



MASARYKOVA UNIVERZITA

Constitutionalism

What is Constitutionalism?

Jiří Baroš

What is Constitutionalism?

- Democracy
- Constitutionalism
- Constitutionalism v. Democracy

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- **Democracy**
- Constitutionalism
- Constitutionalism v. Democracy

Democracy

- What is Democracy?
- Political Obligation
- Tyranny of majority; factions
- Types of Democracy

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What is Democracy?

- elections
 - universal adult suffrage
 - not skewed electoral districts
 - free entry of citizens to candidacy
 - freedom of communication and association
 - political privacy
-
- right to participate in political process

Democracy

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- **Political Obligation**
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Political Obligation

- why to obey the law?
- people must be its makers
- equal right to participate
- sovereignty v. morality
- value of process

Democracy

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Tyranny of majority; factions

- tyranny over minorities; public v. special interests
- checks on majorities?
- shifting coalitions of minorities
- shared political culture

Democracy

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- **Types of Democracy**

Deliberative Democracy

- reason-giving requirements
- reasons accessible to all citizens
- deliberation – decision
- continuing dialogue

Aggregative Democracy

- majoritarianism
- production of optimal outcomes
- what are preferences?

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Constitutionalism

- Criticism of Democracy
- Process v. Substance
- Constitutionalist Institutions
- Varieties of Constitutionalism

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Criticism of Democracy

- human tendency to act selfishly and abuse power
- shortcomings and dangers of democracy

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Process v. Substance

- when is public policy legitimate?
- where to place political confidence?
- value judgement v. skepticism

Constitutionalism

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Constitutionalist Institutions

- division of shared powers
- bicameral structure of legislature
- judicial review and protection of individual rights

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Varieties of Constitutionalism

- liberal / conservative
- libertarian / egalitarian
- legal / political / democratic

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Constitutionalism v. Democracy

- Continuum: Pure Constitutionalist – Pure Representative Democrat
- Constitutionalism facilitates democracy...

Sources

- Blokker, P.: New Democracies in Crisis?
- Gutmann, A., Thompson, D. Why Deliberative Democracy?
- Murphy, W. F. Constitutional Democracy.
- Murphy, W. F., Barber, S. A., Fleming, J. E., Macedo, S. American Constitutional Interpretation