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WAS THE EAST INDIA COMPANY  
A “DEMOCRATIC” ORGANIZATION?  
MAJORITY PRINCIPLE AND POWER RELATIONS  
IN 17<sup>TH</sup> CENTURY ENGLAND

*ABSTRACT. According to a widespread historiographic topos, the English East India Company – the richest, biggest, most powerful and long-lasting of all chartered companies –, was a “democratic” organization. Founded by Queen Elizabeth I on December 31<sup>st</sup> 1600, this joint-stock company, originally conceived to import spices and silk from the islands of Southeast Asia, became, during the course of the 18<sup>th</sup> century, the main tool of British colonial expansion in the Indian sub-continent, until its liquidation in 1858. In the 17<sup>th</sup> century, though, it still was, essentially, a company of “adventurers” trying to challenge the Portuguese and Dutch merchants in the East-Indies spice race. On the basis of the assumption that to decide by majority means to decide democratically, this essay aims at reconsidering the supposed democracy of the business corporation EIC, by way of the enforcement of the majority principle in modern England. It focuses on three issues: overview of the historiography devoted to the topic; description of the rooting of the principle in England (courts of justice, Parliament and legal-political doctrine, with a particular focus on Locke’s thought); analysis of the development of the voting systems within the EIC in the time-frame 1600-1700. We will see that it was possible to define the EIC as a “democratic” organization, but only at the beginning of its very long history.*

*CONTENT. 1. Introduction – 2. Is the majority principle “natural”? A historical and historiographic overview – 3. When was the majority rule first applied in England? From the medieval courts of justice to the 17<sup>th</sup> century Parliament – 4. How did the assemblies of the EIC work? Voting rights in progress – 4.1. The General Court – 4.2. The Court of Committees – 5. When did the EIC abandon the “democratic” one-man-one vote rule? 1657: The year when everything changed*

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## 1. Introduction

The East India Company was incorporated when it received its first royal charter from Queen Elizabeth I on December 31, 1600 under the name of “The Governor and Company of Merchants of London trading into the East-Indies”, but is better known as the East India Company, or Honourable Company, or simply EIC.<sup>1</sup> This chartered company, originally conceived (especially) to import spices from the islands of Southeast Asia, became, during the course of the 18<sup>th</sup> century, the main tool of British colonial expansion in the Indian sub-continent. It retained this function until its liquidation in 1858, when the administration of India passed under the direct control of the Government of the United Kingdom.<sup>2</sup> We will focus on the 17<sup>th</sup> century, when it still was, essentially, a company of “adventurers” trying to challenge the Portuguese and Dutch merchants in the East-Indies spice race.

The English business corporations of the Modern Era have been placed at the center of a debate on the establishment of democratic institutions, in the sense that it has been speculated that the development of “political democracy” in England was influenced by “economic democracy.”<sup>3</sup> In particular, several scholars have agreed on the “democratic” nature of the richest, biggest, most powerful and long-lasting of all business corporations: the EIC.<sup>4</sup> Considering that it is a common assumption that to

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1 This paper is a revised and updated version of part of chap. V of my book on the EIC: S. GIALDRONI, *East India Company. Una storia giuridica (1600-1708)*, Bologna, 2011. For an overview of the EIC's history: J. KEAY, *The Honourable Company. A history of the English East India Company*, London, 1993 (1991); for an economic perspective: K.N. CHAUDHURI, *The trading world of Asia and the English East India Company, 1660-1760*, Cambridge, 1978; for a legal perspective, still fundamental: W.R. SCOTT, *The constitution and finance of English, Scottish and Irish joint-stock companies to 1720*, vols. I-III, Cambridge, 1910-1912; for a wider understanding of Eurasian trade in the Modern Era see the very recent: R. HARRIS, *Going the distance. Eurasian trade and the rise of business corporation, 1400-1700*, Princeton/Oxford, 2020. All the 17<sup>th</sup> century royal charters of the EIC are available in print: J. SHAW, *Charters relating to the East India Company from 1600 to 1761*, Madras, 1887.

2 Government of India Act of 1858 (21 & 22 Vict. C. 106).

3 We will discuss in detail Francesco Galgano's thesis: F. GALGANO, *La forza del numero e la legge della ragione. Storia del principio di maggioranza*, Bologna, 2007, pp. 100 *et seq.*

4 A. MIGNOLI, *Idee e problemi nell'evoluzione della “company” inglese*, in *Rivista delle società*, 1960, now in *La società per azioni. Problemi – letture – testimonianze*, Milano, 2002, vol. I, pp. 13-64, pp. 16-19; R. HARRIS, *The East India Company and the history of company law*, in E. Gepken-Jager-G. Van Solinge-L. Timmermann (eds.), *VOC 1602-2002. 400 years of company law*, Deventer, 2005, pp. 217-247, p. 229; N. ROBINS, *The corporation that changed the world*.

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decide by majority means to decide democratically,<sup>5</sup> the first thing to do in order to verify the supposed “democracy” of the EIC is to understand what the majority principle is and how it was applied in England up to the 17<sup>th</sup> century. We will first provide an overview of the opinions of contemporary European and American scholars on the topic; we will then provide a description of the rooting of the principle in England, taking into account courts of justice, Parliament and legal-political doctrine (with a particular focus on Locke’s thought); and finally, we will analyze the development of the voting systems within the EIC in the time-frame 1600-1700.

## ***2. Is the majority principle “natural”? A historical and historiographic overview***

Speculation on the political role of majorities is probably as old as western political thought. In terms of legal-historical research on the issue, the majority principle was studied in depth by the Italian scholar Edoardo Ruffini, in 1920s’ Italy.<sup>6</sup> Ruffini was one of the few university professors who refused to sign the oath of allegiance to the Fascist government in 1931. According to his biography, it wasn’t just chance that he decided to concentrate his research on majority rule at the same time as the Fascist dictatorship in Italy was enjoying an unstoppable rise. Any reflection on the majority principle is, in fact, directly or indirectly, a reflection on the rules of democracy, in the broad sense of a «system, or organization in which everyone has equal rights and opportunities, and can help make decisions».<sup>7</sup>

The great value of Ruffini’s monograph “Il principio maggioritario. Profilo storico”,<sup>8</sup> relies on the fact that it retraces the historical evolution of the majority principle in different juridical systems across a very long time-frame: from ancient

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*How the East India Company shaped the modern multinational*, London, 2006, p. 30; R. HARRIS, *Going the distance*, 2020, pp. 304-305 (see also Harris’ comparison with the Dutch VOC: pp. 318-323).

5 See for example Elias Berg’s overview: E. BERG, *Democracy and the majority principle: A study of twelve contemporary political theories*, Göteborg, 1965; F. GALGANO, *Principio di maggioranza*, in *Enciclopedia del diritto*, Milano, 1986, vol. XXXV, p. 548.

6 See for example: E. RUFFINI, *I sistemi di deliberazione collettiva nel medioevo italiano*, Torino, 1927.

7 *Cambridge Dictionary*, entry “Democracy”: <<https://dictionary.cambridge.org/it/dizionario/inglese/democracy>>. Accessed 10 April 2020.

8 E. RUFFINI, *Il principio maggioritario. Profilo storico*, Milano, 1976 (1927).

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Greece and Rome up to the international organizations of the 20<sup>th</sup> century, via Church councils, medieval Italian city-states institutions and the natural law theories of the Modern Era. How to reach a collective will is not only a legal question, but also a political and philosophical one, as an ancient tradition, dating back to the Greek city-states in general and to Aristotle in particular, clearly demonstrates.<sup>9</sup> It comes as no surprise, therefore, that the most important natural law philosophers of the 17<sup>th</sup> century, focusing on the social contract and its mechanisms, devoted close attention to the majority rule: Grotius and Pufendorf for example and, above all, John Locke.<sup>10</sup> According to Locke, the decision which marked the transition from state of nature to civil society was taken unanimously but, from that moment on, decisions started to be taken according to the majority rule. This means that the majority rule is one of the most important (if not *the* most important) objects of the contract but not a principle of natural law. This distinction is significant because one could easily be “tempted” to think that the fact that the will of the majority must bind the entire community is, in a certain sense, “natural.”<sup>11</sup> Ruffini himself was very aware of this temptation, underlying that it is natural and obvious only as long as it is opposed to its absurd inverse: the minority principle.<sup>12</sup>

In reality, the means adopted over the centuries to determine the will of a group have been the most varied. An interesting example is that of the canonistic *sanior pars*, which has been defined as a spiritual and qualitative system.<sup>13</sup> It can be traced back to the 5<sup>th</sup> century, when Pope Leo I mentioned it in a letter to Anastasius, bishop of

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9 In the debate about democracy, ancient Greece is (almost) always present. See for example: D.L. Schaeffer (ed.), *Democratic decision-making: Historical and contemporary perspectives*, Lanham et al., 2012.

10 H. GROTIUS, *De iure belli ac pacis*, Amsterdam, 1646 (1625), II.5.17: «Habent autem omnes hoc commune, quod in iis rebus ob quas consociatio quaeque instituta est, universitas, & eius pars major nomine universitatis obligant singulos qui sunt in societate»; S. PUFENDORF, *De iure naturae et gentium*, Amsterdam, 1688 (1672), VII.2.15; J. LOCKE, *Second treatise of government*, London, 1690, VIII.95. On Locke see more *infra*.

11 J.G. HEINBERG, *History of the majority principle*, in *The American Political Science Review*, 20.1 (1926), pp. 52-68, p. 52.

12 E. RUFFINI, *Il principio maggioritario*, 1976, p. 11.

13 See on this point: P. GROSSI, *Unanimitas. Alle origini del concetto di persona giuridica nel diritto canonico*, in *Annali di storia del diritto*, Milano, 1958, vol. II, pp. 229-331, pp. 324 *et seq.*

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Thessaloniki, but it was first enforced in the Benedictine Rule (chap. 64), in the part devoted to the election of the abbot: «sive etiam pars congregationis quamvis parva saniore consilio elegerit».<sup>14</sup> The Rule assumed that the majority, *i.e.*, the *maior pars*, coincided with the *sanior pars*, the wiser and fairer part of those entitled to vote. This was a groundbreaking idea, as canon law had for centuries favored the unanimity rule. In this way the Church managed to reconcile the hierarchical principle, so dear to the ecclesiastical tradition, with the well-known Roman law *factio*, according to which the will of the majority is the will of all (Dig. 50.17.160.1).<sup>15</sup> It is comprehensible that the Church devoted much attention to decision making mechanisms, including the majority rule, which have to be inspired by the Holy Spirit.<sup>16</sup> Otto von Gierke found the first explicit mentions of the majority rule in canon law in the works of some of the most famous decretalists, like Goffredus of Trani («hoc est generale in cunctis actibus ecclesiae, ut obtineat sententia plurimorum») and Johannes Andrea («et si discordant in aliqui, majori parti standum est».<sup>17</sup>

Before Ruffini's contributions (and except for the illustrious precedent of Gierke's essay “Über die Geschichte des Majoritätsprinzips”<sup>18</sup>), the topic of the majority rule had been approached only in a fragmentary and cursory way. Later on, the inputs of lawyers remained rare and never devoted much attention to the majority rule as

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14 Rule of Saint Benedict (534), chap. 64.1: «In abbatis ordinatione illa semper consideretur ratio ut hic constituatur quem sive omnis concors congregatio secundum timorem Dei, sive etiam pars quamvis parva congregationis saniore consilio elegerit» («At the election of an abbot let this principle be always observed, that he be appointed whom the whole community, being of the same mind and in the fear of God, or even a part albeit a small part of the community shall with calmer deliberation have elected». Translated into English: *A Pax Book*, preface by W.K. LOWTHER CLARKE, London, 1931, available online at: <[https://www.solesmes.com/sites/default/files/upload/pdf/rule\\_of\\_st\\_benedict.pdf](https://www.solesmes.com/sites/default/files/upload/pdf/rule_of_st_benedict.pdf)>. Accessed 09 April 2020).

15 ULPIAN: «Refertur ad universos, quod publice fit per majorem partem».

16 Very interesting indeed is also the analysis of the decision-making process in the Islamic world: E. SINANOVIC, *The majority principle in Islamic legal and political thought*, in *Islam and Christian-Muslim Relations*, 15.2 (2004), pp. 237-256.

17 GOFFREDUS OF TRANI, *Summa Decretalium*, in X 1.6 *De electione*, n. 8; JOHANNES ANDREA, X 1.31.3 *De officio iudicis ordinarii*, n. 14. Quoted in: O. VON GIERKE, *Das deutsches Genossenschaftsrecht*, Berlin, 1881, vol. III, p. 322, footnote 241.

18 O. VON GIERKE, *Über die Geschichte des Majoritätsprinzips*, in P.G. Vinogradov (ed.), *Essays in legal history*, London, 1913, pp. 312-335.

applied within business organizations. That is, until 2007, when Francesco Galgano published his “La forza del numero e la legge della ragione,” proposing a “parallel history” of political and economic institutions, starting from Athens’ “democracy without majority” and Rome’s “majority without democracy” up to the contemporary “decline of majority,” typical (according to Galgano) of our “post-democratic” and “techno-democratic” society.

From our perspective, what matters most is the role assigned by Galgano to the EIC in the development of democratic institutions in England. That the EIC’s shareholders (at least at the beginning) voted by majority is a widespread notion and is not really striking. Very original though, is the idea that the voting mechanisms of the general assembly of the EIC had an impact on the thought of one of the most influential philosophers of the Modern Era: John Locke. According to this viewpoint, Locke was inspired, in drawing up a model-state consisting in a community of equals governed by the majority rule, by the voting systems of the colonial companies in general and by the General Court of the EIC in particular. A model-state that would have had an impact on the very development of the British Parliament.<sup>19</sup> But was it true that each member of the EIC, whether merchant or aristocrat, had the same voting rights, regardless of the sum invested as a share in the joint-stock? If so, “economic democracy” would have anticipated the political one even in its philosophical formulation. The idea that business companies can be conceived as a form of democracy is not completely new.<sup>20</sup> Nevertheless, because voting rights are nowadays directly proportional to the amount of capital subscribed, the most widespread opinion is that business corporations are “plutocracies” rather than “democracies”. On the other hand, the linking the EIC-Locke-English Parliament seems brand new and deserves to be deepened.

Ruffini wrote about the majority rule under the dark shadow of Mussolini’s dictatorship, and it was in the early years of WW2 that an important book on the work of John Locke and the doctrine of majority-rule was written by Willmoore Kendall in the

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19 F. GALGANO, *La forza del numero*, 2007, pp. 103 *et seq.*

20 This idea is particularly evident in the French historiography. See for example: Y. GUYON, *La société anonyme, une démocratie parfaite!*, in *Propos impertinents de droit des affaires, Mélanges en l’honneur de Christian Gavalda*, Paris, 2001, pp. 133-146.

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United States.<sup>21</sup> Reflections on the majority principle seem to flourish in times of crisis of democracy, as is also the case of a series of works on the justification of power published immediately after the end of the Second World War: “Du pouvoir” (1945) by Bertrand de Jouvenel, “Philosophie du pouvoir” (1948) by Alfred Pose and the four volumes of the “Arcana imperii” (1947-1948) by Pietro de Francisci, just to give some examples.<sup>22</sup> These works range from philosophy to Roman history but they all demonstrate an interest in the mechanisms of legitimizing power, exactly like the contributions of Ruffini at the beginning of the Fascist Era and Kendall’s monograph at the dawn of the United States’ entry into the war.

The role of Locke in modern political thought is very well known. What matters here, in short, is that he managed to combine the concept of equality (already present among the Stoics), that of majority voting (already present in Plato and Aristotle), and that of popular sovereignty, that can be found already, for examples, in the work of the German jurist and philosopher Johannes Althusius.<sup>23</sup> The traditional image of Locke as the prince of individualism was challenged by Kendall, who arrived at «the striking conclusion that Locke was not an individualist at all but a ‘collectivist’ in that he subordinated the purposes of individuals to the purposes of society».<sup>24</sup> Not surprisingly, Kendall began his analysis from paragraph 95 of the VIII book of the “Second treatise of government”:

«Men being, as has been said, by nature, all free, equal, and independent, no one can be put out of this estate, and subjected to the political power of another, without his own consent. The only way whereby any one divests himself of his natural liberty, and puts on the bonds of civil society, is by agreeing with other men to join and unite into a community, for their comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties, and a greater security against any,

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21 W. KENDALL, *John Locke and the doctrine of majority-rule*, Urbana: Illinois, 1941.

22 B. DE JOUVENEL, *Du pouvoir. Histoire naturelle de sa croissance*, Paris, 1998 (1945); A. POSE, *Philosophie du pouvoir*, Paris, 1948; P. DE FRANCISCI, *Arcana Imperii*, 4 vols, Milano, 1947-48.

23 W. KENDALL, *John Locke*, 1941, pp. 39-40.

24 C.B. MACPHERSON, *The social bearing of Locke’s political theory*, in *The Western Political Quarterly*, 7.1 (1954), pp. 1-22, p. 2.

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that are not of it. This any number of men may do, because it injures not the freedom of the rest; they are left as they were in the liberty of the state of nature. When any number of men have so consented to make one community or government, they are thereby presently incorporated, and make one body politic, wherein the majority have a right to act and conclude the rest».

According to Francesco Galgano, Locke was inspired, especially for his combining equality and majority, by the assemblies of the colonial companies, where lords and commoners stood side by side, and together discussed and voted. When Locke composed the “Second treatise of government” though – probably some ten years before the first publication in 1689-90 – , the members of the EIC were no longer considered equal: those who had not contributed enough capital, in fact, had no voting rights. However, for more than fifty years one of the characteristic features of the General Court of the EIC had been, indeed, the equality of its members. This character derives, we think, from the strict connections between the chartered companies of the Elizabethan period, like the EIC, and the medieval merchant guilds, where, for centuries, the rule one-man-one vote was applied.<sup>25</sup>

### ***3. When was the majority rule first applied in England? From the medieval courts of justice to the 17<sup>th</sup> century Parliament***

Although it is known that political theory has dealt with the majority principle since antiquity, it was only between the 17<sup>th</sup> and 18<sup>th</sup> centuries – the era of the conception, if not of the birth, of modern democracies – that the principle became the object of an autonomous and in-depth philosophical and juridical reflection. A prominent role in the philosophical elaboration of the principle in a democratic sense is often attributed to John Locke, who had the merit of having been the first, in the

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25 S. GIALDRONI, *A commercial soul in a corporate body: From the medieval merchant guilds to the East India Company*, in B. Van Hofstraeten and W. Decock (eds.), *Companies and company law in late medieval and early modern Europe*, Leuven et al., 2016, pp. 149-170; see also: R. HARRIS, *Going the distance*, 2020, p. 305 («This principle was also followed by the traditional voting scheme in corporations, regulated companies, colleges, cities, guilds, and the like»).

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history of political thought, to link equality and majority.<sup>26</sup>

Contemporary English legal historiography has not dedicated particular attention to studying the issue of the majority principle in the century that ended with a Revolution, which was glorious because (almost) bloodless, and with a Bill of Rights which marked a point of no return in English constitutional history. When the issue is taken into account, the contexts analyzed are usually two: Parliament and courts of justice. Apart from the pages devoted to the majority principle in the classic “History of English law before the time of Edward I” by Frederick Pollock and Frederic W. Maitland (1895),<sup>27</sup> few are the scholars that wrote on this topic with a particular focus on England: Thomas Baty in 1912<sup>28</sup> and J.G. Heinberg in 1926. And then again other important histories of English law, in particular those by William Holdsworth and J.H. Baker.<sup>29</sup> Perhaps the topic was regarded as unworthy of attention because it was considered, as Ruffini acutely observed, a “natural” principle. Yet even a quick look at the application of the majority rule in medieval and modern England shows that it took a while to get over the more reassuring unanimity principle.

One of the first mentions of the application of the majority principle in England is attested by clause 61 of the Magna Carta (1215),<sup>30</sup> which granted to a committee made up of twenty-five barons the right/duty «to keep, and cause to be observed with all their might, the peace and liberties granted and confirmed to them by this charter». It was then specified that: «in the event of disagreement among the twenty-five barons on any matter referred to them for decision, the verdict of the majority present shall have the same validity as a unanimous verdict of the whole twenty-five, whether these

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26 F. GALGANO, *La forza del numero*, 2007, p. 39 *et seq.*

27 F. POLLOCK-F.W. MAITLAND, *History of English law before the time of Edward I*, vols. I-II, Cambridge, 1898 (1895).

28 T. BATY, *The history of majority rule*, in *The Quarterly Review*, 216 (1912), pp. 1-28.

29 W. HOLDSWORTH, *A history of English law*, 17 vols., ed. by A.L. Goodhart-H.G. Hanbury-S.B. Chrimes, London, 1956-1991 (1903-1966); J.H. BAKER, *An introduction to English legal history*, London, 2002 (1971).

30 English translation available on the internet website of the British Library: <<https://www.bl.uk/magna-carta/articles/magna-carta-english-translation>>: «In the event of disagreement among the twenty-five barons on any matter referred to them for decision, the verdict of the majority present shall have the same validity as a unanimous verdict of the whole twenty-five, whether these were all present or some of those summoned were unwilling or unable to appear».

were all present or some of those summoned were unwilling or unable to appear». It is interesting that this article was omitted in all subsequent versions of the Magna Carta.<sup>31</sup> One could deduce that the principle was not yet rooted and the decisions of the majority remained exceptional with respect to the unanimity rule, as the wording of clause 61 itself seems to suggest. However, as mentioned before, there are two contexts in which the application of the principle has aroused particular attention of scholars: Parliament and courts of justice. It is precisely in the latter that we can find traces of the application of the majority principle prior to the Magna Carta.

At the time of the Norman conquest, there was still no system of centralized courts for the administration of justice: the numerous and concomitant existing laws were applied in equally numerous local courts. At the beginning of the 12<sup>th</sup> century, the customary rules applied in these courts were written down into several collections, including the *Leges Henrici Primi* (ca. 1118), which is often considered the most important one. It is precisely in this collection that a reference to the majority principle can be found. It had to be applied in the communal courts and, more precisely, in the county courts, i.e., the courts of justice competent for certain territorial circumscriptions (shire or county). It was foreseen that «Quod si in iudicio inter pares oriatur dissensio, de quibus certamen emerit, vincat sententia plurimorum».<sup>32</sup> Nevertheless, it was still not a well-established principle, as in the very same collection other principles were also applied, like that of the *sanior pars*, which has, as we already know, a “canonistic flavor”: “Vincat sententia meliorum”.<sup>33</sup> This state of affairs lasted until 1367,<sup>34</sup> the year in which it was established that in a verdict, the decision taken by the majority had to be considered void.<sup>35</sup> The only valid sentence became the unanimous one, which definitively passed to represent not the opinion of twelve men, but rather the verdict of

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31 J.G. HEINBERG, *History of the majority principle*, 1926, p. 63.

32 Leg. Henr. I, 5: *De causarum proprietatibus: Leges Henrici Primi*, in D. WILKINS (ed.), *Leges anglo-saxonicae ecclesiasticae et civiles*, Londini, 1721, pp. 231-283, p. 236

33 Leg. Henr. I, 31: *De capitalibus placitis, ibid.*, p. 248.

34 For other examples of the enforcement of the majority rule before this date see: J.H. BAKER, *An introduction to English legal history*, 2002, p. 76.

35 Y.B. 41 Ed. III Mich. pl. 36, quoted in W. HOLDSWORTH, *A history of English law*, vol. I, p. 318.

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the entire community («of a pays, a ‘country’, a neighborhood, a community»<sup>36</sup>).

On the other hand, according to William Holdsworth, the English Parliament accepted the majority principle from the beginning of its history, meaning from the 14<sup>th</sup> century, when it became a real governing body, separate (and often in conflict) with the King and his Council. In the second part of the 15<sup>th</sup> century, the same principle became ordinary, as testified by the Year Books in a case written in the characteristic “law-French”, the legal language of England at the time: «Sir, en le Parliament si le greindre partie des Chivaliers des Countys assentent al feasans d’un acte du Parliament, et le meindre partie ne voillent my agreer a cel act, uncore ce sera bon statute a durer en perpetuity».<sup>37</sup> According to others, the application of the majority principle is attested in the House of Commons starting from 1430.<sup>38</sup> And still others tend to minimize the role played by the majority principle in Parliament up to more recent times, arguing that it was, for a long time, the principle of unanimity that governed the English Parliament on the basis of testimonies such as that of Jeremy Bentham who, still in 1791, wrote that 99 out of 100 motions were accepted or rejected without division.<sup>39</sup>

One of the greatest difficulties in understanding whether the Parliament voted unanimously or by majority lies in the reluctance with which the two branches of the English Parliament allowed the minutes of their sessions to be disseminated, given that the first records of the Commons Journal date back to the mid-17<sup>th</sup> century and the first detailed reports are even more recent. According to Thomas Baty, there are two options: either the decisions of the House of Commons were taken unanimously for a long time, so that the minority was forced to accept the will of the majority; or the majority principle was accepted without contestation by the House of Commons from the beginning of its history. Baty doesn’t agree with this last opinion, since the Chamber had existed for about three hundred years when minutes began to be drawn up, allowing outsiders to follow its procedure in detail. In any case, the House of Commons, in the

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36 F. POLLOCK / F. W. MAITLAND, *History of English law*, vol. II, p. 621.

37 Y.B. 15 Ed. IV Mich. pl. 2 p. 2, quoted in W. HOLDSWORTH, *A history of English law*, vol. II, p. 431.

38 T. BATY, *The history of the majority rule*, 1912, p. 9.

39 J. BENTHAM, *Essay on political tactics*, VI, in *Works*, ed. by J. Bowring, vol. II, Edinburgh/London, 1995, repr. 1843 ed. (1<sup>st</sup> ed. 1791), p. 319.

17<sup>th</sup> century, was still a restricted assembly, whose electoral body comprised just one sixth of the entire male population: the end of monarchical absolutism had certainly not opened the doors to universal suffrage, but rather to the oligarchy (double and antagonist) of the aristocracy (House of Lords) and the upper bourgeoisie (House of Commons). It is precisely for this reason that Francesco Galgano believed that Locke did not find inspiration for his theories in the parliamentary system, but rather in the assemblies of the EIC, where lords and commoners had voted together (in his opinion) for almost a century when the “Second treatise” was published.

Even before the foundation of the EIC though, we can observe that, at least in some cases, the courts of justice recognized the majority rule within the framework of corporations, which, before the 16<sup>th</sup> century, usually had no business aim: corporations were at that time more likely to be municipalities, churches, hospitals, etc. In the Abbot of Hume’s Case, for example, the “ubi major pars ibi tota” rule was recognized in the case of acts approved by a corporate body.<sup>40</sup> More evidence of the general application of the majority principle to corporations are attested in the following century, even though only Holdsworth seems to focus on this.<sup>41</sup> In 1591 the King’s Bench recognized the rule, already imposed by the King ca. fifty years earlier, according to which all powers of a corporation could be exercised by the majority of the members. This judgment was essentially based on an act of Henry VIII (1541-1542)<sup>42</sup> as well as on a case known as The Chamberlain of London’s Case (1591), which we know of thanks to three different reports. We will take into account Edward Coke’s one.<sup>43</sup> In reality, looking at it in more detail, the Chamberlain of London’s Case is rather ambiguous: if it is true that the majority of the inhabitants of a city (obviously incorporated) were recognized as having the power to issue by-laws that would also bind the minority even in the absence of a specific custom, this rule was valid only if the by-laws were aimed at the “general good of the public”, as in the case of the restoration of a church or a street; on the contrary, if they were issued for the pursuit of private interests (“their own private profit”), “the

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40 Y.B. 21 Ed. IV Mich. pl. 53, quoted in W. HOLDSWORTH, *A history of English law*, vol. III, p. 485.

41 *Ibid.*, vol. X, p. 54.

42 33 Henry VIII, c. 27.

43 5 Co. Rep. 62b, 77 ER 150.

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greater part should not bind the less”.<sup>44</sup>

#### ***4. How did the assemblies of the EIC work? Voting rights in progress***

When writing about the “democracy” of the EIC, scholars usually refer to the voting mechanisms of the company’s assemblies (General Court and Court of Committees, later Court of Directors) and in particular, of course, to the application of the majority principle, because today democracy and majority are two inseparable concepts.

The governance structure of the EIC foreseen by the 1600 incorporation charter included a Governor, a Deputy Governor, a Court of Committees and a General Court. The latter is, of course, particularly important for judging the company’s “level of democracy” as it was composed of all members of the EIC. Its duties were not limited to the election of the Governor, of the Deputy Governor and of the twenty-four members of the Court of Committees (to be chosen among all members), but included a series of judicial and deliberative functions, useful for assessing the effective participation, at least theoretically, of the universality of the shareholders in the management of the company.

##### ***4.1. The General Court***

The general meeting of members had to be convened at least twice a year (on the 1<sup>st</sup> of July and on the second Tuesday of May) and had, in general, powers to revise and ratify the decisions of the Court of Committees, which was in charge of the every-day management, but on the basis of the instructions of the General Court. In 1661, King Charles II’s charter moved the annual date for the election of the governing bodies (Governor, Deputy-Governor, Treasurer and Committees) between April 10 and April 30.

If we combine the royal charters (the most important ones of the 17<sup>th</sup> century are dated 1600, 1609, 1661 and 1693)<sup>45</sup> with a very interesting, yet neglected, document called “The Lawes or Standing Orders of the East India Company” (1621), we

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44 *Ibid.*, 63 a.

45 43 Elizabeth I, 31<sup>st</sup> Dec. 1600; 7 James I, 31<sup>st</sup> May 1609; 13 Charles II, 3<sup>rd</sup> Apr. 1661; 5 William & Mary, 7<sup>th</sup> Oct. 1693. All are available in: J. SHAW, *Charters relating to the East India Company*, 1887. Unfortunately, the 1657 charter granted by Oliver Cromwell is lost.

obtain a clear and quite detailed picture of the operating mechanisms of the EIC.<sup>46</sup> The by-laws opened with the list of the powers or, more generally, of the functions of the shareholders' meetings (courts). The first article concerned the election of the Governor, the Deputy-Governor, the Treasurers and the Committees (the number of which was not specified): every year, on the 1<sup>st</sup> of July or during the following five days, a General Meeting had to be convened to this end. The matter was already regulated in the 1600 incorporation charter, with the important exception of the Treasurers (also to be elected by the General Court), on whose election the sovereign's provisions were silent. The content of the charters and of the regulations was almost identical, apart from some small, negligible differences (for example the days within which to convene the meeting after the 1<sup>st</sup> of July were six in the first case and five in the second), but the style was very different: the one of the royal chancery was redundant and sometimes obscure; the one of the (anonymous) by-laws of 1621 was simple and direct. The incorporation charter also provided that all governing bodies (including the Governor and Deputy-Governor) were "removable" «at the pleasure of the said Governor and company, or the greater part of them». In summary, not only were the governing bodies in charge for a very limited period (one year), perhaps all the more surprising considering that the voyages lasted at least a couple of years, but they could also be removed at any time, should their work not be appreciated by the members.

The principle adopted for the decisions of the General Court was that of the relative majority, that is, of the majority of those present at the meetings, as can be deduced from the formula «the said Governor and company [...] or the more part of them» or «the greater part of them, which then shall happen to be present». On the contrary, as we will see, the decisions of the Court of Committees were to be taken by absolute majority. Once the methods were established, the men remained to be chosen: the regulation recommended that they be suitable men, experts in the trade, but above all men who could and really wanted to deal with the business.

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46 *The lawes or standing orders, made and ordeyned by the Governor and Company of Merchants of London trading to the East Indyees, for the better governing of the affaires and actions of the said Company heere in England residing*, London, 1621, repr. Farnborough, 1968.

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#### 4.2. *The Court of Committees*

The functions of the twenty-four members of the Court of Committees, elected annually, were regulated in a special section of the by-laws entitled “Committees general” (Arts. XLIV-LI of “The lawes or standing orders”), except for a couple of rules that were set out in the first part, the one devoted overall to the courts and essentially to the general assembly of all members (Arts. I-XV). The Court of Committees was summoned at least once a week (and whenever it was deemed necessary) and compulsorily on June 24 for the election of the officers.<sup>47</sup> According to the royal charters it was the competence of the Court of Committees (together with the Governor) to organize travel, equip ships, sell goods from India, and deal with all matters pertaining to the management of the company. To organize all these activities, the Court used special commissions, made up of its own members and, in case of need, of salaried employees. Between the 1660s and the 1670s, when the organization of the company became more stable, these commissions acquired a permanent character, and appeared in the court minutes according to the different peculiar competences: “Accounts, Buying goods, Coast and bay, Lawsuit, Private trade, Shipping, Surat, Treasury, and Writing letters.”

Within this Court, the criterion applied was the one of absolute majority (“thirteen committees at least”), as was specified in the by-laws. The charter granted by Elizabeth I in 1600 determined the voting mechanisms of the General Court, and left the discipline of the decision-making process within the Court of Committees to the company’s self-regulation. In the case of the election of the officers, given the silence of the royal charters on this matter, it was necessary to introduce a special section in the regulation: “Election of officers.” Also in this case the principle of absolute majority was applied. The method of voting was via the raising of hands or of the “balloting box.” In addition to the (manifest) method of raising the hand, therefore, at least within the Court of Committees, the (secret) method of the ballot box was allowed. It is usually stated that in the General Court people voted by raising hands but perhaps one could hypothesize, by analogy, that the secret vote was admitted, in some cases, also in the

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<sup>47</sup> “Officers” were for example: the *secretary*, in charge of writing the court minutes, or the *remembrancer*, a kind of deputy-secretary.

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general assembly. Charles Gross showed that, contrary to what most people believed at the time of the English Ballot Act (1872) (when there was a widespread belief that secret ballot using the ballot box method had never been used in England before for the election of public officers), the method was known and applied in England since the Middle Ages and was in vogue at the beginning of the 17<sup>th</sup> century, when it was not uncommon to cast a vote by inserting bullets of different colors in a box. Particularly interesting is an order in council (*i.e.*, an order of the Privy Council made in the name of the King, in this case Charles I) dated 17 September 1637, in which the use of balloting boxes by corporations and companies is clearly attested because it is explicitly prohibited. Gross admitted that he did not know exactly the reasons that led the King to enact this ban, but assumed that the secret vote could be unwelcome to a sovereign who wanted to check that his subjects managed their activities, including the commercial ones, in accordance with his desires.<sup>48</sup>

### ***5. When did the EIC abandon the “democratic” one-man-one-vote rule? 1657: The year when everything changed***

According to the voting mechanisms described, the EIC appeared to be an organization structured so as to guarantee the maximum participation to all members, regardless of social status, wealth and capital subscribed. However, things not only changed over the 258 years of the Honourable Company’s history, but over the course of that same 17<sup>th</sup> century that had opened with its foundation. Opinions are different, though, about the exact date of this change.<sup>49</sup> Certainly the one-man-one-vote rule was definitely abandoned after the mid-17<sup>th</sup> century. On 19 October 1657, some Committees drew up, on behalf of the General Court, a “preamble” which, in view of the subscription of a new joint-stock, should attract new adventurers. On that occasion it was established that the right to vote should be linked to the amount of capital subscribed.

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48 C. GROSS, *The early history of the ballot in England*, in *The American Historical Review*, 3.3 (1898), pp. 456-463.

49 R. HARRIS, *Going the distance*, 2020, p. 305.

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«Each adventurer present at any general court to vote and rule in the government of this stock and trade according to his adventure, that is, every 500 l. adventured entitles him to one vote; those whose adventures do not amount to so much to be allowed to join together to make up that sum and choose one of their number to vote for the rest».<sup>50</sup>

More generally, 1657 was a very important year in the history of the EIC, since several other decisive measures were adopted: a new (unfortunately lost) charter, and a new joint-stock (which became finally permanent).<sup>51</sup> From 1600 to 1612, in fact, during the first uncertain years of activity, the joint-stocks lasted only until the end of a single voyage. A bit later on, they were extended slightly, usually from eight to fifteen years.<sup>52</sup> Until the 1657 turning-point.<sup>53</sup>

The charter by Charles II, issued in 1661, recognized the voting rule of the 1657 “preamble”.<sup>54</sup> The following 1693 charter by William & Mary confirmed the previous privileges but only a month later a new charter changed, or better doubled, the amount of the subscription which gave the right to one vote: from £ 500 to £ 1.000, with the maximum limit, however, of ten votes per capita. Furthermore, the possibility of gathering multiple subscriptions, in order to reach the sum required, disappeared from the charter and small shareholders seemed now out of the game. Five years later, for the members of the so called “New company”, £ 500 became sufficient again and the Committees started to be called Directors.<sup>55</sup>

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50 E. Bruce Sainsbury (ed.), *A calendar of the court minutes etc. of the East India Company, 1655-1659*, Oxford, 1917, p. 173.

51 J. POLLEXFEN, *Discourse of trade, coyn and paper credit*, London, 1700 (1st ed. 1697), p. 98: «the last stock was underwrit by vertue of a charter granted Anno 1657, since often confirmed, and augmented». See also: K.N. CHAUDHURI, *The trading world of Asia*, 1978, p. 14 and p. 460; P. LAWSON, *The East India Company: A history*, London / New York, 2014 (1993), p. 21, pp. 40-42.

52 For a detailed analysis of the amount and duration of the joint-stocks until 1657, see: R. HARRIS, *Going the distance*, 2020, pp. 297 and 302.

53 W.R. SCOTT, *The constitution and finance*, 1910, vol I, p. 17.

54 13 Charles II, 3rd Apr. 1661. See: J. SHAW, *Charters relating to the East India Company*, 1887, pp. 32-47, in particular p. 44.

55 At the end of the 17<sup>th</sup> century a “New” East India Company was created, in addition to the so called “Old” East India Company. This crisis was solved by merging the two companies in 1708. See: S. GIALDRONI, *East India Company*, 2011, pp. 60-62.

As Norberto Bobbio wrote, the majority rule is a necessary but not sufficient condition for a democratic regime to function properly.<sup>56</sup> If anything, it is universal suffrage that characterizes democracy. If we apply these criteria to the EIC, the result is that it could be considered a “democratic” organization but only at the beginning of its history. As for contemporary public limited companies it would seem, in fact, that economic conditions have led to derogations from the principles of equality to introduce a vote proportional to the contribution. This change occurred many years before Locke wrote the “Second treatise of government” which, according to Francesco Galgano, should have been influenced by the voting mechanism of the colonial companies, including the most important one, the EIC. Certainly, in the 1661 charter granted by Charles II, the adventurers were no longer considered equal as they were at the very beginning of the company’s history, when the whole organization of the company was still very much influenced by the structure of the merchant guilds. Moreover, Locke could only have indirect knowledge of the EIC assemblies, as it seems that he never joined this company. He was instead a shareholder of the Royal African Company (1672-1752), a commercial company born with the aim of trading gold, silver and slaves from Africa to the British colonies. In this company, from the very beginning, those who had subscribed less than £ 100 had no voting rights. Each £ 100 subscribed gave the right to one vote, with no limit on the number of votes per capita.<sup>57</sup> Constructing an argument that seeks to link the experience of the EIC, John Locke’s thought and the English Parliament is therefore, on careful observation, not completely convincing.

In conclusion, although the majority rule principle was initially applied in the General Court of the EIC, it is important to underline that the strongest shareholders started, quite soon, to exclude the small ones from the right to vote, introducing a mechanism of participation based on money rather than on people. A mechanism that we do not associate with our idea of democracy today.

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56 N. BOBBIO, *La regola della maggioranza e i suoi limiti*, in V. Dini (ed.), *Soggetti e potere. Un dibattito su società civile e crisi della politica*, Napoli, 1983, pp. 11-12.

57 K.G. DAVIES, *The Royal African Company*, London *et al.*, 1957, p. 154.