



Equality, democracy and (popular) sovereignty

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Why Democracy?

- Connection to previous classes: mainly legitimacy; but also to equality)
- Substantive/outcome based vs. egalitarian/procedural answers).
- Democracy creates „flexible“ systems from the point of view of **perpetual need of the State to legitimize itself**, cf. *open society* (Popper and others: „only democracy provides an **institutional mechanism for reform** and leadership change **without** the need for **bloodshed**, revolution or coup d'état“).

Democracy and Popular Sovereignty: A Prelude

- The shift between sovereignty as understood by Hobbes and Bodin vs. popular sovereignty (read D. Grimm, Sovereignty).
- The earlier accounts of sovereignty have been devised to justify a rule of a monarch over the people/the state.
- The new accounts see sovereignty as self-determination of the people.

Establishment of Democracy (Popular Sovereignty)

- As a historical/political question
- As a question of political philosophy
- „Empowering“ aspect of constitutionalism vs. purely limiting/restricting the state

Democracy, Majority, Equality

- *Democracy: The decisions made by a group must be appropriately responsive to the expressed wishes of the members of that group.*
- *Political equality: Each group member must have an equal (chance of) influence over the group's decisions.*
- *Majority rule: The option that gets the most votes should be the group decision.*

Equality and Democracy

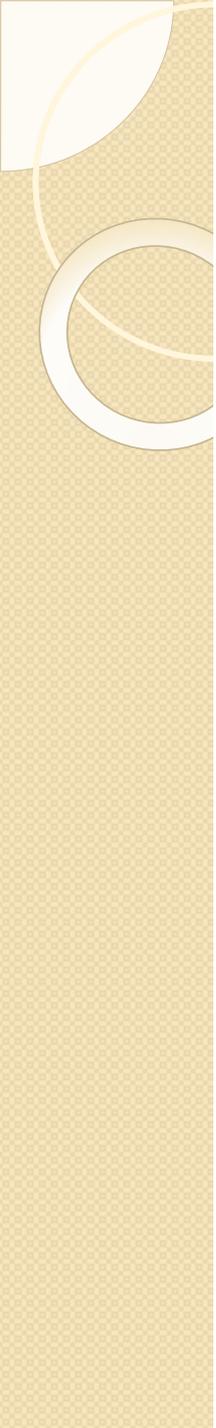
- The „philosophical dimension“
- Equality => Democracy as a rule of people + majoritarian rule? (Is there an implication?)
 - Consider special cases (qualified majorities, unequal impact or „skin in the game“)
- Consider „the lottery democracy“

Lottery Democracy

- In lottery voting, each person casts a vote for their favored option but, rather than the option with most votes automatically winning, a single vote is randomly selected and that one determines the outcome.
- This procedure is democratic, since all members of the community have a chance to influence outcomes, but is not „majority rule“, since the vote of someone in the minority may be picked. It is egalitarian, since all have an equal chance of being picked.
- What do we lose/gain by adopting lottery democracy?

What Do We Lose by Lottery Democracy? What Do We Gain?

- The „problem of discrete and insular minorities“ (*United States v. Carolene Products Co., fn. 4*); bloc vs. fluid minorities; one vs. multiple cleavages.
- (discuss: deliberation, compromise, distribution of happiness, creation of moral virtues)



Procedural democracy or democracy plus? A (partly) false dilemma?

- Classical argument: proceduralist vs. value oriented theorists
- Is democracy just a procedure or does it

Democratic rights? Rights as prerequisites of democracy (Waldron's Debate with Dworkin)

- Rights directly connected to democracy
 1. Equal participation (universal suffrage)
- Rights indirectly connected to democracy (democracy is only legitimate if...)
 1. Freedom of speech
 2. Freedom of association
 3. (*Real* membership in the community)

Political equality as a political struggle

- French revolution, English evolution
- Granting „active citizenship“ vs. negative rights
- Struggle of (*inter alia*) women, ethnic minorities, lower classes
- Establishment of „political community“ (externally and internally).
- Timeline of women’s suffrage
https://en.wikipedia.org/wiki/Women%27s_suffrage

Remaining inequalities?

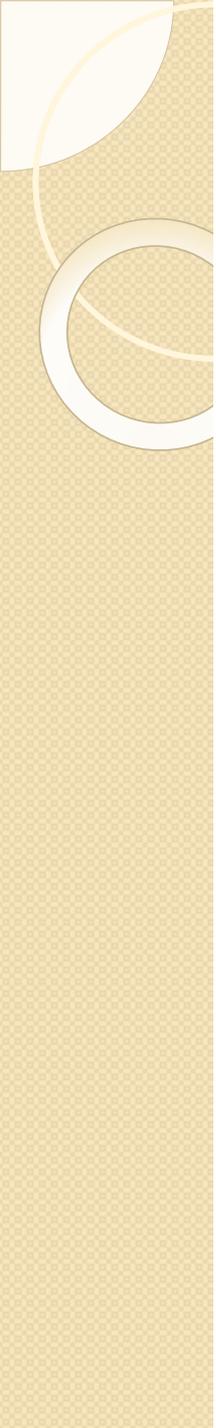
- Nationality (or, more generally, determining the political community/district; especially problematic in various administrative districts)
- Age
- Mental health
- Overlooked minorities
- Systemic issues (weight of a vote)

Choosing a system of representative democracy

- It is not simply a matter of taste.
- I. e. creating a constitution for a homogenous political community vs. creating a constitution for a multi-ethnic political community.
- Consociational state or consensus democracy vs. majoritarian versions of democracy.
- „Good gerrymandering“ in the US (redistricting); Section 2 of the Voting Rights Act blocks district lines that deny minority voters an equal opportunity *"to participate in the political process and to elect representatives of their choice."*

Limiting popular sovereignty

- Fear of „absolute“ popular sovereignty.
- Difference between „THE PEOPLE“ and „the people“.
- The former are sovereign (even though a rather abstract entity), while are a specific (specifiable) group of people operating within a set of rules (basically a constitution).
- => rule of LAW rather rule of MEN/PEOPLE; democracy through law (i. e. *the basic limitation*).
- Basic problem of „binding the future generations“.



Other possible limitations/important questions

- Natural law/human rights.
- Judicial review.
- International and supranational law.
- All will be addressed in future classes.