, the decision not to employ coercion as a means to the resolution of dispute does not require a claim or common commitment to the priority of any particular value or particular set of values or, a particular understanding of how that priority is to be understood.

There is, however, an asymmetry in the argument against the employment of coercion as a method of dispute resolution. The argument is most compelling when the difference in power between the parties to a dispute is unclear and when the parties involved require each other's on-going cooperation. The argument is less compelling when one party is clearly more powerful, at little risk of accidental misfortune, and does not require the continued cooperation of the other party either for the enactment of her proposed course of action or for other purposes. Although the reasons against the coercive resolution of disputes stand generally, in some particular instances, a party to a dispute may be tempted to employ coercion when she is sure her proposed course of action is the best available. Because all persons have an epistemic interest in ensuring the best course of action regularly wins out in a dispute, all persons should take whatever measures are necessary to prevent its employment in specific instances of dispute. The asymmetry of the argument against coercion indicates the measures that must be taken. The disparity in effective power between the parties must be reduced in disputes and the on-going cooperation of the disputing parties must be encouraged, if not with respect to the specific dispute itself, but, at least, more generally. Only in this way will it be likely that all parties will entirely forgo coercion as a method of dispute resolution. Consequently, measures must be taken

in every society to equalize power relations and to encourage a measure of continued cooperation between the relevant parties that is sufficient to eliminate the possibility of coercion as a method of dispute resolution.

The most challenging aspect of coercion is, of course, the question of how to respond to it when a party to a dispute chooses to employ it. However convincing the reasons against coercion may be, once it is employed reasons and arguments are ineffective against it. In these circumstances, the only answer to coercion is whatever coercion is necessary to contain or subdue the instigator. In these situations, it must always be remembered that coercion is not an appropriate means to the resolution of disputes. So, when a party as a matter of defense overpowers an instigator of coercion, she should not treat this victory as resolving a dispute in favor of some proposed course of action. The inappropriate employment of coercion by one party does not somehow transform coercion into an appropriate method of dispute resolution. Instead, the victory should be characterized as the successful attempt to re-establish the conditions necessary for the appropriate resolution of disputes. At that point, any standing dispute should be resolved according to the appropriate method of dispute resolution.

Dropping the assumption that the dispute involves only two parties or two proposed courses of action strengthens the argument against the employment of coercion as a method of dispute resolution. With more parties involved, it becomes much more difficult for a party to assess her relative power with respect to each person and with respect to potential coalitions. Coercion even in these circumstances may be effective but it will be much riskier and far less certain in disputes involving more than two parties. The overall volatility of a dispute is likely to be increased when it involves more than two parties and this will increase the attendant risk and

uncertainty of coercive methods of dispute resolution. With respect to a dispute that involves more than two proposed courses of action but only two parties, the argument does not require any modifications. Overall, I think the argument against coercion is more compelling when disputes involve more than two parties; nevertheless, as with disputes involving two parties, it is not decisive and measures will need to be taken to reduce the chance coercion is employed in particular instances.

1.3 Should the parties employ a random or an intentional method of selection?

The third choice each party must make concerns how to determine which of the proposed courses of action should be selected to win out in the resolution of the dispute. I argued in the first section that each party has good reason to aim for her proposed course of action to win out because she thinks it the best available. Because each party is already certain her proposed course of action is the best available, each party has reason to adopt the method of dispute resolution most likely to select the course of action she proposes. The surest means to this end is an intentional method of selection that selects a party's proposed course of action because it is hers and for no other reason. Any other method only risks the introduction of unnecessary opportunities for error and, at this stage in the dispute, she already knows the other party cannot be convinced by a further elaboration of the reasons that motivate her proposed course of action. Of course, neither party would accept the other party's preferred version of this method, so neither is appropriate as a means to resolve the dispute. Another approach must be found.

The only way out of this potential stand-off turns on the fact that each party is certain her proposed course of action is the best available. For this reason, both parties have good reason to adopt an intentional method of selection that aims to identify the best course of action. Each

party is certain her proposed course of action is the best available and, for this reason, can be confident that it will be selected by any reliable procedure that aims for the best of those available. Of course, no procedure is perfect and errors are always possible. Because a random method of selection could be employed to select the course of action to win out -- giving both proposals an even chance of being selected -- an intentional method of selection must have a better than even chance of selecting the best course of action. Otherwise, each party will have more reason to adopt a random method of selection because, as a sheer matter of chance, it will be more likely to pick the course of action she already regards as best. Recall, it remains the aim of each party to see her proposed course of action win out because she has concluded, after careful and conscientious reasoning, that it is the best available. So, the parties have good reason to accept a method of selection that aims for the best course of action only when it is more likely than random to do so. On this account, a random method of selection acts, as it were, as the benchmark for the assessment of other methods of selection because it indicates in no uncertain terms the minimum chance a party's course of action has in being selected.

The decision to employ an intentional method of selection that aims for the best course of action also requires the parties to rely on the judgments of some other person or persons to choose between the two proposed courses of action. Any method of selection capable of selecting the best of two courses of action must involve a sophistication of judgment that either depends upon and is, therefore, reducible to the judgment of its designers, or is sophisticated enough to be accorded the same regard as human judgment. Otherwise, the method is rightly treated as random and only of interest to the parties when there is no better alternative. The

resolution of hard disputes must, therefore, *either* be by arbitration *or* by random selection. There is, I think, no middle ground.

To see my point, imagine an incredibly complex super-computer is employed to choose between two courses of action based on an assessment of which of the two is best. There are, I think, three plausible assessments of the computer's decision. The computer's decision either reflects the opinion of its designer because, in accordance with its programming, it selects as she would; or, it is a genuinely independent judgment; or, it renders a decision not actually based on an assessment of the merits of the proposed courses of action and, in effect, randomly chooses one of them. In the first assessment, the parties are better off asking the designers to decide the matter directly or, at any rate, to treat the computer's decision as a kind of proxy expression of the designer's judgment. In the second assessment, the computer's judgment should be treated and assessed as any human judgment would be. So, in either case, whether or not to employ the super-computer turns on the same criteria that would be employed to select persons: does it have a better than even chance of independently judging which of the two proposed courses of action is best? If it does, it is rightly characterized as an act of arbitration; if it does not, it is rightly characterized as an act of random selection. Arbitration or random selection are, I think, the only two methods of selection which can be employed for a method of dispute resolution.

The choice between a random method of selection and arbitration, I've argued, turns on the question of whether or not a person or persons not party to the dispute has a better than even chance of selecting the best course of action. There is an easy temptation here to ask, best according to whose standards? This question is, I think, a red herring. The parties to the dispute are indifferent to how the best course of action is selected so long as the best course of action has

a better than even chance of being selected. Different premises can lead to the same conclusion and the method of selection need not duplicate or mirror the method of selection employed by the parties when they arrived at their own judgments. Indeed, it may even be advantageous if the winning course of action is selected by a method notably different than those employed by the parties to the dispute because a method of selection duplicating or mirroring the method of selection employed by one of the party's could, from the perspective of the other party, be rightly suspected of bias. The nature of the dispute, I think, entails that there is unlikely to be, and, in fact, need not be, any precise agreement with respect to *how* the method of selection arrives at the best course of action, so long as both parties accept that it is more likely than random to do so.

There is another consideration in favor of employing arbitration rather than a random method of selection, which strengthens the argument. Most humans, it is unobjectionable to claim, prefer to control their environment, destinies, and affairs rather than not to control them. Random methods of selection are unlikely to provide the appropriate sense of control. In contrast, arbitration provides each party with the opportunity to win the judgments of the arbitrators based on the merits of her proposed course of action. It counts, therefore, in arbitration's favor that it fosters in the parties a sense of control over their affairs because, whatever an arbitration's outcome may be, the process is something over which a measure of control can be exercised.

Dropping the assumption that the dispute involves only two parties or two proposed course of action strengthens the argument for an intentional method of selection that aims for the best course of action available. Recall, the parties have reason to adopt an intentional method of

selection over a random method of selection only when it offers to each party a better than random chance that her proposed course of action will be selected. When a dispute involves only two parties, a party's random chance of having her course of action selected is even (0.5). When the dispute involves more parties or more proposed courses of action, the chance of a party's proposed course of action being selected decreases as more proposals are added. Consequently, in disputes involving more than two parties or proposed courses of action, the effectiveness required of an arbitration at picking the best course of action available will be even less. For this reason, I think the parties will be more inclined to adopt an intentional method of selection.

1.4 Should the parties rely on the judgments of one, few, or many persons?

The fourth choice each party must make concerns whether the winning course of action should be selected by one, few, or many persons and it is surprisingly straightforward. According to Condorcet's Jury Theorem, a simple majority decision comprised of the independent votes of an odd number of persons who each have a better than even chance of selecting the best of two courses of action, or who have as a group an average chance that is better than even, will select the best course of action more often than one or a few persons of the same average competency. As the number of persons in the voting group increases (assuming those added have *the same* or *greater* competency and the total number remains odd), the likelihood that the majority decision will select the best of the two courses of action increases almost to certainty. For example, an arbitrating tribunal consisting of forty-one persons with a 0.6 chance of selecting the best course of action has a 0.9 chance of selecting the best course of action when a decision between two options is made by majority vote. If more persons *of equal or greater competency are added*, the chance of a simple majority selecting the best course of action always increases. However, it also

follows from the theorem that a majority decision comprised of the independent votes of an odd number of persons who each have a less than even chance of selecting the best of two judgments, or who have as a group an average chance that is less than even, is less likely than an individual with the same competency to select the best course of action and the likelihood will decrease as sufficiently incompetent persons are added until the majority decision is almost certain to get it wrong. Because both parties want the best course of action to be picked, they have good reason to employ the judgments of as many sufficiently competent persons as possible, but not so many that there is a significant risk that average competency will fall below even. In other words, they have good reason to accept and employ as arbitrators any tribunal that consists of whatever number of competent persons is required to insure the tribunal's majority vote is very likely to identify the best course of action in a dispute.

Before turning to a discussion of the standard concerns expressed about Condorcet Jury Theorem, one of its features should be highlighted. The chance that a majority decision will identify the best proposal of those considered does not increase monotonically. This means, when one or only a few sufficiently but less competent persons are added to a small group of much more competent persons, the chance that the majority will identify the best proposal of those under consideration can drop. Nevertheless, as a sufficient number of sufficiently competent persons are added, the chance that the majority decision will identify the best proposal will eventually surpass the majority competency of the smaller but more competent group. Notice, however, in the previous paragraph, I argued that the parties to the dispute have good reason to include more persons only when they are *of the same or greater competency* and I have *not* argued that the parties have reason to include more persons who are less competent. They should

only do *that* when a sufficient number of less but sufficiently competent persons can be added to compensate for the initial decrease in the group's majority decision competency. So if the parties to a dispute have good reason to identify and employ whatever intentional method of dispute resolution is most likely to identify the best course of action of those under consideration, as a general rule, the parties should always prefer to employ the judgment of as many sufficiently competent persons as is possible. The fact that the competence of majority decision does not rise, in every instance that some person is added to the group, does not count as an objection to the general argument in favour of employing -- whenever possible -- the judgments of more rather than one or a few sufficiently competent persons to settle a dispute.

There are four standard concerns expressed about Condorcet's Jury Theorem. The first three relate to the question of a voter's competency and the fourth relates to the theorem's apparent infallibility. I discuss and dismiss each in turn.

The first worry concerns the fact that the Jury Theorem not only indicates those circumstances in which the majority decision is almost certain to pick the best course of action; it also indicates circumstances when it is almost certain it will not: when a sufficiently large tribunal's average competency falls below 0.5. Voter competency, the worry goes, is difficult to assess and, for this reason, some majority decisions, in some instances, will almost certainly be wrong. The reality of this worry cannot be denied, but it is unclear what force it has against the role of majority decisions in arbitration. No method for the selection of the best course of action will ever operate perfectly and, so long as a conscientious effort is made to pick competent arbitrators, the risk of certain error can be largely mitigated. Furthermore, once a vote is taken, the competency of the arbitrators can be estimated based on the outcome of the actual votes. If

60 percent of a sufficiently large number of voters select a particular outcome, this implies that the average competency of each voter must be around .6 if they are correct or around .4 if they are incorrect. At this point, it need only be asked which level of competency is more credible given the question at hand. While this safeguard is not fool proof, it is an important additional piece of evidence which mitigates worries about employing insufficiently competent persons. Of course, the risk of error can never be completely eliminated, but it is a risk, all things considered, which both parties to a dispute can accept. They need, after all, some means to decide how to proceed. Because each party is sure her course of action is the best available, both would prefer a method capable of perfect accuracy but no such method exists. In comparison with a random selection method or a decision based on the judgments of one or few persons, the majority vote of a sufficiently large group of sufficiently competent persons is the best alternative. So long as both parties proceed in full awareness that the majority decision may sometimes not pick the best course of action available, the worry about the chance of certain error is not decisive.

The second worry concerns whether it is even possible for arbitrators to be sufficiently competent to decide the kinds of disputes they will face. Many disputes, especially hard disputes, involve a range of dimensions and issues about which an arbitrator may have different competencies. An arbitrator may be very competent on some issues and less competent on others. The worry is generated by claiming that, overall, no person is ever likely to have a sufficiently high enough aggregate competency to decide some matters and, if this is so, no group will either. There are a number of responses to this worry.

First, if particular disputes involve distinct issues with distinct competencies, the worry can be addressed methodologically. Each dispute can be broken down into its distinct elements

and persons competent with respect to each element employed to decide each of them. There is no reason only one group of persons must be employed to decide all the elements of a complex matter. Second, as the first point suggests, the worry seems to be based on a misunderstanding about how to calculate the tribunal's average competency. The tribunal's competency is not based on the aggregate of each person's overall competency on a range of issues. If a particular decision involves a range of issues involving different competencies, the group's average competency should be calculated for each issue. So long as the group's average on each issue is above .5, then a majority decision by a sufficiently large group should pick the best course of action, even on complex matters. Third, the attempt to discount the plausibility of the Jury Theorem's account of majority decisions involves discounting the plausibility of any person having competency to decide a particularly complex matter. So, the fault lies not with the Theorem but the attempt to reach a decision about an inordinately complex matter. If a particular dispute is this complex, it should be broken down into more manageable elements. If it cannot be, it is a matter about which no judgment should be made because no person is competent to make it. This is not a shortcoming of the Theorem, but only a concession that there are limits to human reason. Notice also, if it is actually the case that there is a distinct class of disputes about which no person is ever sufficiently competent to arbitrate, it means every decision ever made about that class of disputes is always likely to be wrong and that correct decisions for them are only ever identified by chance. However, once it is admitted that more than one person is sufficiently competent to make a decision in the relevant class of disputes, the implications of the Jury Theorem become relevant. All that remains to be done is to take whatever steps are

necessary to create a sufficient number of sufficiently competent persons to arbitrate disputes when they arise.

Third, there is a worry that the competency conditions of the Jury Theorem may be used to exclude persons from participation in the arbitration process, however I fail to see the force of this objection. It is a common and accepted practice for persons to seek out the opinion of those who are thought to be competent and to rely on their judgments. There is nothing peculiar or worrying about a person's desire to rely on only competent judgments when making difficult decisions.

So the worry must be motivated by the thought that the Jury Theorem might be used to justify disenfranchising persons in the everyday practice of democratic politics. Although we are presently only concerned with the arbitration of hard disputes, the worry does not seem particularly relevant to democratic politics either. All democracies exclude some persons from voting based on some account of competency: e.g., children, the mentally ill, non-citizens. Furthermore, the Jury Theorem need not necessarily justify the exclusion and disenfranchisement of persons; it can as easily be used to justify the expenditures necessary to increase the competency of voters and include more of them, because, according to the Jury Theorem, this will increase the likelihood that democratic decisions identify the best course of action. There is, then, no reason to worry that the Jury Theorem necessarily leads to the unnecessary exclusion of persons from the processes of arbitration.

Fourth, there is a worry that the apparent infallibility of the Theorem will be used to justify a culture of conformism. If the majority decisions of a sufficiently large group of

sufficiently competent persons is almost certain to pick the best course of action, the worry goes, individuals will always defer to the outcomes of majority decisions on all matters.

This claim does seem to me to be very plausible. As we have seen, the conditions under which a majority decision is virtually infallible is rarely attained. There may not be a sufficient number of sufficiently competent people to ensure infallibility; or, on some occasions, the parties to the dispute may make incorrect assessments about the competencies of the arbitrators. Furthermore, the parties to the dispute are not looking for a means to settle the question of what to believe but are instead only looking for a means to settle which of the two disputed courses of action should be adopted. The Theorem provides only an intelligible account of why the majority vote of a group of competent voters should be employed to decide which course of action should, for the time being, win out. Each party is prepared to rely on such a vote because each believes it is more likely than random to pick the course of action which she already regards as best, in full awareness that the vote may sometimes get it wrong. Neither party employs it to determine which course of action *is* best. Both parties already know the answer to that question. Of course, for some, the majority decision may count as good evidence to reconsider her beliefs; for others, it may only count as good evidence that the arbitrators were insufficiently competent to pick the best course of action.

Dropping the assumption that the dispute involves only two parties and two proposed courses of action requires a modification of the argument for populist arbitration but, even with these changes, the relevant considerations remain strongly in favor of employing the majority decisions of a sufficient number of sufficiently competent to resolve the dispute. Condorcet's Jury Theorem can be extended to include decisions involving more than two proposed courses of

action, even when voting cycles are present. In its adapted form, a majority decision that favors one course of action over every other is treated as the best *estimation* about which is the best course of action of those considered. Although the chance that the best answer being picked is less certain, it remains, nevertheless, better than random and better than the selection of one or only a few persons. So, even when disputes involve more than two proposed courses of action, the parties will still prefer populist arbitration.

1.5 How should the proceedings of the arbitration be conducted?

The fifth choice each party must make concerns how the process of arbitration is to be conducted. Beyond the fact that the winning course of action will be decided by a majority vote of a sufficient number of sufficiently competent arbitrators, are there any other aspects of the arbitration proceedings that must be strictly defined? There are, I think, only two strict requirements that both parties have good reason to accept.

First, and perhaps most obviously, no form of coercion should be allowed to shape or direct the proceedings. Coercion cannot be expected to improve the likelihood that the best course of action will be selected and it is very likely to diminish this possibility. This means, I think, that great leeway must be given with respect to how each party's proposed course of action is presented to the arbitrators. A party should not be forced to adopt any particular form of expression for the presentation of her proposed course of action, so long as her preferred form does not rely on coercion. Any attempt to stipulate in advance which modes of presentation or forms of reasoning are appropriate could rightly be regarded by either party as an attempt to slant the proceedings in favor of one course of action or the other. Consequently, I think, the parties have good reason to leave the details of the proceedings, as a general rule, almost entirely

unspecified. Some parties to a specific dispute may, of course, agree to adopt particular forms of proceedings if they both agree to them (so long as it does not employ coercion), but I see no good reason to think that all parties must adopt in advance a particular form of proceeding in every case.

On first impression, this recommendation may be worrying. Without strictly imposing a specific form of proceedings, it may seem possible that the arbitration process will be plagued by dishonesty, deceit, and other forms of manipulation. The risk of this, of course, cannot be denied, but, it should also be said, every kind of proceeding is susceptible to some form of manipulation. Nevertheless, there are some considerations which may, I think, address these worries. First, it must be remembered that my present aim is to identify a method of dispute resolution for hard disputes in conditions of diversity. When there are no shared terms of reference, one person's bald-faced lie is another person's well-founded premise. In these conditions, it is implausible to imagine that any particular set of rules, beyond mere platitudes, can be wholly determined in advance of the dispute which will satisfy all the potential perspectives. Second, although a party may always attempt to be deceitful or manipulate the proceedings in some way, there are substantial reasons counting against the employment of such a strategy. Each party knows the decision will be based on the majority decision of competent arbitrators and, in these circumstances, attempting to mislead the arbitrators is only likely to be counter-productive. The arbitrators are, after all, competent and unlikely to be easily misled. She may fool some of the arbitrators but she is unlikely to fool a majority, particularly when she may inadvertently obscure the merits of her proposed course of action through her deceit. Although it cannot be said with absolute certainty, it seems plausible to predict that her proposed course of action is more likely

to be selected when she simply presents it in good faith as the best course of action available.

After all, because she is already sure it is best, she can expect a majority of competent persons to select it. Finally, and most importantly, the presentation of the different courses of action is not itself instrumental to the identification of which is best. The presentations of the proposed course of action will affect the judgments of the individual arbitrators but how they are effected exactly is largely determined by each arbitrator's competency. Ultimately, it is up to each arbitrator to make a judgment based on her competent assessment of the relevant details and this, in the end, is the most important line of defense against deceit and manipulation. So long as each arbitrator is sufficiently competent, sufficiently conscientious, votes independently, and aims to pick the best course of action, a majority vote can still be expected to identify the best course of action even when each party resorts to deceit in the presentation of their proposed course of action.

The second strict requirement is that each arbitrator's vote must be made independently. This is because voting as a block or faction tends to but does not always necessarily reduce the effects of large numbers and therein lowers overall group competency and the chance that the best course of action will be picked. There are limited circumstances in which factional voting can increase the overall competency of the arbitrating tribunal, but the increases are minimal and unlikely to off-set the much greater risk of reduced competency. So, in order to maximize the average competency of the group, and thus its ability to identify the best course of action, the parties have good reason to require that each member of the tribunal vote independently. This does not mean the arbitrators cannot discuss or deliberate about the merits of the different courses of action presented to them, but it does mean that every measure must be taken to ensure

that no pressure is exerted against the arbitrators to vote in blocks or factions. The vote, for example, must be taken according to secret ballot.

With respect to the decision about proceedings, removing the stipulation that the dispute involves only two parties and two disputed courses of action does not greatly effect the conclusion. Including more parties or proposed course of action in the process of arbitration may complicate procedural matters but the parties' motivation for adopting a largely unspecified process of presentation remains unchanged. In some cases, there may be so many parties and contested courses of action in the dispute that a single arbitration proceeding may be unwieldy. Procedural steps will need to be devised to address these practical concerns but, as they are largely technical obstacles, they need not concern us here. One of the great advantages of populist arbitration is, I think, the fact that it can easily accommodate a very large number of different proposed courses of action. It, after all, requires only that competent arbitrators be identified and then presented with the different proposed courses of action and provided with sufficient time to consider the merits of each. This leaves a lot of room for flexibility.

Finally, it should be noted that leaving the details of the proceedings unspecified results in two other features which are highly advantageous. First, notice that no particular description of the dispute needs to be accepted by the parties or the arbitrators for the arbitration to be undertaken. Each party is free to characterize the dispute as she sees fit and she is also free to propose any course of action she thinks best. In other words, so long as all persons exercise their respective judgment in good faith, there needn't be any agreement on the precise nature of the dispute, only that there is a dispute in need of some resolution. The question of whether or not a dispute properly exists can also be settled by populist arbitration. Second, notice also that the

unspecified nature of the proceedings are well-suited to especially complex disputes. So long as no coercive elements are introduced and the independence of each arbitrator's judgment is maintained, the parties and the arbitrators are free to adapt the proceedings in whatever fashion they think will best accommodate the complexities of a particular dispute. For example, the dispute could be divided into a number of sub issues and voted on separately or particular points of order could be settled by a vote of the arbitrators. In other words, by leaving the proceedings formally unspecified, they are easily adapted to accommodate issues of complexity.

And with that, the argument in favor of the conclusion that the parties to a dispute should *employ* populist arbitration is now complete. There is, however, no reason to expect the parties to a dispute to necessarily abide by the outcomes of populist arbitration even if they have good reason to employ it. This is because in every instance of arbitration, one or more of the parties will be sure that the arbitration did not select the best course of action available. Knowing that populist arbitration may sometimes not pick the best course of action, the parties may refuse to abide by it. Moreover, in some instances, the course of action that wins out may involve costs that both parties, even the party who proposed it, would rather not incur. So, persons may choose not to abide by an outcome of populist arbitration in order to shirk its costs. Finally, every party knows that some parties prefer not to abide by any outcome with which she disagrees or considers to be too costly, but will also want all other parties to abide by those outcomes with which she does agree and to incur all the necessary costs. Because it can be expected that some parties will not comply reciprocally in the future, parties may refuse to comply in the here and now. For these reasons, I now consider whether or not the parties have a reason to abide by the outcomes of populist arbitration.

1.6 Should the parties to the dispute abide by the outcomes of populist arbitration?

A party to a dispute has, I think, two reasons to abide by the outcomes of populist arbitration. First, she has an epistemic interest to help create and maintain an environment in which coercion is not employed to resolve disputes and this can only be secured when most parties abide by the outcomes of a non-coercive method of dispute resolution most of the time. Unless it is well known that persons will generally do this, few persons will even bother to participate in the process. She, therefore, has a good reason to abide by its outcomes and incur its costs. Second, although populist arbitration is not a perfect procedure, it nevertheless is more likely to pick the best course of action more often than any other method of dispute resolution and is always likely to pick the best course of action of those available. Because each party has an interest in seeing the best course of action win out as much as possible, she has good reason to abide by and incur the costs of populist arbitration. Overall, it could be said that the epistemic benefits of abiding by the outcomes of populist arbitration outweigh its costs.

Nevertheless, given the advantages to be gained by free riding, I do not think these reasons are sufficient to guarantee the compliance of all parties. Some persons can always be expected not to abide by the outcomes of populist arbitration and shirk its costs whenever possible. This problem is, however, not distinctive to populist arbitration alone. Any social practice involving the coordination of behavior at a cost to those whose behavior is coordinated must also address the problem of compliance.

There are, I think, only two plausible responses to the problem of compliance. First, a party who thinks there is sufficient reason to abide by the outcomes of populist arbitration can abide by them, do nothing else, bear the cost of other person's shirking, and ignore or contain

those who refuse to abide by its outcomes. In doing so, a party sets an example that others may follow and it allows her to identify other persons who are willing to abide by its outcomes. In time, persons who are willing to abide by the decisions eventually identify each other, cooperate together, and exclude or contain those who do not -- until such time as they are prepared to abide by its outcomes. Similarly, a party may choose to abide by the outcomes of populist arbitration but, instead of doing nothing else, she may incur the additional costs of monitoring and enforcing each decision. When a sufficient number of persons assist her, the costs will not be so great and shirking and non-compliance may in time become too costly for most persons. As all persons come to expect the outcomes of populist arbitration to be enforced, they will be less prone to shirk, more prone to abide, and the costs of enforcement and monitoring will eventually decrease.

The important difference between these two approaches concerns the motivations of the persons who abide by the outcomes of populist arbitration and their approach to its enforcement. In the first scenario, the persons identify and form a coalition with other persons who are willing to monitor and enforce the outcomes of populist arbitration based on its independent merits. In this approach, no attempt is made to compel persons to abide by its outcomes. Those who do not comply are ignored, excluded, or contained. The incentives for non-compliers to comply are the benefits of willingly abiding by the outcomes of populist arbitration. In the second scenario, persons identify and form a coalition with persons who are prepared to monitor and enforce the outcomes of populist arbitration and they may do so for reasons that have little to do with its merits. In this approach, an attempt is made to compel persons to abide by its outcomes and, if unsuccessful, those who do not comply are contained and, perhaps, excluded. The incentive for

non-compliers to comply is the elimination of the costs of being coerced and the benefits of willing cooperation and compliance. Which of these two conceptually distinct approaches is likely to be more effective is, I think, largely an empirical question and the successful establishment and employment of populist arbitration is likely to involve dimensions of both.

In any case, the answer to the problem of compliance will, I think, involve and require persons to form a coalition to monitor and to enforce the outcomes of populist arbitration and this answer itself begets another worry. If there is a coalition of persons prepared to, and capable of, enforcing the outcomes of populist arbitration, it is always possible that it might choose to enforce any course of action it wishes. This is the standard worry about the “tyranny of the majority” and it is normally presumed that coalitions will form that are prone to enforce whichever course of action they please. However well-founded the worry may be, the presumption is not. In many instances, particularly given the conditions of diversity, any coalition sufficiently large enough to enforce the outcomes of populist arbitration is unlikely to share many values and interests in common. Furthermore, if most members of the coalition share *only* or *primarily* a willingness to enforce the outcomes of populist arbitration, the coalition is unlikely to enforce courses of action not identified by populist arbitration. Recall, the coalition forms only because its members recognize the epistemic advantages of securing an environment where coercion is not employed to resolve disputes. Because any attempt to enforce courses of action not selected by populist arbitration is unlikely to enact the best courses of action of those available with any reliability, the coalition has good reason not to attempt to enforce whichever outcome it prefers. Finally, any particular coalition is unlikely to last forever and the members of one coalition are under no guarantee to be part of the next coalition and this long term worry may

be sufficient to off-set short term gains. Generally speaking, the arguments against coercion presented in the first section of this chapter remain and can be restated at this level of analysis for coalitions rather than persons. So, whatever the members of a coalition may choose to do, they have good reason to monitor and enforce only those courses of action selected by populist arbitration. Of course, the worry is that the arguments against coercion may be less decisive in light of the certainty of the coalition's power and, because of this, the threat of a permanent coalition prepared to enforce coercively its own judgments about the best courses of action remains an ever present possibility.

If a permanent coalition prepared to enforce whichever course of action it chooses emerges, what then? The minority group or groups have only limited options. First, they can attempt to convince the coalition to enforce only the outcomes of populist arbitration by employing arguments such as those provided in this section. Second, they can employ defensive non-participation, which amounts to ignoring the dominant coalition as much as possible and then employing populist arbitration in their own affairs. Third, they can employ coercion to create an environment of sufficient unrest that the coalition decides that it is better off abiding by and enforcing only the outcomes of populist arbitration. Which of these approaches will prove most effective is an empirical question and largely dependent on the attitudes of those in the coalition and their understanding of their relationship to those who are not. In any case, given the argument against employing coercion as a method of dispute resolution, the principal aim of the minority group can only be the reestablishment of the conditions necessary for the employment of populist arbitration.

With respect to the question of whether or not persons have good reason to abide by the decisions of populist arbitration, dropping the assumption that the dispute involves only two parties and two proposed courses of action does not, I think, change the conclusion. I argued a party has good reason to abide by populist arbitration because she has an epistemic interest to contribute to the creation and maintenance of an environment in which coercion is not employed to resolve disputes and because populist arbitration normally selects the best course of action of those available. These reasons are unaffected when more parties are included in the dispute. However, the inclusion of more parties in the dispute may increase the number of persons who refuse to comply and if this makes monitoring and enforcement too costly, or even impossible, then persons may decide not to abide by its outcomes because of the expectation that few others will as well. Nevertheless, persons who are prepared to bear the short-term costs may still, in time, identify persons who are also willing to abide by its outcomes and exclude those who do not.

1.7 Should persons not party to the dispute enforce the outcomes of populist arbitration?

Even when most persons are willing to abide by populist arbitration's outcomes, the compliance of all persons cannot always be expected and many decisions will normally require some monitoring and enforcement. Otherwise, if it becomes commonly known that non-compliance is possible, the willingness of persons to abide by outcomes of populist arbitration may erode. In this section, I argue that persons not party to the dispute have good reason to enforce the outcomes of populist arbitration.

There are three reasons why a person not party to the dispute cannot be expected necessarily to enforce the outcomes of populist arbitration. First, in every instance of arbitration,

one of the parties to the dispute will insist that the arbitration did not select the best course of action available and persons not party to the dispute may agree. Knowing that the outcomes of populist arbitration may sometimes not pick the best course of action, persons may refuse to enforce it. Second, in many instances, persons not party to the dispute may regard the dispute and its resolution as being of little consequence to them and may prefer not to incur the costs of monitoring and enforcing it. Also, the particular outcomes of populist arbitration may also create indirect costs for persons not party to the dispute. To avoid these costs, persons may choose not to monitor or enforce the outcomes. Third, all persons not party to a dispute know that some persons will prefer not to monitor and enforce some outcomes when they disagree with them or consider them too costly, but will nevertheless want all other parties to monitor and enforce all those outcomes with which they do agree. Knowing that it can be expected that some persons will not monitor and enforce all outcomes in the future, persons not party to a dispute may refuse to monitor and enforce an outcome in the here and now.

There are, I think, three good reasons why all persons not party to the dispute should monitor and enforce the outcomes of populist arbitration. First, all persons have an epistemic interest in ensuring that coercion is not employed as a method of dispute resolution. To ensure coercion is not employed, it is necessary to employ a non-coercive method of dispute resolution regularly and consistently. The only way to ensure it is employed regularly and consistently is if persons monitor and enforce the outcomes of a non-coercive method of dispute resolution, like populist arbitration. Second, populist arbitration is the form of non-coercive arbitration most likely to pick the best course of action of those involved in a dispute. In many instances, because disputes will involve matters about which persons not party to the dispute have little interest or

competency, populist arbitration is the most reliable means to determine which course of action is the best of those available. The efficacy of populist arbitration provides persons not party to the dispute with good reason to trust in its outcomes most of the time. Third, all persons can expect to employ populist arbitration to resolve a dispute at some point and they will expect their own proposed courses of action to win out, assuming in advance that it will be the best available in the dispute. Consequently, because they will want their winning courses of action to be monitored and enforced, they have reason to set a precedent of enforcement in the here and now. For this reason, it makes good sense for persons not party to a dispute to enforce all rather than only some outcomes of populist arbitration.

Admittedly, as convincing as these reasons may be, they may not be sufficient to ensure all persons monitor and enforce the outcomes of populist arbitration but, so long as a sufficient number of persons do so, the employment of populist arbitration will be unaffected. Notice also, it need not always be the same persons who enforce the decisions. So long as there is a sufficient number of persons to enforce a decision, the exact composition can vary over time. There is a risk that persons will grow resentful of those who do not play their part in monitoring and enforcement or that so many persons will choose not to play a part that populist arbitration will cease to be effective. For this reason, there will be an ever present need to remind and encourage other persons to play their part in the monitoring and enforcement of populist arbitration.

With respect to the decision to monitor and enforce the outcomes of populist arbitration, the inclusion of more parties or more proposed courses of action in the process of arbitration does not affect the reasons that a person has to enforce its outcomes. I argued that a person not party to a dispute has three good reasons to enforce its outcomes. First, she has an epistemic

interest to ensure that coercion is not employed as a method of dispute resolution and this can be avoided only when the outcomes of a non-coercive method of dispute resolution is consistently and regularly enforced. Second, populist arbitration is the most reliable means to identify the best course of action in a dispute. Third, she can expect her own proposed courses of action to win out in future disputes when they are the best proposed and she will want them to be monitored and enforced. These reasons, I think, are unaffected by the inclusion of more parties or more contested course of action in the dispute.

1.8 Does Populist Arbitration Depend on Any Claim for Which Intelligent and Plausible Disagreement is Possible?

Notice, no aspect of the basic argument for populist arbitration is grounded in or depends upon a claim about the priority of a particular value or set of values, and how that priority is to be understood. The argument is based solely on epistemic considerations. Accordingly, when all of society's disputes are resolved in accordance with the notion of populist arbitration, its organization can take any shape or form and it will not be grounded in or depend upon any claim about the priority of a particular value.

I consider now whether or not populist arbitration is grounded in *any* claim for which there can be plausible and intelligent disagreement. I identify the six key claims involved in the argument for populist arbitration and I argue that they are uncontroversial. Accordingly, so long as society's organization results from the accumulated decisions of disputes resolved in accordance with the notion of populist arbitration, it will not be grounded in any claim for which there can be intelligent or plausible disagreement.

In order for it to be claimed that the notion of populist arbitration is not grounded in any claim for which there can be intelligent or plausible disagreement, six claims must, be shown to be uncontroversial. They are:

1. How 'best' is defined need not be specified in advance of inquiry into what is or is not best.
2. There can be better and worse courses of action in a dispute.
3. Disputes should be resolved in favor of the best course of action available.
4. A coercive method of dispute resolution is an ineffective way to identify and enact the best course of action.
5. Competent persons (that is, those who have a better than even chance of identifying the best course of action) can be reliably identified.
6. The majority decision of a sufficient number of sufficiently competent persons is always the best estimation of which of two or more courses of action is best.

These are the six key claims involved in the argument for populist arbitration and they must be uncontroversial if it is to be said that populist arbitration is not grounded in any claim for which there can be intelligent and plausible disagreement.

The first claim is that 'best' need not be defined in advance of inquiry into what is or is not best and this is uncontroversial. It should not be understood as implying that persons cannot have views, opinions, and judgments about what is best. It says only that there does not need to be any attempt to specify and reach a consensus about how 'best' is to be understood in advance of inquiry into what is, in fact, best. The very fact that there can be a dispute about which course of action is best indicates that different persons can have different accounts of what is best without it being immediately apparent what is in fact best. The resolution of disputes about what

is best does not require a consensus on how it is to be understood but instead requires only a reliable method for either confirming or falsifying different hypothesis about what is best.

The second claim is that a course of action can be assessed as being better or worse according to some standard—whether that standard exists independently of our knowledge, is socially constructed, or whatever. Indeed, so long as a person is willing to express any kind of preference, view, or judgment about any course of action, she necessarily implies it is possible to make assessments of what is better or worse. The only person who *might* contest the possibility of assessing courses of action as better or worse is someone who adopts a strict relativist-nihilist account of all opinions, judgments, knowledge, etc. Assuming any such view is even coherent, the only appropriate attitude for this person to take is one of total indifference whenever a person assesses a course of action or claims that such an assessment is possible. If she objects to any particular assessment or to the possibility of an assessment being made—in any fashion that is not simply a coincidental exhalation of noisy air—she necessarily acknowledges the possibility of assessing courses of action as better or worse. In other words, even to object to this claim is to confirm it. So, I do not think there can be any plausible or intelligible debate about the claim that courses of action can be assessed as being better or worse. It is unobjectionable.

The third claim is also uncontroversial. A person might at first resist the notion that the best course of action should always win out in the resolution of a dispute but only if she first assumes that what is meant by ‘best’ is predefined or predetermined in advance of inquiry. However, this is not the case in populist arbitration. What is meant by ‘best’ is left entirely unspecified and the process of populist arbitration only produces compelling evidence that one particular course of action is, all things considered, the best available. Insofar as a person has any

judgment about how any dispute should be resolved, she can have no complaint with respect to the effort to favor the best course of action in its resolution. Insofar as she has such a judgment, she admits to thinking there is a best way to resolve it. She might, in a loose use of words, claim that the best course of action should not win out in a dispute and that only the second-best course of action should win out. In saying this, however, she is really only saying that a second-best course of action from the perspective of some persons is, in fact, the overall best course of action for the resolution of the dispute. In saying this, she is admitting that the dispute should be settled according to the best course of action available.

The fourth claim -- that a coercive method of dispute resolution is an ineffective means to identify and enact the best course of action in a dispute -- is uncontroversial. Notice first, to avoid misunderstanding, the claim does not require a denial of any role in society for coercion; it denies only that it has any relevance for the resolution of disputes. Persons who think coercion is necessary for other purposes, such as security and retribution, need not necessarily disagree with this claim. The only persons for whom this claim can be controversial are those who think coercive dispute resolution *is* a reliable means to identify and enact the best course of action. This claim is false. There is no connection between the coercive force at one's disposal and the veracity of one's judgment. The powerful are not necessarily the wise and, even when by chance they are, there are more certain means available to them than coercive force to identify and enact the best course of action. If persons are not swayed by these arguments and are untroubled by the thought of the best course of action losing out for no other reason than a more powerful person or faction preferring a different course of action, there is, I think, really no argument that can change their outlook. So long as these persons never *act* on their views, there

is no meaningful disagreement. If they do act on their views, there is not, properly-speaking, a disagreement but instead only a clash of arms. If the supporters of populist arbitration are more powerful, then, by the standards of those who support the employment of coercion, the dispute is resolved. Of course, by the standards of populist arbitration, the dispute is not resolved. It can only be said that the conditions appropriate for the resolution of a dispute are reestablished. If the question of coercive dispute resolution remains a live one, it should be addressed by populist arbitration.

The fifth claim -- that competent persons can be identified -- is uncontroversial. In order to see this clearly, it needs to be emphasized that it does not follow from this claim that persons will never disagree about who is or is not competent or never disagree about whether there are persons who are sufficiently competent to identify the best course of action for some circumstances. Admitting that the competent can be reliably identified does not entail a denial of the possibility of disagreement over issues of competency. There may be and, in many instances, will very likely be disputes about who is sufficiently competent to arbitrate a dispute and whether or not any person is competent for some particular matter. These disputes, however, concern the question of who is competent not the possibility of identifying the competent, which is what it claimed here. In fact, for there even to be a disagreement about competency, it normally requires that the persons involved accept the notion that the competent can be identified and then carry on to disagree about who is competent. Furthermore, empirically speaking, competency is easily and regularly tested. Certainly, in some cases, the competent are not correctly identified and some persons are wrongly identified as competent but this does not entail the impossibility of identifying the competent. Only the radical skeptic about all knowledge can seriously entertain

the notion that it is impossible for the competent to be identified. If the skeptic expects her claim to be taken seriously by others, however, she must identify herself -- and must be identified by others -- as being more likely to be right than wrong on at least this issue. She must, in other words, identify herself and be identified by others as competent on at least this matter. This implies of course that the competent can be identified in at least one instance and this is all that is required for the claim to be judged uncontroversial. I conclude, then, that no intelligent or plausible disagreement can exist with respect to the possibility that the competent can be reliably identified.

The sixth claim -- that the majority decision of a sufficiently large number of sufficiently competent persons is the best estimation of which of two or more courses of action is best -- is uncontroversial. It is a mathematical consequence of probability and the power of large numbers and there are a number of proofs on record for the Jury Theorem. The only way a person could object to this claim is if she is prepared to call into question the formal practices and conventions of mathematics. While such a position is in principle possible, such disagreement would hardly be intelligent or plausible. Until such time as the Jury Theorem is formally discredited, in a fashion and forum widely accepted by recognized mathematicians, this claim will not be subject to intelligent or plausible dispute.

1.8 Conclusion

In this chapter, I presented the argument defending my claim that populist arbitration is the best method for the resolution of hard disputes. In the first section, I argued that each party involved in a hard dispute has good reason to aim for her proposed course of action to win out when she

thinks it is the best available. Assuming she has reasoned carefully and conscientiously and assuming she has considered the other proposals seriously, she has no reason to doubt the merits of her own competent judgment. Even the disagreement of another competent person is insufficient to count as a reason to doubt her judgment because competent persons sometimes reason differently. In the second section, I argued that a party to a dispute does not have a good reason to employ coercion to resolve disputes even when she is her own proposed course of action is best. Coercive methods of dispute resolution are too risky, uncertain, and ineffective to be employed as a means to ensure the best course of action wins out in the short and long term. This decision is crucial because it forces the parties to identify a method of dispute resolution they both can accept. In the third section, I argued the parties have good reason to employ arbitration because it is very likely to have a better than random chance of selecting the best course of action of those available and this coincides with each party's objective. In the fourth section, I argued that the parties have good reason to employ the majority decision of a sufficient number of sufficiently competent persons because it is the method of arbitration most likely to pick the best course of action of those proposed and, again, this coincides with each party's objective. In the fifth section, I argued that the parties have good reason to leave the details of the proceedings of arbitration largely unspecified, but for two requirements. First, the proceedings cannot be influenced or effected by the employment of coercion; second, the votes of the arbitrators must be made independently by secret ballot. The reasons for this is that each party wants to maximize the power of large numbers in order to increase the likelihood that the best course of action is identified and because neither party will accept any constraint on the proceedings that may bias the procedure towards one outcome or another. This section completed

the argument for the claim that the parties should *employ* populist arbitration. In the sixth section, I argued that the parties to the dispute have good reason to abide by the outcomes of populist arbitration because they have an epistemic interest to avoid an environment in which coercion is employed for the resolution of disputes and because populist arbitration is the non-coercive method most likely to pick the best course of action. Both parties have an interest in achieving both these aims. However, I conceded that this may not be enough to secure full compliance and argued that compliance can be secured only if persons not party to the dispute are prepared to enforce and monitor the outcomes of populist arbitration. In the seventh section, I argued that persons not party to the dispute have good reason to enforce the outcomes of populist arbitration because they have an epistemic interest to help create and sustain an environment in which coercion is not employed for the resolution of disputes, because populist arbitration is the most reliable non-coercive means for determining the best course of action with respect to issues for which they have little interest or competency, and because they can expect their own proposals about the best course of action to be selected by populist arbitration in the future and will want them to be enforced. I conceded that these reasons may not be enough to ensure all persons monitor and enforce all outcomes but argued that so long as a sufficient number do, this poses little risk to the operations of populist arbitration. This completed the basic argument for populist arbitration.

2: Three Recommendations

In this chapter, I examine and discuss three pertinent consequences of my proposed approach to society's organization. An important, and indeed crucial, feature of any historical account of society's organization is that it cannot be known or reliably predicted in advance what shape society's organization will eventually take and whatever shape it does take will always be open to further reconsideration. For this reason, the practical task at hand, now that my proposed approach to society's organization is fully explained and defended, is *not* to predict the shape of society's organization but instead is to identify and recommend changes that can and should be made presently to its organization, institutions, and practices to allow more disputes to be resolved in the appropriate fashion. In this chapter, I make three such recommendations, illustrating the wider and practical relevance of my novel approach to society's organization and to the notion of populist arbitration itself.

2.1 Populist Arbitration as an Institution

An institution, based on the notion of populist arbitration, should be created and employed to resolve disputes between two or more parties. One of the great advantages of an institution of populist arbitration is that it could easily be incorporated into the existing political affairs of any society, whatever its manner and style of government. So long as the parties to the dispute have sufficient resources to participate effectively in the process, a whole range of disputes can easily be left to populist arbitration. The existing government need only create the institutional framework for populist arbitration and be prepared to enforce its outcomes. The transition to incorporate populist arbitration need not be sudden, abrupt, or radical. Governments

can slowly and progressively introduce a range of issues for which populist arbitration is employed.

An institution of populist arbitration may also be the best means for the resolution of disputes in environments where there is no single effective government and insufficient agreement or mutual recognition to establish one. Rather than establishing a provisional and ineffective government, which can be expected to employ coercion to establish its rule in a particular area, the international community is, I think, better off establishing the necessary conditions for the employment of a system of populist arbitration and committing itself to the enforcement of its outcomes. In time, as the outcomes of arbitration are enforced and all persons recognize that arbitration normally selects the best courses of action more often than not, persons may come to abide by and enforce the outcomes of populist arbitration as a matter of course, only refusing to do so in its most extreme failures. Furthermore, it may help establish the mutual recognition necessary for other forms of cooperation, including some form of government. In some environments, say, at the level of interstate relations, a single government may not even be required.

One fact that supports the feasibility of my proposal is the already significant and ever growing interest in the practice of arbitration within and between different persons and groups today. Arbitration is one method, in a range of approaches to dispute resolution, now collectively referred to as Alternative Dispute Resolutions [ADR]. Generally speaking, interest in ADR is motivated by the desire of legal professionals, business executives, and community workers to find more efficient and effective alternatives to costly and lengthy litigation. Arbitration, for the most part, tends to be quicker and less expensive than formal litigation and avoids the difficulties

of overlapping and conflicting legal jurisdictions. Historically, the practice of arbitration has long played an important role in commerce—in particular, international commerce—and it is a common practice for contracts to include a clause stipulating that all relevant disputes between the parties to the contract be settled by arbitration rather than through formal litigation. Arbitration also played, and continues to play, an important role in the resolution of labour-management disputes, particularly in the United States.

Arbitration, as it is commonly practiced today, is straight-forward. In the event of a dispute, two or more parties agree to have the matter decided by an independent and impartial arbitrator or panel of arbitrators. Very often, the requirement of arbitration will be stipulated in the terms of a contract but it can be employed at any time so long as both parties consent. The parties to the disputes are free to set the terms under which the decision is to be made (normally the terms of the contract), to choose the number of arbitrators, to choose who the arbitrators will be, and to choose the procedures to be employed in the course of the arbitration. The parties are also responsible for all the costs of the proceedings, including the fees for the arbitrators. Once the arbitration begins, the arbitrator is given complete control of the proceedings, based upon the agreed terms. Each party presents his claim and the arbitrator(s) is asked to render her decision based on her own judgment, in a way which is consistent with the terms of the arbitration. Usually, the arbitrator is free to decide the matter however she pleases but, in some cases, she must choose one party's proposed course of action over the other. The decision is binding and there are today a number of treaties and conventions which require nations to uphold and enforce arbitration decisions. As a matter of practice, the proceedings and the decisions are normally held in strict confidence between the parties but this need not always be the case.

From the perspective of my argument for populist arbitration, there are four crucial shortcomings with respect to how arbitration is currently practiced. First, and foremost, arbitration as it is practiced today normally employs no more than three arbitrators and this greatly reduces the likelihood that it will identify the best course of action in the resolution of disputes. Second, when more than one person acts as arbitrator, there is no requirement that each independently reach her own judgment and independently vote in favor of a particular course of action and this is also likely to reduce the effectiveness of arbitration in picking the best course of action. Third, arbitration is normally regarded as a personal concern between the parties to the dispute. Decisions are rarely made public and there is virtually no oversight with respect to the quality of the decision. In some disputes, a measure of secrecy is important—say, in disputes about an as of yet unpatented technology but some middle ground, I think, can be found which will allow the identified course of action to be made public and, in some cases, re-arbitrated, without the valuable aspects of secrecy being diminished. Fourth, because arbitration is normally regarded as a personal concern, it is normally paid for by the parties to the disputes themselves. So, arbitration is now only available to those who can afford it. If populist arbitration is, as I have argued, the best method for the resolution of disputes, it is, I think, a very great good which should be provided for in some way that ensures that all persons can participate in its processes either as a party to a dispute or as an arbitrator.

If, in accordance with my recommendations, contemporary arbitration incorporates larger tribunals of sufficiently competent persons who vote independently and the arbitration process is made more accessible to more persons, it can only be expected that its effectiveness will improve and it will be more readily employed by more persons. As arbitration becomes more

commonplace, it can also be expected that there will be a reduced demand on courts. Because of the decrease in demand, the formal processes will become more efficient and less expensive to operate. Furthermore, as persons develop the habit of settling matters themselves through arbitration, it can be expected that there will be less need for a top-down approach to settling disputes in society and there may even be less need for legislators to settle disputes with the creation of new law.

Populist arbitration should, I think, also prove more attractive than conventional approaches to the resolution of disputes with those persons who occupy minority positions in a particular society—whether it be in terms of a specific belief, ideology, culture, or language. For each arbitration, the arbitrating tribunal must be composed of a sufficient number of sufficiently competent persons to ensure it identifies the best course of action. This requirement entails, I think, that any dispute involving a particular minority group within society will require a substantial number of arbitrators who are themselves members of the group. Any arbitrating tribunal that does not include members of the minority group is unlikely to be recognized as being sufficiently competent to resolve the dispute. The equalization of minority influence in populist arbitration should also be more acceptable from the perspective of those who do not regard themselves as part of a particular minority. Within populist arbitration, no effort is made to give any particular perspective special rights or privileges, nor does it require the application of any principles derived from a particular moral view. The balance of influence results naturally from the consistent application of the notion that the best means to the resolution of a dispute requires an tribunal of sufficiently competent persons to decide the matter and nothing more.

Similarly, the unspecified nature of the processes of populist arbitration allows it to be more inclusive than traditional channels of dispute resolution. Although particular conventions about the proceedings of arbitration can be expected over time to coalesce, the unspecified nature of arbitration allows it to be flexible enough to allow alternative forms of communication and reasoning to be adopted by those parties that prefer them. In this way, arbitration may allow persons who are intimidated or excluded by formal litigation processes to advance their proposed courses of action satisfactorily and successfully.

Finally, an institution of populist arbitration is an appropriate avenue through which persons or groups can formally and effectively contest and challenge the decisions of particular governments. Too often, when persons or groups have complaints about the actions of governments and seek redress on some matter, the only avenue open to them are the very processes, practices, and institutions of government which they regard as responsible for the perceived wrong doing they hope to challenge. In many cases, expecting these persons or groups to employ the very processes which, on their view, wronged them not only adds insult to injury but can only create in them a greater sense of alienation. An institution of populist arbitration, because it exists along and outside the normal processes of government, can act as an important and useful alternative. Furthermore, because governments presumably are also committed to abiding by and enforcing only the best courses of action, they have no reason to be reluctant to participate in populist arbitration because its only aim is to identify the best course of action on some matter of dispute. Of course, in actual fact, many governments are in power precisely because they are happy to enforce and benefit from inappropriate courses of action and even well-meaning governments are sufficiently powerful to ignore the outcomes of arbitration if, in

their own judgment, they decide that the particular outcome of a populist arbitration is wrong. However, in these circumstances, the persons or groups who are challenging government will, I think, be in a better position to mobilize the wider global community to exert pressure. Governments will find it more difficult to justify not participating in a process that is most likely to identify the best course of action in a dispute and will find it more difficult to justify not abiding by the outcomes of a procedure that is most likely to identify the best course of action.

The aim of this section has been to illustrate that a institution, designed in accordance with the notion of populist arbitration, is feasible and not merely an instance of speculative fancy. The fact that there is already great interest in the practice of arbitration as an alternative method of dispute resolution is, I think, encouraging and indicates where the work required to bring such an institution into existence should begin. Arbitration, as it is currently practiced, is a long way from the institution of populist arbitration I propose but it is a good place to start. If it evolves in accordance with the notion of populist arbitration, it will become an extremely useful and valuable institution.

2.2 Populist Arbitration and the Operations of Government

Within most western democracies, there is a recognized distinction between a government's legislative function, its executive function, and its judicial function. The legislature is understood to scrutinize proposals for new law and to create law by approving those proposals. The executive is understood to initiate proposals about new law and to administer those proposals once they become law. The judiciary is understood to apply and to interpret the law (which can include the precedents of common law) in particular cases and is sometimes called upon to review the decisions of the other branches of government. In what follows, I examine

and discuss some of the important implications that emerge from an application of the notion of populist arbitration to each of these functions of government. I also consider some of the implications that result from the application of the notion of populist arbitration to the electoral process.

Generally speaking, as a matter of introduction, it can be said that applying the notion of populist arbitration to the question of government and the electoral process has four implications. First, rather than treating the law-making process as a clash of interests, an aggregation of preferences, or as an attempt to identify the common good, it is treated instead as a process through which the best proposals about a government's ends and purposes are identified, achieved, and administered. Second, law-makers are not regarded as governors; instead, they are regarded as competent arbitrators who are charged with the specific task of identifying a government's ends and purposes, how they are to be best achieved, and how they are to be best administered. Members of the legislature and members of the executive, on this view, are to be assessed based not upon their ability to initiate and impose a particular legislative agenda but instead on their ability to propose, identify, and enact the best laws and to administer them effectively. Third, the general aim of government should be to harness, as effectively as possible, the competency of persons through the power of large numbers. This entails placing greater emphasis on the role of the legislative assembly, securing greater independence of judgment for the elected legislators, and employing, where appropriate, the outcomes of expert arbitration and direct referenda. Finally, elections should be treated as a society-wide process of arbitration to determine which candidates are the most *competent* for the specific task of identifying and

administering a government's ends and purposes. These outcomes are illustrated and discussed more thoroughly in what follows.

The Legislature

There are three significant recommendations that emerge when the notion of populist arbitration is applied to the legislative process. First, and most importantly, it requires an end to the habit of block voting along party-lines and any other practice compromising the independent judgment of a legislative member. Second, it suggests a somewhat different approach to the identification and creation of law. Third, it suggests that legislators should rely on the outcomes of expert arbitration or the outcomes of direct referenda—understood as an instance of populist arbitration involving all of society. I discuss each of these recommendations in turn.

First, when the notion of populist arbitration is applied to the legislative process, it is very obvious that the practice of disciplined block-voting should be stopped. The most common form of block-voting is, of course, according to party affiliation. From the perspective of populist arbitration, no other single legislative practice does more to undermine the legislature's effectiveness in determining the best course of action for government and identifying the best laws to be enacted. In almost every instance, block voting can be expected to reduce the legislature's ability to reliably identify the best law. However, this point should not be misconstrued as a call for the abolishment of political parties; it calls only for an end to disciplined block-voting along party or any other lines. In this view, it should not be a condition of party membership and support that a legislator suspend her own best judgment on matters of government in favor of the decisions reached by the policy mechanisms of the party. To this end, I think, it should be made a matter of constitutional principle (and perhaps criminal law) that no

member of the legislature should ever be subject to any form of coercion (or bribery) in order to secure a vote for or against some proposed law. The simplest and most effective way to achieve this end is for all votes in the legislature to be based on a secret ballot. Not only can this be expected to reduce the effectiveness of attempts to enforce party discipline, it should also reduce the effectiveness of certain forms of lobbying and manipulative financial contributions. There will be less incentive to financially support particular candidates in exchange for particular policy outcomes if the legislator can vote however she pleases when the time comes. If it should happen that this proposal creates circumstances in which candidates have insufficient funds to finance election campaigns, some provision will need to be made to finance candidates from government expenditure.

The notion of populist arbitration also suggests a somewhat different process for the proposal and creation of new law. In order to illustrate this point, I will first outline a typical example of the legislative process. I then present an alternative account of the process, based on the notion of populist arbitration. Generally speaking, rather than treating the legislative process as an attempt by a person or a group of persons to enact a particular legislative agenda, it should instead be treated as an instance of arbitration intended to resolve disputes about when and where new law is required and what the law should be. It should also utilize to maximum advantage the benefits of relying on the majority decisions of a sufficient number of sufficiently competent legislators—this being the best way to identify the best law of those proposed.

Roughly speaking, the normal procedure for the creation of new law is as follows. The executive identifies a need for legislation, drafts a bill to fill that need, and then introduces it to the legislature, explaining why the legislation is needed and what is to be achieved in enacting it.

Once introduced, after some period of time in which legislators independently consider the merits of the bill, it is formally scrutinized and discussed for the first time. Debate, at this stage, focuses on whether or not the bill warrants further consideration. If the legislature thinks the bill warrants further consideration, it is sent to a committee for more detailed scrutiny and analysis. The committee hears submissions from the public and makes recommendations with respect to amendments to the proposed bill. The bill returns to the legislature for further consideration. On this occasion, the principles of the bill are scrutinized and it is determined whether or not a commitment to the passage of the bill should be made. The amendments proposed by the committee are considered and either accepted or rejected. If the bill receives a majority decision in its favor, the bill then proceeds to a committee of the whole legislature, which involves every legislator. The bill receives further scrutiny, further amendments are proposed, and they may or may not be incorporated into the bill. The bill is considered one last time and a vote is taken on whether or not it should become law. If a bill receives a majority vote, and the government does not involve a second legislative chamber, it becomes law after some formal ceremony of enactment.

Roughly speaking, the legislative process, if modified according to the notion of populist arbitration, should look something like this. First, instead of relying on the executive to determine legislative priorities, a majority decision of the legislature should be used to identify them. To this end, any member of the legislature should be allowed to make a proposal regarding new law. Each such proposal should be given equal regard and consideration and the legislature asked to consider which proposal warrants immediate attention. A majority vote will decide which matter receives first consideration. Second, once a proposal for new legislation is

identified, invitations should be extended to all members of the legislature to propose and present bills appropriate for the matter under consideration. At this point, the merits and demerits of each bill should be examined and the reasons for and against each bill discussed. After some appropriate time for debate, the revision of proposed bills, and the introduction of alternative bills, a vote should be taken to determine which of the bills should be allowed to carry onto the committee stage. Each bill should be voted on separately and each bill that receives the support of a majority should proceed to committee. Once each bill has undergone committee scrutiny, they should each be considered again by the whole legislature. After some period of time for debate and amendment, each legislator should vote for whichever bill she thinks, in her own best judgment, is the best bill of those available for the matter under consideration. Whichever bill receives a majority vote will then become law. Each and every vote should be taken by secret ballot

To reiterate, the principal advantage of the proposed legislative process is its reliance on the majority decisions of a sufficient number of sufficiently competent persons. When the executive proposes a bill, based on the judgment of one or only a few of her ministers, there is, I think, insufficient reason for a competent person to believe that the matter actually warrants new legislation, that the matter warrants it now, or that the general principles and approach of the proposed bill is the best available for the matter under consideration (assuming that, in her considered judgment, she disagrees with the executive's decision on these matters). So, even after the bill has undergone a series of amendments, there is insufficient reason to believe it is a bill that even warrants attention -- let alone is the best bill for the proposed matter. However, if at each stage of the legislative process the decisions are settled by the majority decisions of all the

legislators, there is substantial reason to accept the outcome as the best available (assuming, of course, the legislators are not block-voting according to party-line or any other affiliation). Furthermore, this approach allows a number of different bills on the same matter to be examined concurrently, thereby allowing genuine alternatives to be properly considered. By relying on the majority decisions of the legislators to direct the legislative process, and by selecting between a number of well-considered proposals, it can be expected that the best legislation will be much more likely to be enacted.

On this view, it will also be expected that the legislators will sometimes be required to admit that they are insufficiently competent or that the legislative assembly has an insufficient number of persons to decide some issues of policy. Such an admission could arise because the technical issues of some policy are too complex or because the majority decision is so close that it is less than certain that the best law has been identified. In these situations, the legislature has two options. Either they can appoint a sufficient number of sufficiently competent experts to decide the matter or they can rely on the power of the general electorate's very large numbers and call a referendum on the issue. In either case, the increased competency of the experts or the power of the electorate's very large numbers should decisively settle the matter for the time being.

The Executive

The notion of populist arbitration significantly reduces the influence and power of the executive in the legislative process. The reason for this is simple. In virtually every case, a decision reached by the majority vote of a sufficient number of sufficiently competent persons is almost always more likely to pick the best outcome than a decision reached by one or a few

competent persons. Most contemporary legislatures are sufficiently large that when the legislators are sufficiently competent, majority decisions should count as good evidence that the best outcome on some matter has been selected. The executive may propose legislation but her proposals should receive no more consideration than those proposed by any other legislator. On this account, the principal and primary function of the executive is to administrate the law and to act as a society's representative in its interactions with other societies, governments, and peoples.

If the executive is not independently elected, her appointment should be decided by a majority decision of the legislature. Any number of persons may be nominated but a majority decision should determine who is selected. Her ministers should also be similarly nominated and elected. Once elected, the executive and ministers should only be removed in instances of gross negligence or incompetence. To this end, the legislature should devise and select (in a manner consistent with the legislative process) a set of guidelines in accordance with which the ministers must act. If the executive is independently elected, her ministers should also be selected by a majority decision of the legislature. Again, guidelines for conduct should be devised and selected for them by the legislature.

The Judiciary

With respect to the day to day operations of the judiciary, the notion of populist arbitration recommends that decisions about the application of the law be decided by the majority decision of as many competent judges as is practically feasible rather than the decision of only one. One advantage of the technical and focused nature of judicial decisions is that, in principle, each judge may be so competent that only a small panel of judges may be required to ensure the best results. However, as the decisions become more complex, and less definitive,

every effort should be made to settle questions about the application of law by the majority decision of a significant number of judges, in a manner corresponding to the legislative process previously described. Finally, whenever existing law is insufficient to resolve a particular case, judges should refrain from making a decision and instead direct the matter to the legislature for resolution. The motivation for this deferral is that the large numbers of the legislature put it in better position to identify the best way to address the oversight in law.

Significantly, I think, the notion of populist arbitration does not accord well with the kind of judicial review permitted under the Constitution of the United States and the Constitution of Canada. According to these constitutions, the Supreme Court of the judiciary is entitled to revoke a bill's status as law when it is found to violate a particular set of legislative constraints outlined in the written constitution. The discordance with the notion of populist arbitration lies not with a society's decision to commit itself to a set of constitutional constraints on legislative practice. So long as those constraints are identified by some process consistent with the notion of populist arbitration and so long as they can be amended in a similar fashion, no conflict exists. Rather, the discordance lies with the decision to entrust the determination of whether or not a particular bill accords with those constraints to a small tribunal of legal experts. The notion of populist arbitration indicates that a majority decision of the legislature is much more likely than the majority decision of a small panel of judges to identify correctly whether or not a particular law accords with the constitutional constraints. So, at the level of ideal theory, where all persons are assumed to act in good faith, the notion of judicial review is strictly unnecessary and even inappropriate. However, even at the level of everyday practice, there is little reason to think

(except for historical prejudice) that legislators are any more prone not to act in good faith than the men and women of a Supreme Court.

The point to emphasize here is that, from the perspective of populist arbitration, the question of whether or not it is appropriate for the legislative process to include independent judicial oversight turns on issues of competency and effectiveness and not on the question of whether or not the practice accords with some moral ideal of democratic practice. So, if it is the case that the surest way to the best legislation is for the legislative process to include an element of oversight by an independent body that assesses whether or not a particular law accords with a set of constitutional constraints, the composition of that body should be determined in accordance with considerations of competency. The only question is whether it should be a significant number of sufficiently competent persons, a sufficient but smaller number of highly competent legal experts, or a limited number of highly competent legal experts.

Straightforwardly, it should be an assembly composed of as many competent persons as is possible and this seems to imply an assembly of legal experts. However, if the assembly is sufficiently large, an assembly of non-experts may also be more likely to identify the best judgment. Clearly, the least likely candidate of these options is the small number of legal experts who normally sit on a Supreme Court. Therefore, by the lights of populist arbitration, the current practice of judicial review is far less than ideal and, at the very least, the number of judges included on a Supreme Court should be significantly increased.

The Electoral Process

Normally, two different normative models of voting are distinguished. Voters are expected to vote either in accordance with their individual preferences (whatever they may be) or

in accordance with their best judgments about the common good. Unfortunately, these models are often discussed in a fashion which assumes the voters vote directly on policy. Of course, in a representative democracy, the electorate almost never vote directly on policy and normally choose between candidates who endorse a number of different policies, not all of which need even be consistently related. So, it is unclear, as these models are normally presented, whether a person votes for the candidate she prefers or for a particular policy endorsed by that candidate. Similarly, does she vote for a person who is more likely to identify the common good or does she vote for a particular policy endorsed by a candidate that accords with her own judgment about the common good? This in turn, I think, leads only to confusion about the nature of an election and the status of the policies discussed in the course of the election. Is an election an opportunity for a candidate to demonstrate to the electorate that she is more likely to advance the particular preferences or judgments of different voters in society or is it an opportunity to present a slate of policies which corresponds to the preferences or judgments of the electorate? This confusion also extends to questions about a candidate's conduct once elected. Is a candidate to vote according to her own preferences or judgments, according to the preferences or judgments of those who elected her, according to the preferences or judgments of the whole electorate, or should she only vote in favor of those policies she explicitly endorsed in the election? A third model of voting is suggested by the notion of populist arbitration and it, I think, cuts through some of the confusion.

In this view, an election is a society-wide process of arbitration to determine which candidates are the most *competent* for the specific task of identifying a government's ends and purposes, how they are to be best achieved, and how they are best administered. Voters, in this view, are expected to vote according only to their own best judgment about which candidate is

the most competent to run government effectively and an election campaign represents the efforts of the candidates to demonstrate to the electorate their competency for office by offering and defending a variety of proposals about which courses of actions should be undertaken by the government. Rather than acting as promises to be fulfilled, the policy proposals should be treated only as evidence of the competency of the candidates. There are two reasons for this. The main reason is that an election is not an adequate forum for the careful consideration of the merits of all the various proposed policy initiatives and so cannot be counted as genuine arbitration of their merits. Furthermore, since any one candidate defends a number of policy proposals, it is virtually impossible to discern which policy a particular voter is supporting with her vote. The secondary reason is that the candidates themselves cannot yet know whether or not their proposals are in fact the best available. New and important information may only come to light once a legislator is in government and other circumstances may of course change over time. Once elected, a legislator's only aim should be to apply her own best judgment with respect to each new policy proposal and it is the legislative process itself, on this view, that determines which of them is most likely to be best.

Consequently, it is much less troubling if the electorate never know how a particular candidate votes on a particular policy. A legislator, on this account, is not expected to know in advance all the best answers and, like everyone else, will only have sufficient evidence to support one policy or another at the end of the legislative process. A legislator's performance will be assessed not on her ability to implement a specific legislative agenda or on her ability to know in advance which policies will be selected by the legislative process; instead, it is assessed on how well and how much she contributes to the legislative process. Are her contributions

insightful and productive? Does she regularly participate in all aspects of the legislative process? Is she responsive and attentive to the expressed concerns of the electorate? Is she well informed on the technical issues of policy? These are, from the perspective of populist arbitration, the sort of considerations upon which the electorate should assess the past and present performance of legislators.

6.3 Populist Arbitration and Difficult Choices.

Very often, a person will find herself in a situation where she faces a difficult choice. In some circumstances, it may be because the choice involves new or unfamiliar considerations; in others, it may be because even after careful and conscientious reasoning, no single course of action seems definitively right or wrong; in others, it may be because she is forced by circumstance to choose between two incommensurable goods (or evils). In these circumstances, it is important for persons to have some sense of how to identify the best course of action and the idea of populist arbitration provides a suitable model for how best to proceed.

Whenever a person confronts a difficult choice for which there is no easy answer, she should first determine what she takes to be the most intelligent and plausible courses of action available to her. Then, she should identify and consult as many sufficiently competent persons as she can about the choice in question. She should present to each person she consults her proposed courses of action and ask each person to express a judgment about which course of action is best. If, at any time, a different course of action is proposed, or an already proposed course of action is proposed again on different considerations, the person facing the decision should include these new proposals in future consultations and wherever possible present them to previously consulted persons. Once a person has consulted as many competent persons as she

can (and the more the better), whichever course of action that receives a majority decision is the one, all things considered, she has good reason to pursue. If she consults a sufficient number of sufficiently competent persons, she has good (but not decisive) reason to regard the selected course of action as the best course of action available to her. At that stage, based on the more or less reliable evidence she has received (which depends on the number and competency of the persons consulted), she must decide for herself which course of action to pursue, for whichever reasons she thinks best. Once a particular course of action is adopted, she should persevere with it until such time as she has sufficient new experience and considerations to justify employing a new course of action. At this stage, what was once thought to be a difficult choice may no longer be so difficult and another consultation may not be required. If it remains a difficult choice for her, she should undertake another consultation.

Of course, in many instances, there will be little or no time for such an extensive consultation. Difficult choices, after all, often occur in circumstances of great urgency. Because circumstances of urgency almost always preclude the possibility of employing the appropriate procedure for making a difficult choice, it follows that difficult choices whenever possible should not be made in these circumstances. When confronted with a difficult choice, a person should make every effort to find time for unhurried reflection and for a comprehensive consultation process. By following only this recommendation, a person can expect to make far fewer poor choices. Unfortunately, the realities of life sometimes demand urgent decisions for difficult choices. The best response to this difficulty is, I think, for a person to prepare herself for difficult choices in a way which accords with the notion of populist arbitration. According to this proposal, persons should prepare themselves for difficult choices by identifying and examining

actual instances of difficult choice and the choices made by persons facing them; the aim and purpose of this sort of inquiry is to facilitate the development of the requisite skills, experience, and knowledge for making competent choices, even when such decisions must be made in conditions of urgency.

The process, in outline, looks something like this. A person can either begin with a difficult choice expressed in abstract and general terms and then identify and examine actual instances of difficult choice which correspond to it, or she can begin with an actual difficult choice with which she is familiar (say, from her own experience or from the experience of others) and then identify and examine other instances of choice corresponding to it. For example, she might ask herself, under what conditions is it appropriate to deny a person aid and then carry on to seek out actual instances of difficult choice corresponding to this question, or she could begin with a particular experience when she refused to give aid to a person and then carry on to identify and examine other instances where persons faced the same choice. For each identified instance of difficult choice, the persons should identify the course of action taken, the considerations upon which the decision was made explicitly, considerations that may have inadvertently played a role, other considerations that might have been overlooked or could have been weighted differently, other courses of action which were considered and the reasons motivating their rejection, and, finally, other courses of action not considered. The ruling idea is to employ documented instances of difficult choice in a fashion which mirrors the consultation process. Once a person has determined the course of action she thinks best, she should then consult as many sufficiently competent persons as she can about her decision. A person who conducts such an inquiry, in good faith, on a number of pertinent issues can be expected to be in

a good position to make better rather than worse decisions in the face of difficult choices because she will have developed the relevant competencies and acquired useful and relevant information. There will, of course, be no guarantee that the best decision will be made but no amount of preparation can guarantee that.

One of the features of human experience thrown into relief by the proposed consultation process is the fact that very few persons, if any, are likely to know a sufficient number of persons sufficiently well to employ them as competent consultants on how to proceed in the face of some instance of difficult choice. In order to incorporate the proposed consultation process into one's actual life, most persons, I suspect, would be required not only to increase the number of their social relations but also, in many cases, to improve the quality of them as well. The consultation process recommends not only that we know many persons but that we know them sufficiently well to be able to assess their competency and to be able to trust them with knowledge of our affairs. So, in all likelihood, if persons adopt the consultation process I propose, they will be required to substantially increase their engagement with their wider community, either formally or informally. It may even require the development of specialized civic associations formed exclusively for the purpose of bringing together persons to act as consultants to each other. So, of all the applications for populist arbitration considered so far, it is this one I consider the most radical. Nevertheless, if these practices are adopted by most persons, society's organization will I think be well served by it.

2.4 Conclusion

In this chapter, I discussed and examined, the three most pertinent consequences of my proposed approach to society's organization. My aim has been to illustrate the wider and practical

relevance of both my approach to society's organization and to the notion of populist arbitration itself. In the first section, I examined and discussed how the notion of populist arbitration can be employed as a blueprint for the development of a new kind of institution within society. The fact that there is already great interest in the practice of arbitration as an alternative method of dispute resolution is, I think, encouraging and indicates where the work required to bring such an institution into existence should begin. In the second section, I examined and discussed how the notion of populist arbitration could be used to re-think the processes and practices of government. Generally speaking, the application of the notion of populist arbitration to the question of government and the electoral process has three implications. First, the law-making process should be treated as a process through which the best proposals about a government's ends and purposes are identified, achieved, and administered; Second, law-makers should be regarded as competent arbitrators charged with the specific task of identifying a government's ends and purposes, how they are to be best achieved, and how they are to be best administered. Third, the general aim of governmental processes should be to harness, as effectively as possible, the competency of law-makers through the power of large numbers. This entails greater emphasis on the role of the legislative assembly, securing greater independence of judgment for the elected legislators, and employing, where appropriate, the outcomes of expert arbitration and referenda. Finally, elections should be regarded as a society-wide process of arbitration to determine which candidates are the most *competent* for the specific task of identifying a government's ends and purposes, how they are to be best achieved, and best administered. In the third and final section, I discussed how the notion of populist arbitration might be employed to model a personal-decision procedure with respect to how to proceed in the face of difficult

choices. I suggested that a person should secure the advice of others in a fashion which mimics the process of populist arbitration and I also suggested a method by which a person can prepare herself for instances of difficult choice.

3. Conclusion

In this book, I identified, articulated and defended a novel approach to society's organization, importantly different from the dominant approaches in contemporary philosophy. Rather than grounding society's organization in a claim about the priority of value, the approach I defended grounds society's organization in a claim about the best method for the resolution of disputes. No society exists without dispute and, for this reason, whatever other higher purposes it might serve, society's organization must, before all else, make possible the effective resolution of disputes.

This entails offering a justification of one method of dispute resolution rather than another. In my account, society's organization should arise out of the accumulated decisions of disputes resolved in accordance with the method of dispute resolution persons have good, convincing, and relevant reasons to employ, abide by, and enforce. I argued that the best method for the resolution of disputes is populist arbitration because all persons have an epistemic interest in ensuring that coercion is not employed as a method of dispute resolution and because Condorcet's Jury Theorem demonstrates mathematically that a majority decision based on the independent judgments of a sufficiently large number of sufficiently competent persons is always the best estimation of which of two or more proposed courses of action is the best available. Looking to the future, it can be said that having defended this epistemic approach to society's organization, the task ahead is to determine how best to realize the approach in practical terms and how best to bring about a society that is organized in accordance with the accumulated decisions of competent human judgment alone.

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