

Philosophy 267

Fall, 2010

Professor Richard Arneson

Introductory Handout

Class meets Tuesdays 1-4 in the Department seminar room.

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This course considers some philosophical arguments concerning the justification of the claim that under modern conditions, the political order of a society ought to be democratic. Next question: how democratic ought the political order to be, and what determines the normatively appropriate degree of democracy in particular circumstances. Following David Estlund, let us say a state is *legitimate* if it issues commands (laws, public policies) and enforces them and does so permissibly, and a state has *authority* if it has the moral power to issue commands (laws, public policies) to its subjects and thereby to bring it about that those commanded have some moral obligation to comply. Under modern conditions, must a state be democratic in order to rule legitimately and with authority?

Texts: Joshua Cohen, *Rousseau: A Free Community of Equals*; David Estlund, *Democratic Authority: A Philosophical Framework*. J. S. Mill's *Considerations on Representative Government* is available on line at www.utilitarianism.net/jsmill/

Jason Brennan's forthcoming book *the Ethics of Voting* will be made available by email attachment. Some other readings will be made available by email attachment or in printed copies to be placed in the Philosophy Department Library or both.

Note that the reading for weeks 1 and 2 includes Rousseau's *The Social Contract*, which is neither a book placed on the shelves of the bookstore for this class nor specially made available in the Department Library. I'm just assuming each of you can find a copy of this text; any edition will do.

Course requirements: Attendance and participation at all seminar meetings, some seminar presentations (analyzing a key argument or claim in a reading and leading its discussion), and a term paper (about 15-20 pages in length) on some topic central to course themes. Regular auditors of the class are welcome, and will be asked to contribute seminar presentations.

Week 1. September 28. Democracy as Rousseau's solution to the problem of inequality and inflamed self-esteem. Reading: Joshua Cohen, *Rousseau, A Free Community of Equals*, chaps. 1-2; J-J Rousseau, *The Social Contract*, Books 1 and 2. Further background: J-J Rousseau, *Discourse on the Origin of Inequality*; John Rawls, *Lectures on the History of Political Philosophy*, Lectures I and II on Rousseau.

Week 2. October 5. Freedom, Dependence, and the General Will. Reading: Joshua Cohen, *Rousseau: A Free Community of Equals*, chaps 3-4; J-J Rousseau, *The Social Contract*, Books 3 and 4. Further background: Rawls, *Lectures on the History of Political Philosophy*, Lecture III on Rousseau; Frederick Neuhouser, "Freedom, Dependence, and the General Will," *Philosophical Review* (July, 1993).

Week 3. October 12. Mill on representative government. Reading: Mill, *Considerations on Representative Government*, chapters 2-5.

Recommended: Charles Beitz, *Political Equality* (Princeton UP, 1989), chapters 2 and 5

Week 4. October 19. Mill's elitism. Reading: *Considerations on Representative Government*, chapters 6-8.

Recommended: Charles Beitz, *Political Equality*, chapter 6, "Proportional Representation."

Also recommended: Richard Arneson, "Democracy Is Not Intrinsically Just" in Goodin, et al, eds, *Democracy and Justice* (Cambridge UP, 2004).

Week 5. October 26. Epistemic proceduralism. Reading: David Estlund, *Democratic Authority*, chapters 1-6.

Week 6. November 2.

Reading: Democracy and legitimate authority. David Estlund, *Democratic Authority*, chapters 7 & 8; also Christopher Wellman and A. John Simmons, *Is There a Duty to Obey the Law* (Cambridge UP, 2005), 3-30 of the Wellman entry, and 83-189 of Simmons.

Recommended: Jeremy Waldron, "Special Ties and Natural Duties," *Philosophy & Public Affairs* (1993).

Also recommended: Gopal Sreenivasan, "'Oh, but you should have': Estlund on Normative Consent," *Iyyun* (2009).

Week 7. November 9.

Reading: David Estlund, *Democratic Authority*, chapters 9-11, also 14.

Recommended: David Enoch, "On Estlund's *Democratic Authority*," *Iyyun* (2009), A.J. Julius, review of *Democratic Authority* in *Philosophical Review*, Thomas Christiano, "Estlund on Democratic Authority," *Journal of Political Philosophy* (2009). On the relevance or irrelevance of the discursive dilemma: Philip Pettit, "Deliberative Democracy, the Discursive Dilemma, and Republican Theory," in James Fishkin and Peter Laslett, *Debating Deliberative Democracy* (Blackwell, 2003).

Week 8. November 16. The ethics of voting. Reading: Geoffrey Brennan & Loren Lomasky, "Is There a Duty to Vote?," *Social Philosophy and Policy* (2000). Jason Brennan, *The Ethics of Voting* (forthcoming, 2011), chapters 1-4.

G. Brennan & Lomasky & J. Brennan all argue against the claim that the citizen in a well-functioning democracy has a duty to vote. J. Brennan argues for a conditional permissive duty: One has no duty to vote at all (except in special circumstances) and one ought not to vote unless one is competent, well-informed, and votes for the common good.

Week 9. November 23: Justice requires equality and equality requires a democratic political order—Thomas Christiano on the justification of democracy.

Reading: Thomas Christiano, *the Constitution of Equality*, chapters 1-3.

Recommended: David Estlund, "On Christiano's *The Constitution of Equality*," *Journal of Political Philosophy* (2009); on publicity as a constraint on justice, see G. A. Cohen, *Rescuing Justice and Equality* (2008), chapter 8.

Week 10. November 30. Judicial review and other constraints on majority will in democracies.

Reading: Jeremy Waldron, "The Core of the Case against Judicial Review," *Yale Law Journal* (April, 2006); Philip Pettit, "Depoliticizing Democracy," *Ratio Juris* (2004);

Recommended: Thomas Christiano, *The Constitution of Equality*, chapters 6-7.

An alternate week 10 topic: Rights of secession. Reading: Christopher Heath Wellman, *A Theory of Secession: The Case for Political Self-Determination*, chapters 1-3; also Allen Buchanan, "Theories of Secession," *Philosophy and Public Affairs* (Winter, 1997).

(Even if we do not take up this topic in class, it would still be an appropriate term essay topic for anyone interested in it.)

Some rough background on democracy.

A democratic political order is a society in which all permanent adult residents are eligible to become citizens and all citizens have equal rights to vote and stand for office in free and fair elections. A free election is one that occurs when freedom of speech, of association, and assembly are effectively protected. A fair election is one in which the outcome is controlled by a

majority of votes cast. In a democratic political order, majority-rule votes of citizens in free and fair elections either (1) determine the membership of a legislative body that passes the coercively enforced laws of the society by majority rule procedure and also selects top officials of the government branch that enforces the laws and sets other public policies and appoints lower-level officials or (2) directly select the laws that are coercively enforced and select top officials of the government branch that administers the laws. A political order can be more or less democratic, along several dimensions. Two obvious dimensions are the degree to which democratic elections are free and fair as just described. Here are some others: (a) The more it is the case that a change in the will of the majority of citizens quickly brings about corresponding changes in the laws and in the composition of the government branch that administers the laws, the more democratic the political order. (b) The fewer and less important the matters that are placed by constitutional provision beyond the power of majority rule votes of citizens to alter, the more democratic the political order. (An example of such removal of some items from the purview of majority rule would be a substantive bill of rights enforced by an independent judiciary.) (c) The more it is the case that any two adult citizens with the same level of political talent and the same ambition to be politically influential have the same prospects of being politically influential, the more democratic the political order. Both a and b seem crucial to being a democrat, but c is contestable, and so is (d): The more it is the case that the laws and public policies coercively enforced by the government are selected by a process of critical deliberation and reflection about the common good that is deep in the sense of consisting of high-quality discussion and wide in the sense of including as participants all citizens, and that issues in voting by majority rule in free and fair elections, the more democratic the political order.

The rough taxonomy above raises several questions and issues. One question is, is the list of dimensions democracy (freedom and fairness of elections plus a-d) complete, or are there further valuable aspects to being democratic? Or should the ideal of democracy be pared down, and some of a-d eliminated from the ideal? Are some of a-d far more important in the constitution of the ideal of democracy than other elements in the set, and if so, why so?

Another question is, whether some or all of these dimensions of democracy are rightly regarded as merely instrumentally valuable when valuable at all or also as being intrinsically morally valuable?

Notice that some of the dimensions a-d might be satisfied in a political order that is not democratic at all. Equal opportunity for political influence might be fulfilled in a political order in which there is a limited franchise (e.g. only those citizens who pass a political competence test have the right to vote) or in a political order in which majority rule is sharply curtailed by the power of nonelected nonremovable judges or state bureaucrats (who obtain office by passing some test for political competence). Depending on how the ideas of *political talent* or *political competence* are interpreted, one might hold that in principle some dictatorships might satisfy condition c. Consider rule by a communist or egalitarian political party, membership in the ruling party being open to all citizens, and selection into the party being made on a meritocratic basis, with dedication to communist or egalitarian principles being partly constitutive of competence/talent. If one insists that political talent/competence must be interpreted in an ideologically neutral fashion, so a person who adheres to any political ideology whatsoever can qualify as politically talented/competent, then the dictatorship of a single political party, with an ideological qualification for admission to the party, cannot satisfy c. Notice also that to be plausible, the ideal of equal opportunity for political influence must take the distribution of political preferences in the population at a time as a random matter, so that if Arneson, whose political ideology chimes in with that of 1/10 of one percent of American voters, and Bill Clinton, whose political ideology chimes in with that of 60 per cent of American voters, are equally politically talented, then Clinton's having greater chances to be politically influential because his opinions chime in with

most Americans does not preclude Arneson and Clinton having equal opportunity for political influence.

A monarchy or dictatorship could in principle satisfy condition a to a greater extent than a majority rule political process of the sort we would ordinarily call “democratic.” Suppose the king or queen or dictator happens to be very sensitive to majority rule, and always exercises her dominant political power in ways that are reflective of the majority will of the moment. The absolute rule of the sensitive monarch satisfies condition a. (This result might prompt us to revise condition a so that this implication ceases to hold.)

Also, there could be a democratically deliberative nondemocracy. Consider a political regime in which political power is held by an hereditary monarch. Broad free speech protections are in place, and there is a culture that strongly encourages discussions of what public policy ought to be that are wide (encompasses many citizens) and deep (the discussion plumbs to fundamentals, which are carefully considered and weighed). The political regime is strongly deliberative, and the monarch participates in the deliberation. But at the end of the day, what the monarch thinks and decides, determines policy. This regime would not satisfy condition d as stated, because democratic votes do not determine public policy at the end of the day. But in the regime as described, democratic deliberation does determine the outcome of public policy decisions (via the impact of democratic deliberation on the mind and will of the ruler). So the question arises, whether this democratically deliberative character of the regime is rightly thought to be morally valuable when sundered from any connection to democratic rule.

The week 9 topic, limits on majority rule such as limits imposed by an independent judiciary that enforces a constitutionally entrenched charter of rights, raises many issues including the following: Do the moral considerations that show a democratic political order to be intrinsically politically valuable also show that people have certain moral rights (other than the right to a democratic say), which ought above all to be protected and secured? In this way the right to a democratic say would be self-limiting, in that if it turns out to be the case that limits on majority rule are instrumentally efficacious in securing and protecting these certain moral rights, then the very considerations that warrant democracy also set limits to its writ.

Discussions of the moral foundations of democracy often proceed by describing an ideal form of democracy and affirming that in an ideal democracy it would be legitimate (morally permissible) for democratic rulers to issue commands backed by force and such commands would have authority (generate moral obligations in citizens to comply). Under modern conditions, nondemocratic regimes would lack legitimacy and authority. These accounts may leave us wondering what we ought to do when we cannot establish and sustain an ideal form of democracy. Are we obligated to bring about the best feasible approximation of the ideal? Also, existing democracies that fall far short of the ideal still strike many of us as morally attractive as compared to the feasible alternatives. A full account of the moral foundations of democracy would include an account of how we ought to regard nonideally democratic regimes and tell us whether such regimes can be legitimate and have authority.

Another question about democracy is whether individuals subject to nonpolitical authority in churches, workplaces, and perhaps other settings have right to a democratic say, and if so, why, and under what conditions. On this topic, see Joshua Cohen, “The Economic Basis of Deliberative Democracy,” *Social Philosophy and Policy* (1989). See also Michael Walzer, *Spheres of Justice* (1983).