

Strange Bedfellows: The Political Thought Of John C. Calhoun And Lani Guinier

Fred McBride

Clark Atlanta University

It is ironic that two very different personalities with very different purposes can espouse the similar ideas about democracy. The focus of this research is to explore the political ideas of both Lani Guinier and John C. Calhoun with reference to democracy and the majority rule principle. Particular research questions are: 1) What is the problem with majority rule? 2) What are the solutions to the majority rule problem as prescribed by Calhoun and Guinier? 3) What are the consequences of these solutions? 4) Are either proposals or suggestions in the best interest of democracy?

INTRODUCTION

Paul Gigot of the Wall Street Journal described Lani Guinier, President Bill Clinton's nominee for Assistant Attorney General in charge of the Civil Rights Division of the Department of Justice as, "....the reincarnation of John C. Calhoun....better qualified for the Bosnian desk at State than at civil rights as justice....profoundly antidemocratic....they [views] amount to a racial apartheid system."¹ This criticism along with a host of others created a staunch media and political uproar which resulted in President Clinton's withdrawal of her nomination without the option of at least appearing before the U.S. Senate committee.

An important aspect of the Guinier incident is the intellectual literature and debates surrounding democracy and the majority rule principle. Guinier advocates a system which limits majority rule, winner-take-all concept, and provides the minority a powerful voice and option to severely halt any impending legislation which may affect that minority. This similar type of

¹Lani Guinier, Tyranny of the Majority: Fundamental Fairness in Representative Democracy, (N.Y.: The Free Press, 1994), IX.

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Clark Atlanta University, Department of Political Science
Atlanta, Georgia 30314

system was advocated by John C. Calhoun in the 19th century. Both advocate protecting minority rights and halting or preventing the abuse of tyrannical majorities.²

For John Dewey, democracy is a necessary way of life for individuals to live among each other, advocating societal goals and pursuing interests which allow them to develop as full individuals.³ Some aspects of democracy include: universal suffrage, elections, responsiveness to citizens, individual freedom, capitalism, limited government, etc.

Indirect democracy, or representative democracy, is the institutional arrangement by which individuals engage in a competitive struggle for the power to make political decisions on behalf of citizens.⁴ Theorists of representative democracy include B.R. Berelson, R.A. Dahl, G. Sartori, and H. Eckstein.⁵ Dahl, for example, believed it more favorable for citizens to exert a relatively high degree of control over leaders rather than participate directly in the control of the state. This system, sometimes referred to as an elite system, encourages competition among leaders for people's votes, allows limited participation by the masses, and assumes that direct democracy is unattractive and unrealistic.⁶

Other literature involving the theory of representative democracy centers

²Minority for Guinier means basically racial and ethnic minorities. For Calhoun, the minority was a group whose views were not considered, or taken into account. An example would be southern states in the debate concerning the permanence of slavery.

³From J. Dewey, "Democracy and Educational Administration," Intelligence in the Modern World in Carl Cohen, ed. Communism, Fascism, Democracy: The Theoretical Foundations (N.Y.:Random House, 1962), 578.

⁴James Q. Wilson. American Government. 4th Edition, (Mass:D.C. Heath Publishing Co., 1980), 68.

⁵See B.R. Berelson, "Democratic Theory and Public Opinion," Public Opinion Quarterly 16 (1952), 313-330; R.A. Dahl, Modern Political Analysis (Englewood Cliffs, N.J.:Princeton-Hall, 1963); G. Sartori, Democratic Theory (Detroit: Wayne State University Press, 1962); H. Eckstein, "A Theory of Stable Democracy," Division and Cohesion in Democracy (Princeton, N.J.:Princeton University Press, 1966), appendix B.

⁶Demetrius Iatridis, Social Policy: Institutional Context and Social Development and Human Services, (Pacific Grove, CA: Brooks/Cole Publishing Co., 1994), 91-92.

on criticisms and support of both models; direct and indirect democracy, criticism and support of pluralism and elite theories, and the nature of representation. For instance, in The Second Treatise of Government, John Locke argued that elected representatives should be delegates. To further, he states, "....the whole power of the community naturally in them, may employ all that power in making laws for the community from time to time, and executing those laws by officers of their own appointing; and then the form of government is a perfect democracy."⁷

Another view involves how elected members of Congress should best represent the voters. Arguments range from representatives serving the "majority" in their districts to representatives acting in the best interest of the nation. Edmund Burke in his "Speech to the Electors of Bristol on Being Elected" (November 1774) supports the latter by stating, "Parliament is not a congress of ambassadors from different and hostile interests each must maintain....but is a deliberative assembly of one nation, with one interest, that of the whole; where, not local prejudices ought to guide but the general good resulting from the general reason of the whole."⁸

Also with reference to the nature of representation, Alexander Hamilton argued in Federalist No. 35⁹ that the actual representation of all classes of people need not include persons of each class. Hamilton believed the need to win votes would motivate individuals to adequately represent the interest of all groups. This conservative view of representation can be further articulated by James Madison and other federalists. They argued for a strong representative national government with separation of powers and federalism. Opponents, the anti-federalists, believed liberty was secure in a small republic where rulers were close to the ruled. They believed that a national government would be distant from the people. The federalist view relied on a general distrust of the people and a fear of a tyrannical majority. Representation, as originally based in the Constitution, only allowed popular elections for the House of Representatives, not the Senate. Debates during the constitutional convention centered on a distrust of the people as well as

⁷ John Locke, Second Treatise of Government, ed. C.B. Macpherson (Indianapolis, IN: Hackett Publishing Co., 1980), 68.

⁸ See Jay M. Shafritz and Lee S. Weinberg, Classics in American Government (Belmont, CA: Wadsworth Publishing Co., 1994), 254.

⁹ See Gary Wills, ed. The Federalist Papers, (N.Y.: Bantam Books, 1982).

the belief that a general public lacked virtue and would be guided by their passions. In The Federalist Papers Madison, Hamilton, and Jay in an attempt to secure ratification of the new constitution, forged the idea that the people's interest would be articulated and the system would provide safeguards or "checks" for the balance of power.

This balance of power begins a discussion of what Alexis de Tocqueville views as consisting of the very essence of democratic government; absolute sovereignty of the majority. It has been argued by many that a government by the people is not necessarily a government for the people. Alexis de Tocqueville, a French nobleman, came to America to study the functions and processes of democracy. One of his most famous observances was that democracy did not favor the prosperity of all, but those of the greatest number; the majority. For de Tocqueville, society is formed by those professing the same opinions, then small assemblies develop representing only a fraction of society [minority] and challenge those in the majority. When a particular assembly becomes dominant [majority] it infiltrates society and controls and maintains power and force. The minority must continue to form associations and oppose the oppressive forces over them. The moral authority of the majority rests on the belief that there is more intelligence and wisdom among those greater in number, and that the interests of the many are preferred to those of the few. Thus, the majority becomes tyrannical. The minority consists of groups taking a position whose views are not taken into account and whose views usually lose.¹⁰

This helps to explain the problem of mass society. By this, under the conditions of democracy people free themselves from domination of local elites and institutions which previously were considered oppressive and focusing on the status quo. Thus, a dichotomous relationship resulted where people/individuals aligned against the state. In this situation one of two possibilities occur: 1) arbitrary authority, or 2) chaos/anarchy. The best solution is to form intermediate and local associations designed to provide a sense of identity and stability.

James Madison in writing about majority tyranny states, "the accumulation of all powers in the same hands whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be

¹⁰Richard D. Heffner, ed. Alexis de Tocqueville Democracy in America, (N.Y.: The New American Library, 1956).

pronounced the very definition of tyranny."¹¹ For Madison, the majority may act in its own self-interest and not represent the interest of all. To prevent this majority tyranny Madison advocated both a system of checks and balances and federalism. An elaborate system of checks and balances would allow all branches of government to check, or monitor the other branches; thereby sharing some responsibilities and preventing the abuse of power. In Federalist No. 10 Madison writes that federalism halts tyranny because, for example, the relations between the federal government and state governments can prevent political factions from pervading the whole body of the Union, though it may gain influence in a particular state.¹²

De Tocqueville, in believing that a social power will always dominate over another advocated "checks" in power as well as an independent press to provide a voice to appeal from oppression, decentralization to diminish absolute authority and give free men a stake in their society and a sense of responsibility and self-importance, forms, manners, and traditions to protect freedoms, and a legal profession and judiciary to uphold these forms, manners, and traditions.¹³

These efforts, designed to impede tyrannical majorities, prevent the abuse of power advocated against minorities, minority opinion, and individuals. For John Stuart Mill, like others mentioned, precautions were needed to protect the abuse of power by majorities. In particular, Mills was suspicious of the masses and sought to prevent tyranny against individual liberty (thought, feeling, freedom of opinion, scientific, theological, moral, etc.).¹⁴ Individuals should be allowed to express opinions, contradict and even disprove those opinions. Opinions themselves are not necessarily accepted as truths. The only cause for interfering with another's liberty is self-protection.

For Edmund Burke, society was like a corporation bound by common agreement. To prevent the arbitrary use of power by majority rule Burke advocated a natural aristocracy. This natural aristocracy was to be comprised of men of good breeding and virtue, and who looked to public opinion and

¹¹Guinier, 3.

¹²Wills, 49.

¹³Heffner, 24.

¹⁴Selections from J.S. Mills' Consideration on Representative Government and On Liberty in Cohen, 1962.

took a large view of the widespread and diverse combinations of men and affairs.¹⁵ This fundamentally conservative view suggests that an elite theory of democracy is preferable. What prevents the natural aristocracy from becoming tyrannical is the existence of external checks as well as their virtue.

Hence several problems arise from a majority-rule principle. Tyrannical majorities are able to rule in their self interest and force views on the minority. Individual liberty is suppressed. Diversity is minimized, and the majority's progress stands little chance of impediment. The common well-being of those in the minority is jeopardized.

But what of the devices designed to halt tyrannical majorities and lessen the effect of the majority-rule principle? The system of checks and balances, federalism, state intervention, etc. have not effectively prevented against tyranny. Gene R. Urey in, "The Supreme Court and Judicial Review: In Defense of Democracy" argues that the Supreme Court has used judicial review to expand democracy, thereby able to protect the interests of the minority as well as protect against the tyranny of an entrenched majority. He cites such examples as Brown v. Bd. of Education, Baker v. Carr, and Miranda v. Arizona to demonstrate how the Supreme Court has expanded democracy and protected against the arbitrary will of others. But, he also cites such examples as the *Dred Scott Decision*, Plessy v. Ferguson, and Korematsu v. U.S. to demonstrate how the Supreme Court has allowed a majority and/or majority opinion to arbitrarily rule over a minority and subvert minority rights.¹⁶ So the majority rule principle remains problematic. This becomes even more evident as majority rule provides the initial base for the political thoughts and ideas of John C. Calhoun and Lani Guinier.

JOHN C. CALHOUN

For John C. Calhoun, statesman and leading figure from South Carolina, government was necessary to the existence of society and both government and society were intimately connected. But society was primary and the

¹⁵Spahr, Margaret, ed. Readings in Recent Political Philosophy (N.Y.: The MacMillan Co., 1948), 56 and McDonald, Lee C., Ed. Western Political Theory, Part 2 (N.Y.: Harcourt Brace Jovanovich, Inc., 1968), 424.

¹⁶See Gene R. Urey, "The Supreme Court and Judicial Review: In Defense of Democracy," in Arguments on American Politics (Pacific Grove, CA: Brooks/Cole Publishing Co., 1991), 211-223.

purpose of government was to preserve and perfect society. Although this relationship existed, government had a strong tendency to abuse powers. Thus, a constitution, for Calhoun, serves to counteract the strong tendency of government to disorder and abuse. But, the tendency of those who make and execute the laws to favor their will on others still existed. How could this be countered? Calhoun advocated furnishing the ruled with the means to resist these tendencies of rulers [majorities] to oppress and abuse.¹⁷

Calhoun believed the states were the unit upon which America was built upon. States were distinct, independent sovereign communities.¹⁸ The ratification of the Constitution established a compact between the states and the federal government, not over them, and the states did not lose their confederate character. To his misfortune America had outgrown states' rights and adopted the usurpations of majority rule and tenets of nationalism. The South had become a minority against an arbitrary majority. Tariffs, legislation, and particularly the slavery debate placed the South in a minority position. Calhoun asserted that it was the right of the people to choose their own way of life, economic and social, regardless of the majority pattern, and any government that crushed men into a single pattern was deemed despotic.¹⁹ He professed that there were no provisions which prevented the federal government from encroaching on the powers reserved to the states. Thus the problem, according to Calhoun, lie in numerical majorities which ultimately lead to absolute governments.

Calhoun posed the question, "How can we construct a working machine for the democratic state without bestowing upon the majority an absolute dictatorship?"²⁰ His answer lies in his belief that government should not be comprised of a numerical majority, but instead a concurrent majority where

¹⁷See Richard K. Cralle, ed. The Works of John C. Calhoun: A Disquisition on Government and A Discourse on the Constitution and Government of the United States, (N.Y.: Russell & Russell, 1968).

¹⁸Ibid, 1968 and "Federalist Paper #39" in Wills, 1982.

¹⁹Margaret L. Coit, John C. Calhoun: American Portrait, (Boston: Houghton, Mifflin Co., 1950), 521.

²⁰Ibid, 526.

each group in a society has a voice in the legislation affecting them.²¹ The concurrent majority would require a larger proportion of the community to initiate some legislative action. An adequate number, something other than fifty plus one percent, would not allow the means to oppress or abuse power. This concurrent majority would unite the most conflicting elements and blend the whole in one common attachment to the country.²²

This concurrent majority would logically lead to what Calhoun refers to as a minority veto or negative power.²³ By this, a group could halt action [veto] or suspend a law which pertains to that particular group. An example during Calhoun's life would be his advocacy of nullification or "state interposition or the veto." This suggests that a state convention was all that was needed to decide that an act passed by Congress in relation to the group in question was unconstitutional and could be declared null and void.

With particular reference to the South Carolina State Constitution during Calhoun's life, no state convention could be called but by concurrence of two-thirds of both houses (the entire representative body), and the constitution could not be amended except by an act of the general assembly; passed by two-thirds of both houses and passed again at the first session of the assembly immediately following the next election of the members of the House of Representatives.²⁴

Calhoun asserted that positive power [a concurrent majority] makes government while negative power [minority veto, nullification] makes constitutions. Combined, they make constitutional governments. For Calhoun this forces groups to compromise rather than exert force. Thus, divisions have a concurrent voice in making and executing laws, or a veto on their execution.

How would a concurrent majority operate in emergencies, i.e. war, and could it lead to stagnation and gridlock? Calhoun argues that different communities require different spheres of power and liberty. Communities exposed to hostile neighbors, violence, or anarchy within require greater

²¹Ibid, 520.

²²Ibid, 529.

²³Cralle, 35.

²⁴Frederic Bancroft, Calhoun and the South Carolina Nullification Movement, (Baltimore: The Johns Hopkins Press, 1928), and Cralle, 400-406.

amounts of power and limited or proportional spheres of liberty. For example, in a community vulnerable to hostile Indian neighbors, the representatives [rulers] would have a greater sphere of power to quickly enact against insurrections. Though Calhoun is not quite clear here, it can be suggested that the leaders could quickly enact means to protect the community without being subjected to a minority veto by those opposed to an action. This limits the sphere of liberty of those opposed, or those in the minority. This proper spheres limit of power and liberty is also demonstrated by Calhoun with reference to the type of individuals in a community. If a community consisted of a large proportion of "ignorant" and "vile" persons with no conception of liberty, then the proper spheres of power and liberty must be allocated to give an advantage to those individuals of a higher degree of intelligence, patriotism, and virtue.²⁵ Hence Calhoun believed that government must be able to command promptly in cases of an emergency. With reference to stagnation and gridlock, Calhoun knew that the concurrent majority concept could lead to incompetent government, but he believed liberty from the oppression of a majority was worth the danger.²⁶

LANI GUINIER

In 1993, President Bill Clinton nominated Lani Guinier for Assistant Attorney General in charge of the Civil Rights Division of the Department of Justice. After accusations of advocating racial quotas and administering race-conscious policies as well as an attack from a large percentage of the American public, President Clinton withdrew her nomination citing that he was not in agreement with many of her ideas. Presently Lani Guinier is professor of law at the University of Pennsylvania and currently lectures on the effects of majority rule, minority representation, and alternative voting measures.

Guinier's ideas lie in a belief that America is not color-blind. Society is based on racial divisions: housing, voting, employment, etc. These divisions result in one dominant majority [whites] exhibiting a racial monopoly over other non-white groups. Whites are the majority mainly due to their numbers, power, and influence. Minorities [non-whites] feel they "don't

²⁵Cralle, 53-54.

²⁶Coit, 529.

count" since their interests are rarely considered. For Guinier, in a racially divided society majority rule may be perceived as majority tyranny.²⁷ Thus the discussion of majority and minority relations in the 20th century becomes primarily based on racial and ethnic lines.

This tyranny is at the heart of the nature of reality for Guinier. She borrows much from James Madison's works on majority tyranny but does not believe that the system of checks and balances works where a group is unfairly treated, i.e. Blacks, Hispanics, or where the majority is fixed and permanent. For her, the system of checks and balances would work if majorities/minorities "took turns" in power. But Guinier suggests this is not the case in America.²⁸

There exists a large body of literature discussing how the majority [whites] have used their numbers and strength to minimize black voting power. Practices like gerrymandering, at-large elections, runoff elections, and annexations have prospered due to the majority rule principle. For example, in Phillips County, Arkansas black voters are challenging the majority vote run-off requirement in elections on the grounds that the majority run-off requirement deprived black voters of an equal opportunity to elect candidates of their choice.²⁹ They argued that since whites comprise the greater voting-age population and vote as a bloc, this adversely affects their chance to elect a black representative or someone they believe will adequately represent them. This can be described as minority vote dilution where election laws and practices combined with systematic bloc voting diminish the voting strength of a particular group.³⁰ Another example of diluted black voting strength can be found in Presley v. Etowah County. In this case, the Supreme Court ruled in favor of majority-white elected officials who exercised majority rule and decreased the power of the two

²⁷Guinier, 3.

²⁸Ibid, 4.

²⁹Lani Guinier, "Second Proms and Second Primaries: The Limits of Majority Rule," Boston Review (Sept./Oct. 1992), 32-34.

³⁰See Chandler Davidson, ed. Minority Vote Dilution, (Washington, D.C.: Howard University Press, 1989).

newly elected black officials.³¹

This evidence demonstrates an unfair system where the majority exercises tyranny over the minority and rules in their own self interest. This majority is fixed and permanent, cannot be disaggregated, and refuses to cooperate with the minority for power. The end result, suggests Guinier, is a zero-sum solution where there are winners [whites] and losers [non-whites]. Thus society is a game where blacks and other minorities stand little chance of fair play.

Guinier envisions a positive-sum solution. An ideal democracy where minorities are protected against the power of majorities, where rules of decision-making protect the minority, a system where "losers" get something. She believes in fair play where the rules encourage everyone to play. These rules reward winners and are acceptable to those who lose. As Guinier quotes former Chief Justice Warren Burger, "There is nothing in the language of the Constitution, our history, or our cases that requires that a majority always prevail on every issue."³²

What will prevent or protect against arbitrary will of majorities over minorities? Guinier advocates proportional and semi-proportional systems; alternatives to winner-take-all systems. In particular, she is an advocate of cumulative voting and the supermajority.

Cumulative voting, specifically, allows voters the same number of votes as open seats. The voter may "plump" or cumulate his/her votes to reflect the intensity of his/her preference. Thus minorities may give all of their votes to a particular candidate while the majority white voters hopefully split their votes over various candidates. This system, states Guinier, rewards cooperation rather than competitive behavior, encourages cross-racial coalition building, and eliminates gerrymandering.³³

Cumulative voting relies on a coefficient called the threshold of exclusion. This identifies the percentage or proportion of the electorate that a group must exceed in order to elect a candidate of its choice regardless of how the rest of the electorate votes. Hence, the threshold of exclusion ($1/(1 +$

³¹See Presley v. Etowah County Commissioners, Nos. 90-711 & 90-712; 1991 U.S. LEXIS 4190 (U.S. Sept 20, 1991).

³²Guinier, 17.

³³See Guinier, 1994 and Davidson, 1989.

[number of open seats]} X 100) helps to ensure that minorities have a realistic opportunity to elect a candidate of their choice through cumulative voting. For instance, in a two votes, two seat election with cumulative voting, the threshold of exclusion would be 33.3 percent. Any group that constitutes more than 33.3 percent of the voters can elect a candidate regardless of how other groups vote. A single plurality is all that is needed to win. Guinier and other advocates of cumulative voting argue that it complies fully with the one-person, one-vote rule since every individual enters the voting booth with the same voting power, is more democratic, and less likely to result in voter dilution.³⁴

Cumulative voting is practiced in several United States municipalities, and was used to elect members to the Illinois Legislature 1870-1980, and the South Carolina Legislature during reconstruction. The first cumulative voting system in a municipal election in the U.S. during the 20th century was held in Alamogordo, New Mexico in July of 1987.³⁵ Hispanic and black plaintiffs filed suit in 1986 alleging that the at-large election system violated Section 2 of the Voting Rights Act. Cumulative voting was instituted and a Hispanic, Ms. Inez Moncada, won one of three seats and was also the first Hispanic elected in Alamogordo since 1968.³⁶ Cumulative voting is presently implemented in Chilton County, Alabama, Guin, Alabama, Myrtlewood, Alabama, Peoria, Illinois, Sisseton, South Dakota, Lockhart, Texas, and Lovington, Texas. In April of 1994, a federal judge ordered Worcester County, Maryland to adopt cumulative voting.³⁷

Guinier's advocacy of supermajority voting closely resembles Calhoun's concurrent majority. The supermajority is a remedial voting tool where something more than a bare majority (fifty percent plus one) must be able to initiate some action. So logically a minority group can veto impending

³⁴Engstrom, Teabel, Cole, "Cumulative Voting As A Remedy for Minority Vote Dilution: The Case of Alamogordo, New Mexico," The Journal of Law and Politics V (Spring 1989): 469-497.

³⁵R. Engstrom, "Modified Multi-Seat Election Systems as Remedies for Minority Vote Dilution," Stetson Law Review XXI (1992): 744-770.

³⁶Ibid, 752.

³⁷Stephen Buckley, "Unusual Ruling in Rights Case: Maryland County Must Use 'Cumulative Voting,'" The Washington Post, (April 6, 1994).

action. Guinier argues that the supermajority is race-neutral and gives bargaining power to inferior groups.³⁸ The supermajority was implemented in Mobile, Alabama where a five-out-of-seven majority (supermajority) is needed to initiate some municipal action. In advocating both cumulative voting and the supermajority system Guinier believes that they can both work efficiently when the majority and minority are fluid, not monolithic, and not permanent.³⁹

COMPARISON, CONTRAST AND CRITICISM OF VIEWS

Some aspects of the political thought of both John C. Calhoun and Lani Guinier are quite similar. Both understand the tendency of monolithic groups to abuse power. Both also share the view that remedies are needed to ensure that the minority has a voice and share power in the decision-making process. Concurrent majority/supermajority systems can ensure that the minority has a voice in government. Calhoun advocates the use of concurrent majority and the minority veto only among groups which may be affected by some impending action, not in general practice. Guinier advocates cumulative voting and the supermajority only in cases where courts find vote dilution, not as a norm for all legislatures. Aside from their consensus that majorities exercise tyranny over minorities and "checks" are needed to ensure that minorities have a voice in government, there is little similarity between the political thought of John C. Calhoun and Lani Guinier.

One obvious difference between Calhoun and Guinier is their purpose. Calhoun's ideas are rooted in his justification of slavery. His opinions about concurrent majority and minority veto were to basically protect southern (slave) states. He advocated states' rights more so than individual rights. Calhoun is not concerned with actual suffrage. His beliefs about society does not recognize voting rights to all groups of people. In fact he argues that the non-voting citizenry are like passengers on a ship, not directing the passage, but sharing in the privileges and protections of the voyage.⁴⁰ He is really concerned with the ends (governmental action) than the means (electoral

³⁸Guinier, 16.

³⁹Ibid, 17.

⁴⁰Coit, 527.

procedures). His purpose was to maintain the sovereignty of the state and to protect it from what he viewed as a national arbitrary power.

Guinier's purpose is quite different. Unlike Calhoun, Guinier is more concerned with the actual practice of voting. Her purpose is to allow minority groups a voice in government. Blacks, Hispanics, women, etc. can benefit from remedial voting tools by having a realistic chance to elect someone of their preference. She may be concerned with legislative decisions, but she is more concerned with the process of electing these individuals who make the decisions. Unlike Guinier, Calhoun speaks for a monolithic minority.

Hence, Calhoun and Guinier have somewhat different conceptions of the term "minority." For Calhoun, the minority was basically the southern states and their advocacy of slavery. For Guinier, "minority" is basically based on racial and ethnic lines. Racially-polarized voting strengthens the majority [whites] over minority groups. Guinier advocates a system of fair play where everyone is involved in the decision-making process. The minority is excluded from participating due to the effects of a permanent majority unwilling to share its power. Calhoun's problem was not that the minority slave states could not participate in decision-making. His problem was basically the fact that the southern states could not comprise a majority and protect their self interests! Calhoun's ideas rest on his misfortune that there were more free states than slave states and anti-slavery views were becoming the majority opinion.

Guinier envisions a just society not defined by racial districting and racially-polarized voting. She believes that coalition-building among various groups can occur in a system where at-large voting is accompanied by alternative voting mechanisms. For her, more democracy, not less, can be exemplified in a system where there are no wasted votes and the minority groups can exert some influence. She envisions a system where power is shared and parties involved "take turns" and everyone plays fair. She states, "my vision of fairness and justice imagines a full and effective voice for all citizens."⁴¹

Hence, what Calhoun and Guinier actually share is procedural. Minorities should be protected against the arbitrary will and power of majorities. This protection can occur through electoral tools requiring

⁴¹Guinier, 19.

something other than a bare majority to initiate some legislative action. For Guinier, these tools are necessary to ensure fair play and are a result of consistent patterns of racism. For Calhoun, his reliance on electoral tools result mainly from his prophetic vision that the national mood was becoming increasingly anti-slavery and the South could lose its cherished way of life.

Calhoun's concurrent majority, as he deemed, never came to fruition. But some critical thoughts about his concept as well as his political thought exist. How stable is Calhoun's concept of a minority veto? For example, if the South could have enacted a minority veto, couldn't a three-fourths majority of states veto over the minority veto and allow the federal government to initiate the legislation? The nature of federalism is altogether complicated and history can cite many examples. Could Calhoun's concept of a minority veto overrule the Supreme Court? Though he mainly writes about legislative action, one could argue that if the *Dred Scott Decision* was ruled in favor of Dred Scott, Calhoun would probably have advocated concurrent majority and the minority veto in relation to judicial decisions! Also, what if, for example, a small group of abolitionists lived in the South and wanted to use the minority veto to prevent slavery in their particular communities or area of the state? Would they deserve the same minority protection advocated by Calhoun? Calhoun's underlying motive of protecting the institution of slavery creates grave challenges to his political thought as well as raise questions about individual liberty and democracy.

With reference to individual liberty, Calhoun would probably agree that liberty is a basis for states' rights. Since according to his reasoning states were sovereign, they should be able to choose their own way of life. Thus, they should have the liberty of choosing their own way of life. But liberty is not universal for Calhoun. To Calhoun liberty is, "....a reward to be earned, reserved for the intelligent, patriotic, virtuous and deserving, not to be bestowed on people too ignorant, degraded or vicious to appreciate or enjoy it."⁴² He also suggests that liberty bestowed on a people unfit for it would lead to anarchy.

Thus Calhoun did not believe liberty was a natural right that everyone deserved. To him, people were not born equal. The Negro, for Calhoun, was not human and therefore did not deserve rights, and the right to suffrage was not given to women. If white men were the only beings deserving of true liberty, then the states must exist to represent the interests of these white

⁴²Calfe, 55.

men. So Calhoun's advocacy of the sovereignty of states and states' rights is actually acknowledgment of the rights of white men in these states, not a romantic notion of the free and individual states. His justification of states' rights becomes clouded by his views on liberty.

Further, doesn't Calhoun represent a majority southern opinion? Certainly not everyone in the South held the same views on slavery. As previously mentioned, what happens to a minority view on slavery in the South? Would it not become suppressed? To add, given Calhoun's views on the role of women, wasn't it a majority of men who held these oppressive views on women and their "place" in society. Did this majority [men] abuse their power and oppress the minority [women]? There did exist women's suffrage movements in Calhoun's day. If legislation was introduced concerning women they would not have been able to exercise a minority veto nor be comprised in a concurrent majority simply because they could not vote. Thus, they could not have a voice on a matter that concerned them in particular (employment, education, voting). So how could Calhoun justify nullification and other ideas when it only works and can be exercised by, for, and in the interest of white men! Calhoun's concept is biased and not really in the interest of democracy.

Lani Guinier's ideas are much more democratic and in the interest of all people. Procedurally, however, some problems exist. First, the necessary conditions for cumulative voting to be successful are extremely problematic. Minority groups must successfully "plump" their votes and discourage any intra-racial competition. If more than one minority appears on the ballot, then the black votes stand a chance at being split, or severely affected and cumulative voting will more than likely not work in this type of situation. In 1992, two blacks in Centre, Alabama ran under the cumulative voting system and all seats were won by white candidates. The black (intra-racial) competition resulted in no black representation.⁴³ Thus cumulative voting has to be successful under a basic assumption: blacks can and will discourage intra-racial competition and collectively support the candidate or candidates (depending on the number of seats) running. Additionally, confusion surrounds the cumulative voting concept. Chilton County Alabama Probate Judge Bobby Martin revealed that dozens of voters penciled in more than the

⁴³David Van Biema, "One Person, Seven Votes: In Alabama A Radical Electoral System Helps Minorities, But is the System Fair?" *Time* (April 25, 1994), 42.

designated number of votes (seven). He states, "There were so many mistakes, we almost ran out of ballots."⁴⁴

However, the problems with Guinier's concepts are not all procedural. As mentioned, there are many cases involving minority vote dilution. Many of these cases are centered on the fact that voting is racially polarized and minorities are numerically smaller and cannot effectively vote for their preferred candidates. But is it fair to advocate cumulative voting and the supermajority, for instance, in areas where blacks cannot elect their preferred candidates because of voter apathy or low voter registration numbers among their members ?

Second, what happens when extremist groups vie for elected positions under the cumulative voting plan? Of course in a democracy everyone has that right regardless of their views on certain issues. Former Ku Klux Klan leader David Duke successfully won a Louisiana state legislative seat from a majority white area; Metairie, Louisiana. Could cumulative voting allow such an individual to win elections in an area that may not have an overwhelming white majority? Guinier does not discuss or seem to advocate any limits on speech or other liberties, nor does she discuss radical or extremist groups vying for elected positions. To place limits on these individuals would be no different than the limits on liberty advocated by Calhoun. Hence, it becomes apparent that Guinier is ideally democratic.

However, both Calhoun and Guinier assume the minority is abused and oppressed. What about a vile minority abusing the power of the minority veto? Certainly whites in a majority black district could use the minority veto to selfishly halt programs which may actually be beneficial to the community as a whole. For Calhoun the minority [southern states] could and did abuse power over blacks and women. For Guinier, the Supreme Court case Shaw v. Reno 509 U.S. (1993) demonstrated white voters' objection to what they perceived as racially motivated districting. North Carolina's 12th District was redrawn with 53 percent African American and 47 percent White representation. Due to this drawing of the district lines whites successfully claimed the reapportionment plan constituted racial gerrymandering and violated the equal protection clause of the Fourteenth Amendment. Whites may have been in the minority in that particular district, but they constituted a voting majority in 83 percent of the state's congressional districts while

⁴⁴Ibid.

constituting 79 percent of the statewide voting-age population.⁴⁵ This reapportionment plan in North Carolina in 1992 allowed the election of North Carolina's first black congressman since 1901! But whites successfully challenged this plan. The minority, under certain situations, can exercise abuse as well.

CONCLUSION

Certainly the suggestions of both John C. Calhoun and Lani Guinier with reference to majority tyranny can be argued to be in the best interest of democracy. The concurrent majority/supermajority principle provides the minority with a voice in government. Both recognized majority tyranny and its effect on minority opinion. This, as discussed, was witnessed during the early stages of America. Though their thoughts merit valuable discussion, their suggestions are indeed problematic. Their views are roadmaps which lead to entirely different destinations. Calhoun had a fundamental problem with federalism while Guinier can use federalism and laws enacted by a legislative body and enforced by an executive to ensure that democracy works.

Both agree that democracy must work, not just in the interest of the majority, and careful prevention of tyrannical majorities and the ill-effects of majority rule will enhance the tenets of democracy. For Guinier though, this must be inclusive democracy where there are no permanent winners and losers, everyone participates and has a voice, and everyone plays fairly. Guinier's ideas, unlike Calhoun, are not as selfish in nature. She believes in a system where everyone gains something. Guinier believes in no permanent majorities. Calhoun would probably have accepted a majority if it [the majority] was aligned with his views. For Guinier everyone is encouraged to participate because there is something for everyone. This, though problematic as well, is not the reincarnation of John C. Calhoun!

⁴⁵ *Shaw v. Reno* 509 U.S. 125 (1993).

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Fred McBride is a doctoral candidate in the
Department of Political Science, Clark Atlanta
University, Atlanta, Georgia