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TYRANNY OF MAJORITY: THE CONTRACTARIAN SOLUTION

Abstract:

In this paper we are trying to describe one of the classical problem of political theory: which decision can be created by majority rule. For our purpose we can define democracy as a method of creation of political decisions in a political society. Essence of this method is so called "majority rule" which is applied on different levels of political process. The classical definition of democracy is "rule of the people by the people". Under the majority rule, we have not governance of all individuals, but, obviously, only one part of the people that is "majority". So, there is some kind of gap between the ideal type and essence of democracy as rule of the people, and de facto situation when the power is in the hands of majority. The standard solution for this problem we can find in the tradition of contractualism. In this model of creation of political community we have two levels of "transferring" of power [rights]. First is so called the social contract: "the constitutional phase" within which we create a basic rules, the fundamental tenets of our society [the constitution]. For this step we have the unanimity-request: the logical necessity for the social contract is the consent of all. Second is "the post-constitutional phase" [J.Buchanan] where we create executive body to makes decision on the day-to-day level, and legislative body to provide a framework [the legal order] for that. If the legislative body makes the laws which are compatible by the constitution, these laws have "implied" consent of all. Within this "post-constitutive" or "executive" phase, we cannot insist to unanimity because that will be inconsistent with our decision to leave the state of nature and go-in the political society: by the social contract we create the state as an agency for regulation of conflict, misunderstandings etc between members. From this theoretical concept it is obvious and clear for which kind of decision the majority rule can be used: only for decisions from the post-constitutional phase. If we try to solve some conflict which is in the sphere of constitution by using the majority rule, we have situation of tyranny of majority.

Keywords:

Democracy, tyranny of majority, The social contract

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