

Theories of Democracy

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Taught by:

Dr Ricardo Blaug and Andrew Whitworth

Essay title:

**Constitutions limit individual autonomy, and so are
inherently undemocratic**

by

Daniel Wolschner
(SID# 974339865)

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Constitutions limit individual autonomy, and so are inherently undemocratic.

Basically every country in the world has a constitution, including in particular all those commonly regarded as being democratic. However, a constitution is regarded by many political theorists as something limiting individuals and therefore as potentially undemocratic. This begs the question why democracies adopt such rules, which apparently work against basic democratic principles, or whether constitutions really are undemocratic.

Initially it will be necessary to define the central terms used. What is the thing that we regard as a democracy? A simple translation of the Greek terms is people-rule. Or as Abraham Lincoln described it in his Gettysburg address in 1863 democracy is “government of the people, by the people, for the people” (in: Guggenberger, p 37). On the other hand we have the idea of a constitution. Originally the legal term was simply used for laws. However, over the past few centuries the idiom came to describe the fundamental set principles of a state (Sartori, p. 855).

Historical development

Greek philosophers regarded democracies as one form of constitution, as opposed to other kinds such as monarchies, aristocracies etc. Only in modern times has the idea of democracy developed into something more complex, describing the liberal-bourgeois demands for autonomy and participatory

rights. This began with a demand for freedom from wanton persecution and for autonomy with fundamental rights for citizens before modern democracies really emerged. Only with the demand for equality of all citizens and the associated political participatory rights did some form of democracy become reinvented. At the time this did not include the general populace but with the French revolutionary *fraternité* and as a result of American independence wider equality slowly evolved into a generally accepted part of modern liberal democracy (Guggenberger, pp 37). While these democratic principles developed, constitutions also became to be part of a state's institutions. The English Magna Charta was the first document, which can be described as a constitution in the modern sense. The document limited the King's powers and introduced codified rights for at least part of society. Advocates of constitutions, acknowledging the role of governments, link them to the control and limitation of the latter (Vile, p 2). This means that rather than limiting individuals, constitutions actually protect them from limitation by their respective governments.

Democratic principles

Democracy doesn't as such mean that individuals have the right to do whatever they please. In a democratic state the people should aim to work together for the benefit of all. Going back to Lincoln's description I would like to highlight the last phrase of democracy being a government "**for** the people". If one is to accept the principle of equality I would add the small word "all" after each of the three prepositions. If consequently democracy would be

government for **all** the people, this would mean that simple majority decisions could not be accepted in every circumstance. The rights of minorities for instance would have to be protected. Where once constitutions defended the rights of the majority against a ruling minority, minorities within the majority of the populace now need defending too. During the past 20th century with the development of human rights individuals have become protected with special focus often given to minorities. Even countries like the People's Republic of China, which regards itself formally as democratic though not in the western liberal-democratic sense, have given minorities certain rights not granted to the majority. In certain areas there is sometimes a need to restrict an individual's fundamental rights in order to protect those of others. This is sometimes also the case when it comes to protecting the rights of the majority. New concepts of environmental and social rights additionally put limits on individuals' activities when they might harm others through their actions. This may restrict the autonomy of certain individuals, but it will secure more basic democratic rights of others. In a democracy most decisions are in the end based on the will of the majority and unanimous decisions are regarded to be unfeasible due to the size of modern states, which can create the possibility of a limitation on autonomy. As in the liberal-democratic view men and women may be equal under the law and free from the state but not completely free in it (Walzer, p 326).

Need for constitutions

This is where constitutions find their place. In order to make sure that certain rights are protected from the infringement by others they need to be written down. They should be the basis upon which other activities in a state should be taken. However, as mentioned above constitutions were not primarily established to protect people from other individuals but rather from the influence of the state. In addition, in most societies the constitution established a definite separation of powers, primarily between legislature, executive and judiciary. This independence of these institutions from each other was, and still is, regarded as necessary to defend the state against the government falling into the hands of a single person or group, and thereby it protects the people's democratic right to be sovereign. Considering the fact that most democratic countries are actually representative democracies, ie not direct democracies, and therefore delegate certain rights to others to make decisions for them. In such a system a constitution is definitely necessary to provide an assurance to the general public that the rights they have granted to others are not going to be abused, though they do not have any say over their representative's decisions during a set period in parliament. Only when another election is held can they once again exercise their democratic right to decide on whether their representative, be it an individual or a party list, did the job to their satisfaction.

Constitutional issues

There are different views on what form a constitution should take and where its boundary should lie. Firstly, one of the most basic differences is

whether a constitution is a single codified document, as it is in most countries, or not confined to one specific text, as for example is the case in the United Kingdom. However, this does not as such constitute a real difference as the purpose is still basically the same (Sartori, p 855). Thomas Jefferson and James Madison's dispute can be used well to describe the differences. On the one hand, Jefferson believed it necessary to regularly amend a constitution as a society develops and changes its idea of what "form of government it believes most promotive [*sic*] of its own happiness" (in: Sunstein, p 327). In contrast, Madison saw the constitution as something belonging outside of the bounds of ordinary political bickering and being more fundamental (Sunstein, p 327). Most countries' constitutions acknowledge this dispute in creating both a possibility to change a constitution but keeping it more restrictive than ordinary laws which have to comply with the letter of the constitution. Of course this leaves room for both bickering and abuse of power, in particular when the government in power also has the necessary majority to amend the constitution on its own. The latter can become a problem when politics turns into a dispute between self-interested groups and is not only the pursuit of the public good, as is generally the case in modern pluralist societies (Sunstein, p 329). In general, however, the constitution can be regarded as a safe-guard against the most pernicious features of pluralist politics in which the existing economic structures define the outcome. Certain forms of constitutionalism, being sensitive to this issue, are therefore used to create spheres of private autonomy. (Sunstein, p 352).

Conclusion

So are constitutions inherently undemocratic? Most evidence suggests this is not the case, though one cannot say that all constitutions are democratic either. "Some constitutions might promote democracy; others might subvert it" (Sunstein, p 352). If one looks specifically at the case of limited individual autonomy in a country with a liberal-democratic system, I would say that it is generally not the case that a constitution would actually limit an individual's autonomy. The common view is that it actually creates the conditions in which an individual can express their autonomy. The constitution in general is the set of principles which grants individualistic rights such as freedom of speech, freedom to private property etc. In fact without the basic rights given to people under a constitution they could be open to intrusion and persecution by the state and/or others. It is the constitution which establishes and safeguards the participatory rights necessary for a working democracy in the liberal sense. The one area in which one could say that most constitutions do limit the individual autonomy of certain people is when it comes to minority rights, as this causes a collision between the simple majority rule upon which the democratic One Man-One Vote principle is based (Lane, p 244). However, one can view this issue from two sides. For an individual of a minority these constitutional limits on others can improve his or her situation and consequently autonomy. Without this members of minorities might be affected by infringements on their autonomy as a result of simple majority decisions. The majority, though limited in this one respect, however, can still feel safe in the knowledge that most decisions are still to a great extent based upon their wishes. In addition the social and political stability created through the

granting of protected minority rights can enhance the feeling of security for the general populace. There is usually no need for the minorities to express their feeling of insecurity through for example violent means, such as terrorism. As one can see in countries with limited minority rights violence directed toward the majority endangers that part of the society's individual autonomy much more than simple constitutional rights could ever do. Therefore combining democracy with constitutionalism is not only possible, but necessary. Without the fundamental set of rules of a democracy set into place with a constitution the former would most likely collapse within a very short period of time. As I have mentioned before every democratic country has a constitution in some form or other, as the political leaders who established the system, realised that it would be impossible to safeguard it without it. Though some rights may be limited, the positive consequences are far greater.

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