DEMOCRACY AND SOCIAL CONFLICT: HOW WE GOVERN OURSELVES BETWEEN ELECTIONS[1]

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Abstract

Our topic is democracy and social conflict, and how we govern ourselves between elections. I want to examine how our interactions in everyday life, even our arguments and disputes, can, and do, contribute to a democratic form of life, and even self-government.

Keywords

Pragmatism. Conflict. Democracy.

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[1] These lectures (Damas Catholic College, Brazil) are dedicated to Professor George Browne, who was instrumental in bringing pragmatism and John Dewey to Brazil. His many honors and accomplishments include a Master's degree from Vanderbilt and Doctor of Philosophy at Tulane University in the United States, degrees and awards in Brazil as well as the UK, Germany, and Portugal, too many to recount here, and Rector of UFPE and Secretary of Higher Education. They are all secondary to his personal brilliance, his originality, and his example. Many of you are aware of these through the research group on pragmatic philosophy and legal pragmatism, which continues to the present, and which brings you these lectures today.

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Some of you have heard me lecture before, I will start by giving you an overall view of what to expect over the course of these lectures. Our topic is democracy and social conflict, and how we govern ourselves between elections. Social conflict, I say? Why would anyone think conflict can be good for democracy?

But yes, I want to examine how our interactions in everyday life, even our arguments and disputes, can, and do, contribute to a democratic form of life, and even self-government. Surely, we now live in what has recently become a novel, yes, crazy world of instant communication, social media, and, polarization. This polarization is the very essence of conflict, so perhaps we need to understand the nature, the dynamics, of conflict itself.

We need to reckon with it, not just as a political phenomenon, but as a diverse one, including the many, large and small, and constant, conflicts of all kinds and all levels of society. Dispute might actually be the leading source of information about public problems. If so, dispute, if we understand it, could be our ticket out of chaos and uncertainty.

Elections are important, but they take place within a context of ongoing dispute, and even new legislation comes from that context. In other words, electoral democracy might not even be successful without disputes and their ongoing resolution, between various groups of individuals.

So, how does it work? It is not on the curriculum, it is rarely part of academic discussion. Instead, it is assumed to be a problem, a dysfunction, not part of constructive discussion. We have much to gain from knowing more than we do about conflict among groups of individuals.

There will be much talk about dispute in philosophy, political theory, logic, ethics, and law, vey different fields. And to tie these areas together, I will start off today with three short quotations from important figures, and yes, they conflict with each other! However, together, they will help me to underline the relevance of conflict at a very general theoretical level.

I could have started with Plato or Aristotle, Kant or especially Hegel, but the three quotations come from Friedrich Hayek, John Dewey, and Kenneth Arrow. I think most of you know of Hayek, the great libertarian, and Dewey, the great pragmatist, but how many of you have heard of, or even read, Kenneth Arrow? Arrow was Professor of Economics at Harvard University, when he received the 1972 Nobel Prize in economics. Five of his students have gone on to receive the Nobel Prize. I first heard the name Kenneth Arrow in hushed tones when I was still a student—in connection with the famous Arrow General Possibility Theorem.

Here's the quote from the very beginning of Arrow's great work, published in 1951, Social Choice and Individual Values: "In a capitalist democracy there are essentially two methods by which social choices can be made: voting, typically used to make political decisions, and the market mechanism, typically used to make economic decisions."

Arrow goes on to mention two other methods, which are dictatorship and convention, but these relate to other forms of society which he distinguishes from 3 ours. You will see that Arrow has a particular form of reasoning about our society, a particular vision, something I will focus on when we get to Arrow's "General Possibility Theorem," which is actually a general impossibility theorem. I warn you, this theorem is very bad news, as the impossibility extends to ordering any society with diverse preferences, not just by voting, but any other method except dictatorship.

Here is what professor Allan Feldman of Brown University said about Arrow's theory: it "provides an unambiguous answer to the question 'is there a foolproof way to derive complete and transitive social preference relations? The answer is No. This clearly negative result casts doubts on all assertions that there is a general will, a social contract, a social good, a will of the people, a peoples' government, a peoples' voice, a social benefit, and so on and so forth. That is, it casts doubt on all notions that explicitly or implicitly attribute preferences to society that are comparable to

preferences for an individual. Therefore it casts doubts on vast areas of 20th century social thought."

Are you scared yet? You're wondering what he means by "complete and transitive social preference relations." We'll get there soon enough. But before we do, here are the other quotes. The next one is from Friedrich Hayek, in his famous 1973 book Law, Legislation and Liberty: "[T]he use of spontaneous ordering forces us to induce the formation of an order of such a degree of complexity as we could never master intellectually, or deliberately arrange." (1973:41-42) This is the famous Hayek spontaneity theory. There's another impossibility here; things are just so complex in human society that it is hopeless for anyone to deliberately arrange them. [take that, Msrs Lukashenko, Putin, and Xi]

We have here two views of impossibility, one actually from a liberal economist and the other a conservative or libertarian one. And, there are now two distinct views of rationality here, two visions of society, Arrow's one of fixed and opposing preferences such that only authoritarianism works as an ordering method, and Hayek's, that things are so complex that they can't be deliberately, rationally, worked out.

The third quote is from John Dewey in 1927 in The Public and its Problems, where I think Dewey is trying to map a middle ground. He says "There is no sanctity in universal suffrage, frequent elections, majority rule, congressional and cabinet government. They are not the whole of the demoratic idea, but they express it in its political phase. Regarded as an idea, democracy is not an alternative to other principles of associated life. It is the idea of community life itself."

Nice words, I dare say, but where do they take us? We'll discuss that more in later lectures, but please note that Dewey's work was titled The Public and its Problems. Keep in mind the notion of problems, because I want to distinguish that idea from Arrow's focus on preferences and Hayek's of spontaneity.

You have here already three divergent ways of envisioning society, and these three short quotations are the basic tools for understanding pretty much everything that I want to explain. It will help to keep them in mind. Arrow's idea of diverse preferences is actually following generations of utilitarian theorists. From Jeremy Bentham on, they were reform-minded, but Arrow erects an enormous red flag, a negative sign with regard to that great reformist tradition, causing the gloom that has been echoing among liberal theorists ever since.

Hayek focuses on a different doubt about liberal theory, privileging instead a process of social evolution, which delights conservatives who are wary of "liberal" or "socialist" programs for reform. We will examine Hayek in the second lecture. Finally, we'll get to Dewey in detail, but keep in mind his shifting attention from preferences to problems, which leads us right into conflict.

It is problems that lead to dispute and conflict, and, for me, it requires a whole different way of thinking, a different rationality, a different but powerful inductive logic of social dispute and conflict. Induction, as you know, goes back to Aristotle. We will take it forward, to the present, in a way that has yet to be recognized in the logical curriculum—toward problem solving, and toward a social dimension of inductive logic, in Dewey's continuum of inquiry.

In summary, these three short passages, if you keep them in mind, show directly where we are going in the need to understand social conflict. Arrow is skeptical of voting or any kind of rank-ordering, virtually proving in his theorem how it is impossible to order a society of diverse preferences by any rational method other than dictatorship. Then Hayek, who insists that the real underlying order of society is spontaneous and evolutionary, so complex that it cannot possibly be governed rationally through legislation. Then Dewey, whose very title mentions problems, without really diving into how we solve them, yet very interested in

democracy as community, which, unfortunately, he had much trouble explaining in his lifetime.

All three have important insights, yet they all ignore the intricate mechanism of social conflict and its resolution, which is directly implicated by their paradoxical impossibilities. Conflict, I ask, could it truly be the answer to resolve these paradoxes? How? Because conflict leads to the adjustment of the diverse preferences that drive Arrow's impossibility. Conflict works behind the scene to reorder Hayek's notion of spontaneous evolution. And conflict fills in Dewey's interest in real communities by providing a detailed vision of how any community survives and resolves its problems. Conflict works both within and outside government. By examining conflict, we shed light on the other aspects of self government than those that work entirely through the legislature, or the executive state and its bureaucracy. This logic challenges an old one that we all know too well, the logic of Thomas Hobbes. Hobbes's theory of order derives from the necessity of turning to political authority to rescue humanity from violent conflict, from our so-called "state of nature." Despite many variations, that theory continues to influence political thought in its basic dependence on government institutions.

The Hobbesian order is not working well—at least, we might agree, it is not working as well as it is supposed to. We have only to look around. Contemporary authoritarianism, of msrs Lukashenko, Putin, and Xi, is Hobbes taken to an extreme. And in America, north and south, our reliance on executive authority has not provided the fruitful order that political theorists hope for.

Dewey's pragmatic vision is less dependent on the state, and it can help us find another theory of order that can provide more realistic grounds for human understanding, and realistic hope. Conflict resolution is complicated, but by starting with uncertainty, I will do my best to make it clear.

What is uncertainty? How can we describe it, what about it is true and real for us? The answer that I will suggest is to see that uncertainty is actually related to conflict, it's an aspect of conflict, especially of social conflict. Uncertainty is a stage, a phase in the process of inquiry and eventual transformation.

What do I mean by a phase? A simple example might be for you to think about your own personal experience with uncertainty. You hear a noise in the dark. You don't recognize it as like anything identifiable. Was it a burglar, or perhaps an unusual puff of wind? You either lie in bed worrying, or you get up, inspect and — you find a loose window shutter. You have passed from uncertainty, through a first phase, anxiety and doubt, that involved two conflicting possibilities. Then, you fix the shutter. The uncertainty ends in discovery, resolution. You go from doubt to belief, as the great pragmatist Charles S Peirce put it.

We will see that something similar is true for larger and more difficult problems involving many individuals. Conflict comes with civilization, from the very beginning. What's the first thing humans did? One thing was inventing the wheel, and immediately they had the first fender-bender. Ever since, we have had vehicle accidents, with disputes over who to pay for them. But the very uncertainty of crashes and disputes led to new practice, and then the new knowledge of good driving habits. These were adopted as rules of the road, gradually, through constant adjustment, basically caused by— constant conflict.

An important difference from your own personal uncertainty is social uncertainty: the way in which many individuals address a new problem. Your noise in the dark may lead to internal conflict, a period of comparison between opposing possibilities. You can call that an internal conflict. But with groups of individuals, conflict gets out in the open. That comparison you made between possible causes of the noise in the dark is simple, but social doubt comes with complexity and simple comparison is unavailable.

Social doubt has to go through dispute and conflict just to be defined, before being resolved. It is more than just noise, and takes more than simple comparison, or even rational discussion or debate, to resolve[3]. Why? Because human habits are involved, and they often conflict. Resolution takes coordinated action. You had to get out of bed, that was easy. When society has to respond, its more difficult. It must mobilize, the uncertainty has to be addressed.

This is true of minor disputes, on up even to great ideological divisions. Society depends, it runs, on patterns of conduct, habits, and beliefs. All these get shaken, constantly, by social conflict. It is then a process of society either falling apart, or learning new things. How did the human race survive this long? We learned. Social conflict is in fact a stage of that learning, indeed a causal phase of our shared knowledge. We will see how it works in the next lecture in a study of law[4].

Uncertainty involves the problem of stability and the foundations of knowledge. If there are none, then do we have relativism, radical indeterminacy? This is a problem which has a long tradition in analytical philosophy, seeking abstract solutions like Kant's reasoning and Hegel's synthesis. But we don't need to seek abstract analytical foundations if real foundations have been there all along, and have historical roots. We need to be reminded that the actual foundations are in constant need of understanding and repair[5].

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[3] Mention Peirce's doubt - belief

[4] Habit, Westbrook (p287), consider the polarity between the haves and have nots, or the have- mores and the have- lessers. The mores want to keep things the same, while those with less want change. Can they agree on rules, such as the rules of John Rawls's Theory of Justice? This is a major issue and we'll address it.

[5]Mention "The kingdom that cant be shaken"

Some of the foundations of contemporary thought and action, like racial and gender equity, must be rebuilt. Understanding the stages of inquiry is the key to understanding the problem of foundations. Foundations for social action are rooted in history and revision is complicated. But to rebuild we have to get through uncertainty. Next, we work toward transformation. This involves transformation of individual habits and preferences.

There is an important difference between uncertainty and indeterminacy. The latter is an attitude from analytical philosophy that leads either to a hopeless relativism or implies the impossibility of consensual resolution of conflict. It feeds into arguments for authority and dictatorship. Indeterminacy is an attitude that tends to look in the wrong place for solutions, ignoring that uncertainty is a stage, a condition, that invites real work.

I bring this up because indeterminacy is popular with philosophers even today. A principal strain of analytical thought sees it as real, intrinsic, part of logic, and also of law. One purpose in these lectures is to open a way out of the endless maze of indeterminacy, and into the actual mechanism of resolving uncertainty. I will even argue that uncertainty is real, but indeterminacy is imaginary, a false entity. This would shock any classical logician who believes that indeterminacy is real.

Indeterminacy can be very problematic for the rule of law. If it is real for law, then I think we're in real trouble. We'll be stuck whenever we run into it. And I will show that we do not need to be stuck, frozen by the imaginary force field of indeterminacy.

I can illustrate this now with a paradox. It comes from the fourth century BC philosopher Eubulides, the discoverer, or should I say inventor, of several paradoxes including the Sorites paradox, which goes to the heart of the matter of uncertainty and indeterminacy. 2400 years ago, Eubulides asked "What is a heap?" For example, when do you get a heap of sand, when you start putting one grain of sand on top of another and continue

to place more and more grains on top of each other. Or, another example, when do you have a bald person when you remove one hair after another from someone who is not bald?

His argument was that heap is a vague word, and the paradox suggests to many philosophers that vagueness is real.[6] But pragmatism recognizes that all words are used in context. Let's assume that "heap" is mentioned in a contract, that says "every worker will receive a heap of wheat for a day's work." It may sound unrealistic, but there are many vague words in the law. Here's how it would be resolved. Some workers would sue, showing small heaps to a judge with the claim that they were getting less than a proper heap of grain. The judges deciding these cases would say that various small amounts would not be sufficient, while other larger amounts were enough. Eventually enough decisions would permit a consensus regarding what "heap" means in that context, and this would become the law of that situation.[7]

Uncertainty is what those workers had before the eventual judgment. It's a stage of inquiry. Yet belief in epistemic indeterminacy goes all the way back to the Sorites paradox 2400 years ago. Vagueness is a foundational belief in philosophy, but a very shaky one[8].

Well now, how about our 3 thinkers, Arrow, Hayek and Dewey? We are left with conflict and uncertainty, and starting with a careful examination

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[6] In his book Vagueness Timothy Williamson of Oxford University argues that vagueness is intrinsic, or "epistemic." see Excluded middle.

[7] The lazy solution says that any lack of certainty about what to say is merely a matter of us not having yet decided upon, or even having the need to make up our mind about, a "precisification" of the concept of baldness. There are objectors to this "epistemic" way of seeing the matter, some of whom would prefer to think, for instance (see, e.g. Sainsbury 1995), that there was something essentially "fuzzy" about baldness, so it is a "vague predicate" by the nature of things, instead of just through lack of effort, or need. (For recent work in this area, see, for instance, Williamson 1994, and Keefe 2001).

[8] Pieter A.M. Seuren, "Eubulides as a 20th century Semanticist" Internet address.

of Arrow, we will get to Hayek and then to Dewey. On the way we will discuss pragmatism, utilitarianism, and contemporary ethics.

On now to ARROW and the VOTING PARADOX:

We saw that while Dewey focuses on social problems, Kenneth Arrow depends entirely upon a rationality based on a rigid diversity of preferences throughout society. He draws heavily on the tradition of utilitarianism, ancient in origin but systematized by Jeremy Bentham in the 18th century. Bentham's formula had an end game, of maximizing happiness. Happiness is hard to measure, and the tradition has turned to the satisfaction of individual preferences. These cannot be measured either, but at least they are presumably subject to definition and specification.

Meanwhile, utilitarianism is divided into an accounting by either acts or rules.

Arrow follows the utilitarian turn toward individual preferences, and the assumption that every individual has their own set of things they prefer. Arrow delineates this universe with letters like x, y and z that represent various preferences. A simple demonstrable model is this: take three individuals, 1,2 and 3, who have divergent preferences x y and z. It is then a straightforward mathematical problem, to investigate how they might vote on their preferences, or what other rational method might exist for resolving any disagreement. That simple math problem is the essence of Arrow's impossibility theorem.

But, Wait a minute, did I just say disagreement? Surely the three individuals have different preferences, but how does Arrow know they actually disagree, in the sense of battling it out? I say he doesn't care to know, he doesn't consider the issue of actual dispute or deliberation. Why is this important? Because I will show that x, y and z have to be assumed as actually unyielding preferences to fit his thesis. What he does posit is just that x y and z are different and distinct, and that they are compared

simultaneously. But if individuals 1 and 2 actively disagreed, wouldn't there be a potential conflict? And if so, could it be resolved?

In the next step in Arrow's mathematical proof, he applies the same basic analysis to any group of any size, up to and including a whole country. This calculation reaches the same impossibility conclusion for an unlimited domain of individual preferences, and it carries the same assumption into that vast domain, positing, as I say, the unyielding nature of the entire body of preferences, as well as (something else important), an instantaneous comparison of them all. That's how he gets around the problem of dispute and conflict.

There are several questions arising from hidden assumptions here, which we will continue to examine going forward. One is the very nature of preferences; another is the nature of problems underlying them. But it is useful to consider whether there is a mental picture here, and what it looks like. Arrow as an economist has a conventional view from economics. It relates to individual preferences for commodities and economic roles. We shall have to show whether these are subject to adjustment in the wake of social conflict.

But our point now is that if change is possible within the Arrovian scheme, then dispute and conflict is actually a saving force in democratic society. It breaks free from the tight grip of the impossibility theorem. How? Because there is an unspoken and unnoted fact regarding Arrow's assumptions, as well as those of all of his commentators. That is the assumption of immediacy, of instantaneous analysis[9]. If there is a dispute

9 "If we adopt the traditional identifica- tion of rationality with maximization of some sort, then the problem of achieving a social maximum derived from individual desires is precisely tile problem which has been central to the field of welfare economics.~owever, the search for a clear definition of opti- mum social welfare has been plagued by the difficulties of interpersoial com-parisons. The emphasis, as is well known, has shifted to a weaker defini- tion of optimum, namely, the determination of all social states such that

between individuals 1 and 2 over the nature of X, and the two individuals are given time to work it out, perhaps coming to a new version of X, call it "X prime," there would be no necessity of a dictator[10].

This is a very different conclusion from that of Allan Feldman, who said Arrow's "clearly negative result casts doubts on all assertions that there is a general will, a social contract, a social good, a will of the people, a peoples' government, a peoples' voice." Conflict, then, is a form of public inquiry that goes on all the time, in between the occasional elections and referenda. And, for civil society to continue, persistent disputes simply must be resolved, whether or not they can be put before an electorate for a majoritarian vote. Conflicts influence preferences, while voting, though essential to democracy, does not, and has always recognized many flaws, as well as being occasional.

To the philosophers of ancient Greece, the basic theory of majoritarian democracy revealed the potential "tyranny of the majority," and since the 18th century there has been doubt whether "rational" majoritarian public choice is possible at all. The "voting paradox" holds, in a simple calculation, that rational resolution of different preferences by voting is impossible. In the 18th century the Marquis de Condorcet, in the French Enlightenment, saw this as a fundamental problem in the classical model of democracy. The economist Kenneth Arrow extended it in 1951 to prove, to the satisfaction of the academic world, that no rational system of ordering diverse preferences is possible other than dictatorship. But what

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no individual can be made better olf with- out making someone worse off." arrow 1950:329.

10 "It should be emphasized here that the present study is concerned with the formal aspects of the foregoing question. That is, we ask if it is formally possible to construct a procedure for passing from a set of known individual tastes to a pattern of social decision-making, the procedure in question being required to satisfy certain natural conditions [my emphasis]." Arrow., *idem*..

Arrow meant by "rational" assumes fixed preferences, instantaneous analysis, and it ignores the operation of social conflict.

The voting paradox commonly draws on a simple demonstration, the "123/xyz model," where 1, 2 and 3 are individuals with inconsistent preferences denoted x, y and z. It says (according to one summary): Assume a society composed of three voters, 1, 2 and 3. Further, assume that they are deliberating over three mutually exclusive proposals, x, y and z. The voters must choose, under a majority rule, between proposals x and y. Proposal x will win because both 1 and 2 prefer x to y and will vote consequently; 3, who prefers y, will be outvoted. If, instead, the electorate is presented with a choice between y and z, y will win because that is preferred by 1 and 2. Now, consider what happens if the voters are given the choice between x and z. z will win because voters 2 and 3 will vote for z.

The conclusion? "The majority wants both x and not-x." Note that this writer says 1, 2 and 3 "are deliberating." Yet he gives us no idea of time; he does not consider the possibility of transformation. Of course, Arrow never says they are deliberating. He needs to exclude the possibility that they may not stick with their distinct preferences.

Now to be absolutely fair, I should say that there are circumstances in which the simple model has an element of truth. For example, in a small committee meeting where the participants come to the table with firm and unyielding views, the voting paradox may prove correct[11]. But let us be

[11]The process of dispute identifies salient characteristics, for others who share the problem and look for a solution. Thus, the presumption of a society of constant, stable preferences is just a hypothetical model, and not the only available one. It is often said to work for situations like a referendum. However, unlike the symbols x, y and z, referendum alternatives are specifically framed; the real world does not often propose an undefined referendum, like "$1 million for schools, police, or roads." It is more like "$1 million for construction of a new elementary school building on the corner of Ash and

careful not to over extend our assumptions. The next step in Arrow's argument is to apply the same logic to society as a whole. There will be multiple individuals holding multiple preferences, with no clear outcome from voting. Thus Arrow in 1951 makes the error of overextending his base assumptions. He went on to show, and is generally credited with proving, that no "rational" system of ordering, other than dictatorship, is possible in a vast society of diverse preferences. This assumes that everyone comes to the table like the unyielding committee members[12].

Does the model of society that is presupposed here accurately depict social choice, given the constant context of social conflict? Beside being wholly imaginary, the model assumes a society divided into fixed and comparable preferences, as if divided into groups all holding preferences of the same class, like the individuals 1, 2 and 3. The use of symbols removes any possibility of current preferences, x, y, z (or any others) having previously been subject to revision or change, and it rules out any

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Main Streets," versus "$1 million for hiring and training 25 new officers," and $1 million to repave Route 56." Each proposal has been subject to a particularized formative inquiry, including citizen input, and transformative conflict. Nevertheless, contemporary social choice theory concludes: Suppose that a referendum asks the voters to choose, under a majority rule, between proposals x and y. Proposal x will win because both 1 and 2 prefer x to y and will vote consequently; 3, who prefers y, will be outvoted. If, instead, the electorate is presented with a choice between y and z, y will win because that is preferred by 1 and 2. Now, consider what happens if the voters are given the choice between x and z. z will win because voters 2 and 3 will vote for z. The conclusion? Again, it is that "The majority wants both x and not-x."

[12]The aim of the present paper is to show that these difficulties are general. For any method of deriving social choice by aggregating individual preference patterns which satisfies certain natural conditions, it is possible to find individual preference patterns which give rise to a social choice pattern which is not a linear ordering. In particular, this is very likely to be the case if, as is frequently assumed, each individual's preferences among social states are derived purely from his personal consumption-leisure-saving situation in each. Arrow 1950:330

continuing transformative dispute over x, y, z and all other preferences. If this presumably definitive picture of preferences is flawed, many new questions about conflict, now ignored, are forced into view.

While presumably flawed democratic institutions operate intermittently, the interactions and disagreements of social life operate continually, without pause. The dialectic of dispute and conflict are unabated. We should inquire how conditions of human survival, freedom, equity, and order may actually depend on conflict as part of democratic life.

Our first task has been to ask the question: if individual preferences do change through resolution of social conflicts, what is the effect of this on the voting paradox. If the paradox assumes away preference change through conflict, it is reduced to a surprisingly banal, though cautionary, claim: that a society of unyielding disagreement cannot be governed only by voting. Moreover, Arrow's proof reduces to an analogous claim, that a society of unyielding disputes must (according to his definition of rationality) be governed by dictatorship, or by authoritarianism. You may wonder if this may indeed be consistent with our current dilemma, of polarization of disagreement giving rise to authoritarianism.

A simple act of introspection suggests that preferences do change. One is obviously not born with a set of preferences that remain unchanged through life. Preferences are gradually formed by our experiences and our roles in society. Economists view preferences as related to needs and wants, and dictated by various roles in the economic order. Laborers seek higher wages and better working conditions, employers lower wages and measures to increase efficiency and cut costs.

Opposing preferences are reinforced by habits and patterns of conduct. While first established by working conditions that may be compatible, at least initially, those shared patterns of conduct can come into conflict as conditions change. This will give rise to disputes and legal judgments, generally not in one but in a succession of cases. If litigation uncovers a

general and difficult problem, that cannot be resolved by piecemeal adjustments, the next line of recourse in a democracy is legislation.

A new dynamic for democracy thus comes into view. It involves the interaction between the emergence of disputes, their ongoing agonistic inquiry throughout American society, and the formal process of referenda and elections. In sum, democratic inquiry does not begin and end with voting.

The voting paradox ignores the epistemology of preference, the role of disagreement, and the extended continuum of inquiry. The model is applied in any universe of preference-holding individuals. But they only hold if the entire universe of relevant preference-holding individuals is static within the period of inquiry and choice. The model tacitly presumes instantaneous choice in an unchanged framework. When I consider the implicit vision of society, I imagine one that is drawn from what I call a "flash camera" conception of society of preferences, oblivious to Dewey's vision of a set of problems under constant consideration and in stages of resolution in their continua of inquiry[13].

The model ignores John Dewey's continuum of inquiry—the fact of stages in the resolution of uncertainty that we saw earlier. It overlooks the phenomenon of group preference adaptation and transformation. This formative continuum of inquiry is illustrated in the history and practice of Anglo-American law. Unlike models of social choice through voting, this continuum reveals how social conflict is not resolved at once and operates often over considerable time.

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[13] An Arrovian distribution of preferences can be plausibly imagined at a given instant, but only by ignoring the context and status of ongoing disputes, including over the preferences xyz that occupy various groups and are in fact subject to movement. While the model is illustrative of many specific voting quandaries, the generalized "paradox" simply observes that a society of permanent disagreements is not governable by voting. Arrow's thesis determines that under basic assumptions dictatorship is the only option

We live in a society defined by numerous problems. Law can be seen as a cross section of society's problems and disputes. It would be very difficult for any team of scholars to make an accounting of all of the problems that are operating today in society. We can only imagine that it would be a challenging project. But we can instead look to our record of problems in the law has an exemplar of how they operate. One thing that stands out is that problems emerge, become prominent, and lead to legal judgments in litigation.

I recognize that it may sound a bit technical to many of you. As we go forward it should become more understandable. The important thing is to note that democracy depends on constant resolutions of conflict. In the next lecture I will turn to Friedrich Hayek, and discuss the general problem of preference change in the context of habit and discussion. This should help you to understand how preference change works and how it illuminates Dewey's continuum of inquiry.

Tough problems can resist, they can persist, but they can eventually resolve, with a convergence of opposing sides. You may have also heard me compare how natural scientists work, through experiments, to how lawyers and judges must do it.

So in summary, pragmatic uncertainty is the early phase of a new problem, a time when competing views appear unresolved and irresolvable. It is easy to ignore that more information, more experience, will be needed before the problem can be solved. The problem is still at an early stage and cannot be solved in some cases without transformed patterns of conduct. Analytical philosophy often uses the word "indeterminacy" which suggests an impossibility of solving it, thus blocking that very possibility. Transformation is critical, and we need to examine how it operates. What is the role of Hayek's vision of a spontaneous order? What is the role of discussion, deliberation, discourse, reflection, human control? What is the degree of human freedom, and the danger of authoritarianism.