

# Rights and other institutions

Lesson 7

# Rights

- What is a right?
  - entitlements (not) to perform certain actions, or (not) to be in certain states; or entitlements that others (not) perform certain actions or (not) be in certain states
- Distinguish rights from democracy
  - Democracy as way of making collective decisions
  - Rights as a limitation on democracy

# Arguments for rights

- Deontological
  - Natural or god-given rights
  - Rawls
    - Veil of ignorance: what principles of justice would people agree to if they didn't know anything about their social position
    - First principle: equal basic rights for all
    - Second principle: other economic and social inequalities allowed if they benefit the worse off
- Utilitarian
  - Greatest happiness for the greatest number
  - Worry that rights won't be respected: could we deprive someone of right if social benefit > cost
  - But declining marginal utility: large benefits from basic rights

# First generation rights

- Negative rights: non-interference of state in private sphere
  - Speech, religion, association, privacy, property
  - Also political: right to vote
- Most basic and essential
- Even these can be limited
  - Speech: propagation of hatred/racism, pornography, libel
  - Property: eminent domain, taxation?
  - Political: Prisoners can't vote

# Second generation rights

- Positive right: entitlement to provision of some good or service
  - Right to benevolent actions from others
- Social and economic rights
  - Healthcare, housing, education, minimum income
- Justification
  - Necessary for first generation rights to be meaningful
  - Important in their own right
  - Needed for legitimacy

# Problems with second generation rights

- Hard to enforce => devalue other rights
- Justiciable: can courts decide these cases
- Too expensive for developing states
- Poor incentives: most citizens capable of supplying by themselves
- Solutions
  - Ask whether state takes reasonable actions
  - Ask whether a system is in place

# Third generation rights

- Rights to collective goods
  - Survival of language
  - Self-determination
  - Environment
- Do rights apply only to individuals?
- Life gains meaning through groups

# Cultural/group rights (1)

- Exemptions from laws
  - eg, drug use by native Americans, motorcycle helmets for Sikhs, Church wine during prohibition, conscription, vaccinations
- Assistance to do things that majority does easily
  - ramps for disable, multilingual ballots, parochial schools, affirmative action
- Self-government because otherwise would be mistreated:  
eg, Catalonia
- External rules limiting non-members' liberty to protect culture
  - eg, language laws restricting in Quebec, limiting settlement, hate speech laws?



# Cultural/group rights (2)

- Internal rules for conduct enforced by excommunication
  - eg, shunning, disowning children who marry outside the group
- Incorporation and enforcement of religious, ethnic legal codes
  - eg, sharia, Church weddings, can private organizations discriminate?
- Special representation of group within government
  - eg, special ethnic voting lists, majority-minority districts
- Symbolic recognition of group
  - eg, name of polity, national holidays, teaching of history, official apologies

# Arguments about cultural rights

- Pro

- Breakdown of culture => anomie
- Endangered species – try to preserve diversity
- Range of options
- Minorities have disadvantages

- Anti

- Groups not fixed and unchanging
- Why privilege a particular interest
- Groups not homogeneous
- How to enforce
- Sometimes privileges powerful members of groups

# Cost of rights

- Even negative rights can be expensive
  - Property rights require state enforcement: police, court systems
  - Voting rights require elections
- Maybe all rights positive – depend on government enforcement
- Hard to have a minimal liberal state

# Criticisms of focus on rights

- Rights don't allow compromise or discussion
- Rights focus too much on individuals
- What about duties?
  - Duty to serve country: army, public service, voting, jury duty
  - Duty to help others: good Samaritan laws
  - Duty to donate blood/organs

# Citizenship laws

- Jus soli (land): citizenship by virtue of place of birth
  - Helps solve problem of refugees, illegals
  - But leads to diversity, immigration
- Jus sanguinis (blood): citizenship by virtue of parents
  - Creates stronger ties to country – willingness to sacrifice
  - But can create large number of non-citizens

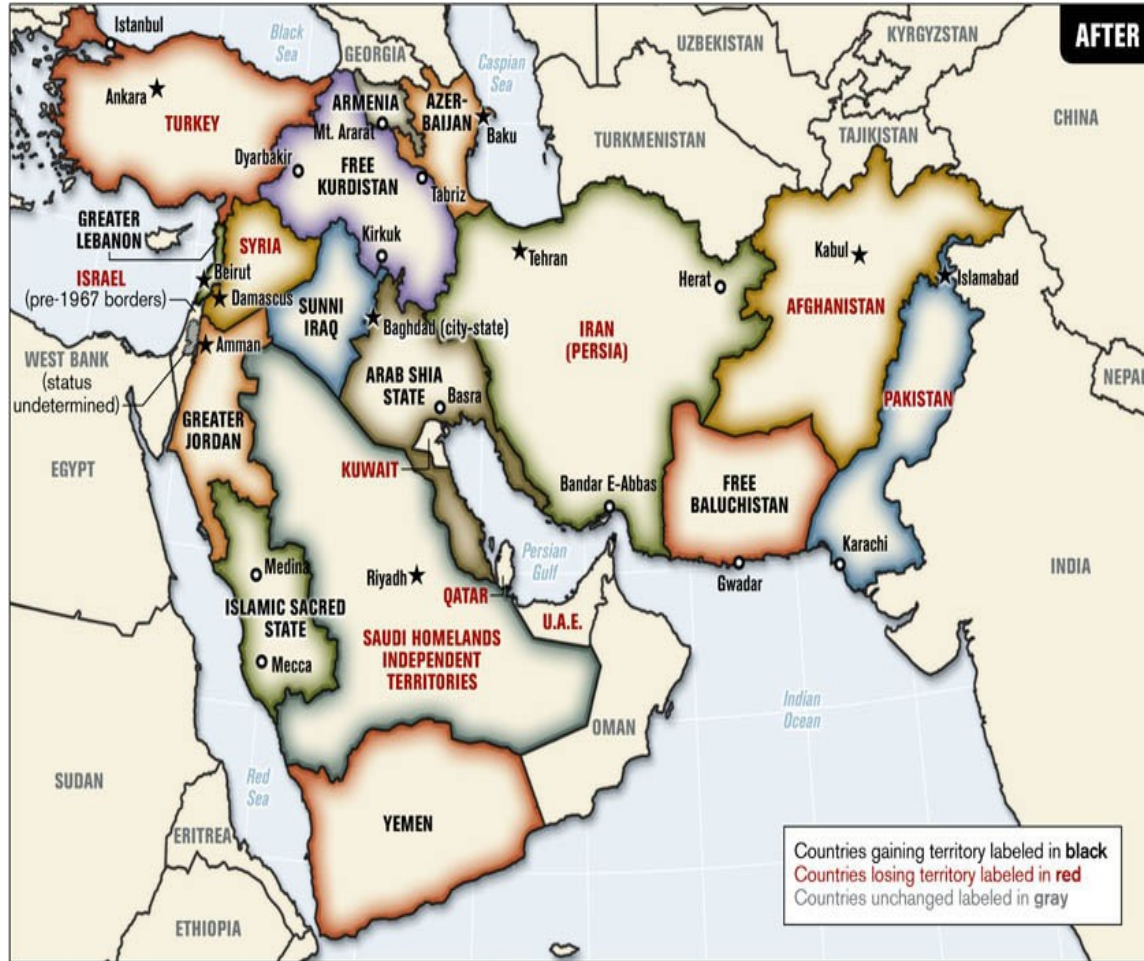
# Secession

- Should constitution include procedures for secession?
  - A separate question: Is secession a good thing?
- Advantage: prevent violent, extra-legal secession; more security for minority
- But
  - Raises stakes of politics: strategic use of threat
  - Problems of secession referendums: endlessly repeated
  - Difficulty of drawing boundaries

# Europe of little state~

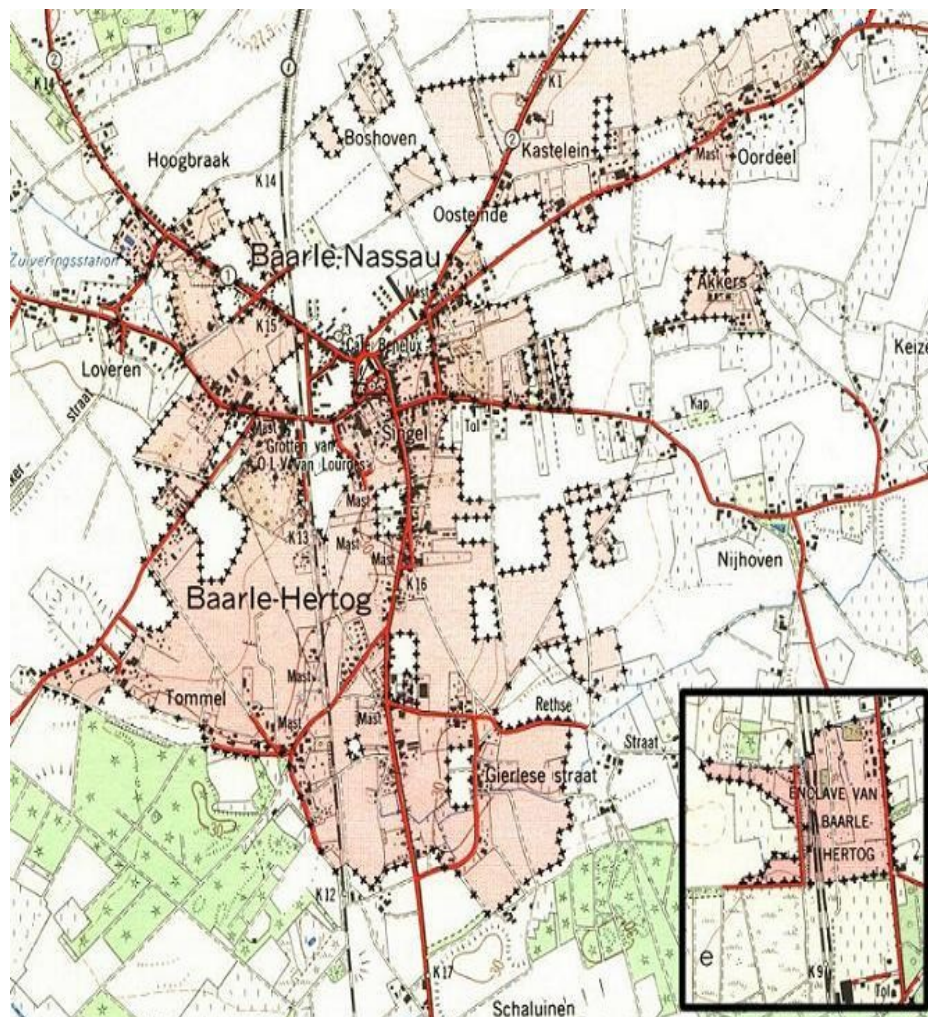


# Redrawing the Middle East





# Enclaves and exclaves of BG/NL



# Referendums, initiative, recall

- Referendum: citizens approve or reject laws or constitutional amendments proposed by government
  - Turnout requirements
  - Necessary for certain issues
- Initiative: ordinary citizens propose laws or constitutional amendments which are then voted on
  - # of signatures required
- Recall: citizens vote on whether to recall elected politicians

# Referenda in Europe

	1940-49	1950-59	1960-69	1970-79	1980-89	1990-98	Total
Austria	0	0	0	1	0	1	2
Belgium	0	1	0	0	0	0	1
Denmark	0	2	6	3	1	3	15
Finland	0	0	0	0	0	1	1
France	4	1	4	1	1	1	12
Germany	0	0	0	0	0	0	0
Greece	1	0	1	2	0	0	4
Iceland	2	0	0	0	0	0	2
Ireland	0	1	2	5	4	9	21
Italy	1	0	0	3	12	31	47
Luxembourg	0	0	0	0	0	0	0
The Netherlands	0	0	0	0	0	0	0
Norway	0	0	0	1	0	1	2
Portugal	0	0	0	0	0	2	2
Spain	1	0	1	2	1	0	5
Sweden	0	2	0	0	1	1	4
Switzerland	17	43	26	81	60	90	317
United Kingdom	0	0	0	1	0	0	1
Total	26	50	40	100	80	140	436
No of countries using referendums	6	6	6	10	7	10	

*Note:* The last two Greek and three Spanish referendums were held during the transition to democracy or under democratic constitutions.

*Sources:* Research and Documentation Centre on Direct Democracy, University of Geneva, www pages on the January 31, 1999; Gallagher & Uleri 1996.

# Arguments for and against

- Pro

- Maximize legitimacy – eg, constitutional amendments, treaties
- Increase public participation
- Take policy out of hands of corrupt politicians

- Anti

- Voters typically uninformed about issues
- Often low turnout
- Can lead to oppression of minorities
- Often poorly thought-out and populist proposals (eg, taxes)
- Subverts representative democracy

# Corporatism

- Tripartite institutions representing peak labor and peak business
  - Set wage growth, social policy, etc.
- Why?
  - May achieve better results: avoid wage-price spirals, stable and legitimate policy, fewer strikes, better growth
- But requires strong labor unions and organized employers
- Can it work in globalized world?

# Emergency powers

- In emergency, democracy and separation of powers can be cumbersome
  - Grant executive special powers after approval of state of emergency
- Can exceptions be regulated by general rules?
- Helps prevent military coup or martial law
- But will it be abused?
- Are there situations where rights need to be suspended?

# Veto points

- Useful to conceive entire system in terms of veto points
  - # of parties, strong bicameralism, president with veto, judicial review, federalism, referenda
- More veto points => harder to change status quo
- What is your evaluation of status quo?
- How much change is needed?
- How much of a threat is overpowerful executive, oppression of minorities?