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# The Word 'Democracy' in Kant's Political Writings

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## CAPÍTULO 9.

# THE WORD ‘DEMOCRACY’ IN KANT’S POLITICAL WRITINGS

*Luigi CARANTI*

That Kant is no friend of democracy has puzzled many commentators and with good reasons. Kant seems to be committed, in light of his ethics, to a strong notion of equality among human beings. Moreover, Kant endorses Rousseau’s idea that that no law can be legitimate unless it can - at least in principle - enjoy the consent of *all* consociates, a principle that sounds even more demanding than current criteria of democratic legitimacy. Think for example of Rawls’ principle of liberal legitimacy: “Our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason”. (RAWLS, 1993, p. 137). Rawls refers to “the essentials of a constitution,” but Kant and Rousseau have no restriction of this sort. They think we should “obey no external law except those to which I have been able to

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give my own consent” (*ZeF*, 8:361). For them *any* law (constitutional or ordinary) is legitimate only if in principle it can be consented to by all. How can Kant criticize, in the harsh way he does, democracy, if he believes that political power is proper only if the people, actually *all* people, can agree with its laws and decrees?<sup>1</sup>

A popular way out of the puzzle has been to say that one should be careful with Kant’s use of the word ‘democracy’. What Kant despises is not democracy per se, but direct democracy. Only in direct democracy, so the argument goes, the mechanism feared by Kant of a faction (probably majoritarian) imposing its will against the other would be triggered. This solution, however, does not stand scrutiny if one looks at the reasons Kant provides to make sure that his republic is not conflated with democracy. Another solution – indeed quite peculiar – has been to deny Kant’s anti-democratic sentiments altogether, finding in Kant a source of inspiration for rather sophisticated conceptions of democracy (MALIKS, 2009; MAUS, 1992) or even an endorsement of revolution (YPI, 2014). What follows is an attempt to take Kant’s reservations seriously. Our main goal is to understand what is the main problem that Kant sees in the democratic form of government. We will suggest that Kant detects in democracy a double tendency: a) of citizens to think of their vote in terms of a tool to advance their private interests and b) of legislators to represent only the part of the population that voted for them.<sup>2</sup> From this reading of Kant’s concern, we will move to construe an account of the republic that is not in principle incompatible with democracy but that presupposes a) very high standards of public ethics among democratic citizens, b) a priority given to

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<sup>1</sup> To be sure, at times Kant seems to side for a less demanding standard of legitimacy, which includes the acceptance of an essential element of democratic rule, that is, majority rule. In *On the Common Saying* (1793) he reiterates that those who possess the right to vote must agree *unanimously* to the law of public justice, but at the same time – he continues – one cannot expect a whole people to “reach unanimity, but only to show a majority of votes (and not even of direct votes, but simply of the votes of those delegated in a large nation to represent the people).” (*TP* 8:296) The solution to have both unanimity and majority rule is one any citizen living in a democracy is quite familiar with: we agree more or less unanimously that certain decisions will be taken through the majority rule. As Kant puts it: “Thus the actual principle of being content with majority decisions must be accepted unanimously and embodied in a contract; and this itself must be the ultimate basis on which a civil constitution is established” (*TP* 8:296).

<sup>2</sup> Maliks calls this “the opportunity view” of representation and contrasts it with the “exercise view” he attributes to Kant (MALIKS, 2009). Before him Jon Elster called this the social choice approach to politics (ELSTER, 1997).

the justice of political decisions as opposed to their procedural correctness, c) possibly the abandonment of the dogma of universal suffrage.

## 1. DEMOCRACY AS DESPOTISM IN *TO PERPETUAL PEACE*

In his published writings Kant uses the word ‘democracy [*Demokratie*]’ five times and the word ‘democratic [*demokratisch*]’ four times. Probably the two most significant occurrences are in *To Perpetual Peace* (1795) and in *The Doctrine of Right* (1797) although Kant makes passing yet significant uses of the word also in the *Anthropology*, in *Religion* and in the *Contest of the Faculties* (1798). In the 1795 essay (and in its preparatory work) we find the strongest and most explicit reservations against this form of government. Right after having introduced the general thesis of the first article, Kant adds a few remarks “to prevent the republican constitution from being confused with the democratic one, as commonly happens” (ZeF, 8:351-2). Kant claims that the various forms of state can be classified by using two different criteria: either by taking into account how many rule (the form of sovereignty/*forma imperii*) or by focusing on the way in which the sovereign power is exercised (the form of government/*forma regiminis*).<sup>3</sup> The former criterion is quite unproblematic and yields the usual tripartition in monarchy (that Kant calls here “autarchy”), oligarchy, and democracy. The latter is more difficult to grasp and yet crucial to understand not only Kant’s view of democracy,

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<sup>3</sup> Byrd and Hurschka (2010, p. 176) hold that when Kant distinguishes the forms of states in *To Perpetual Peace*, he is talking about executive powers only. So we can have monarchical, oligarchic or democratic executive powers, of the republican or despotic sort depending on whether they are distinguished from the legislative. But Kant would not be distinguishing whole political systems in monarchical, oligarchic or democratic, each of them either republican or despotic. Evidence cited to back this reading is Kant’s assertion that democracy necessarily founds [*gründet*] a (despotic) executive power. I cannot share this view. To begin with, the state whose forms are classified in *To Perpetual Peace* is called by Kant *civitas*. And the *civitas* is the state as a whole, not merely its executive power. Not accidentally, in the passage of *Doctrine of Right* where Kant returns on the classification, the state is characterized as *res publica latius dicta*. Secondly, when Kant distinguishes between despotic and republican *formae regiminis*, it is evident that he is talking about a political system *as a whole*. A despotic *civitas* is not a system in which the executive power is despotic, while possibly the legislative is not. It is a system *as a whole* that is despotic because the two powers are not properly distinguished. After all, Kant’s assertion that democracy necessarily founds [*gründet*] a (despotic) executive power need not be understood the way Byrd and Hurschka do. An alternative, and I think more natural, reading of this passage, is that democracy, a necessarily despotic political system as a whole, obviously displays a despotic executive power. After all, when Kant explains why democracy is necessarily despotic, he talks about how laws are made (by some against the interests of others), not about how they are executed.

but his entire political thought. Kant says that the *forma regiminis* “relates to the way – as defined by the constitution (that is, an act of the general will whereby the mass becomes a people) – in which the state makes use of its plenary power.” (*ZeF*, 8:352). Now, continues Kant, there are only two ways in which a state can make use of its power, the republican and the despotic. A state is republican if the executive power is separated from the legislative. It is despotic if this separation does not occur and “the laws are made and arbitrarily executed by one and the same power.”<sup>4</sup> (*ZeF*, 8:352).

Kant adds that “the legislative power can belong only to the united will of the people” and “the laws it gives must be absolutely incapable of doing anyone injustice.” (*MS*, 6:313). This repetition, almost word by word, of Rousseau’s notion of *volonté générale* suggests that the legislative power first and foremost issues the constitution which binds us together and that is in principle unanimously accepted by all citizens. Derivatively, the same power yields all ordinary laws which must reflect what the general will would say in specific circumstances. In other words, even at the level of non-constitutional laws, the rulers must always try to issue laws and decrees in accordance with the general will. A republic is thus a system in which no parliamentary majority, only in virtue of the fact of being majority, can enact partisan laws that are discriminatory against some citizens. If that happens, there is no guarantee that the laws are “absolutely *incapable* of doing anyone injustice” and the pre-political entitlements of human beings (their right to an equal share of external freedom) are in danger.<sup>5</sup>

The requirement that legislative power is to represent the general will is crucial to understand why for Kant democracy, at least “in the truest form of the word,” is necessarily a despotism and why the notion of a republican monarchy (or oligarchy) is not a contradiction. The key point is that political power must remember – when it makes decisions

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<sup>4</sup> Kant emphasizes here the necessity of a separation between two powers, the legislative and the executive, and does not mention the judicial power. This has, however, little significance because in the *Metaphysics of Morals* he follows more closely Montesquieu by distinguishing between the “*ruling power* (or sovereignty) in the person of the legislator, the *executive power* (in the person of the individual who governs in accordance with the law), and the *judicial power* (which allots to everyone what is his by law) in the person of the judge (*potestas legislativa, rectoria et judiciaria*).” (*MS*, 6:313).

<sup>5</sup> On Kant’s theory of innate rights see Caranti (2011).

that affect the citizens – that it is obliged to interpret the general will as best as it can. This “burden of representation”, we might call it, hinges in the same way on one, some or all who are called to exercise power. A king can act “in the spirit of a representative system” if he does his best to interpret the general law in his rulings. Kant makes this point clearly in the *Contest of the Faculties* when he claims that there could be monarchies in which the king is “acting by analogy with the laws which a people would give itself in conformity with universal principles of right” (*SF*, 7:184). Of course, this would still be a “defective system” because, unlike the case of an elected president, it is left to the good will of the king to be a sincere and effective interpreter of the general will. *Mutatis mutandis*, the same can be said of the oligarchy.

At this point one would expect Kant to grant also to democracy this republican potentiality. A democratic demos may act, like a monarch or an oligarchy, “in the spirit of a representative system” if it does its best to interpret the general will. But Kant thinks that in a democracy, at least in democracy “in the truest sense of the word,” ruling cannot be exercised from the point of view of the general will. Kant’s explanation is that democracy “establishes an executive power through which all the citizens may make decisions about (and indeed against) the single individual without his consent, so that decisions are made by all the people and yet not by all the people: and this means that the general will is in contradiction with itself, and thus also with freedom.” (*ZeF*, 8:352). A few lines later Kant adds that a democratic system makes impossible the proclaimed attitude by Frederick II to be the “servant of the state” – an emphatic way of saying that the supreme rulers make decisions from the general will’s perspective. This is so, we read, “because everyone under it wants to be a ruler.”

Clearly, if we want to understand the essence of Kant’s diffidence towards democracy, we need to understand why every citizen’s desire to be a ruler necessarily leads to despotism. At first sight, one can hardly perceive an intrinsic flaw in this desire. What’s wrong, we may ask, with my ambition to be a ruler if I am ready to concede as legitimate the same ambition to all other citizens, as it happens in a democratic system? In fact, in stigmatizing every citizen’s desire to be a ruler Kant cannot mean that

there is something wrong in the attempt of each citizen to give her own sincere interpretation of the general will. This is in fact what must happen with every ruler, given Kant's standards, independently whether they are one, few, or all. What Kant seems to mean – at least this appears to me as the sole plausible reading – is that in a democracy (in the truest sense of the word) *everyone represents his or her own interests only*. This creates an attitude incompatible with the feature that should characterize the act of ruling, namely representing. While in a democracy I represent my will or that of my group, or even that of all citizens, if they happen to agree (*la volonté de tous*), the only thing that a republican ruler should try to represent is the general will.<sup>6</sup>

Notice the difference with the other two forms of governments. While in the case of a monarchy or an oligarchy one can at least hope that political authority is inspired by a sincere attempt to interpret the general will, in the case of a democracy, so understood at least, such hope is impossible. Citizens are *expected* to represent themselves only. Moreover, they don't even need to justify their decisions as arising from a care for the common good, in the way a king or an oligarchy in a constitutional system must do, because they are the ultimate source of power. In voicing their preferences as representing their private interests only, they need to offer no explanation. They do what they are authorized and expected to do. By mistaking the will of all for the general will, or even more grossly the will of the majority for the general will, democratic citizens think that anything they choose is right. Actually, Kant thinks, the more people are in power, the less likely it is they will remember the burden of representation – a burden that no political power, not even that “of the people by the people” can escape (*ZeF* 8: 353).

By the light of Kant's argument, this democratic ‘perversion’ is inevitable in the case of a direct democracy. In a direct democracy each citizen is literally speaking for herself only. This is where Kant departs from Rousseau most clearly. But although Kant is not explicit about it, one can reasonably infer that the same attitude may very well infect citizens

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<sup>6</sup> In contemporary scholarship representation is often conceptualized differently. For example Urbinati emphasizes advocacy of specific interests as an essential component of representation. Still, she differentiates between advocacy and mere partisanship (URBINATI, 2000, p.775).

who are called to elect their representatives. This is certainly the case if governmental power is not checked by a constitutional law that secures everyone's freedom over and above the decision the majority. If this were the case, then again "all decide for or even against one who does not agree; that is, "all," who are not quite all, decide, and this is a contradiction of the general will with itself and with freedom." But, less obviously, the same holds also in the case in which a majority acts within constitutional limits but in a strongly partisan way. A constitutionally scrupulous legislative power may very well enact laws that protect the interests of some, instead of serving the general good. Hence there are reasons to believe that the sheer presence of constitutional limits to majority discretion would not suffice to satisfy the high standards Kant sets for a regime to be republican. A representative system in which all use their share of political power to advance sectarian interests seems to be as perverted and despotic as a direct democracy.<sup>7</sup> For Kant a system is "representative" not just because it has delegates and a parliament where they meet, as opposed to assemblies of all citizens. A system is representative, in this quite specific sense, when rulers (no matter how many) and citizens alike do not represent sectarian interests but further the common good.

## 2. TOWARDS A REPUBLICAN DEMOCRACY

This should help to see why Kant is so suspicious of democracy but it should also help us to conceive a form of democratic regime that does not necessarily fall into the sectarian perversion Kant fears. If the spirit of republicanism has shaped the minds of citizens and rulers in such a way that representatives issue laws not only formally consistent with the constitution, but also capable of furthering the general good; if, in other words, the "burden of representation" is accepted by electors and elected, then there is no reason why a democracy could not avoid despotism and be up to the standards of republicanism. Actually, if care for the general good is embedded in the polity, democracy has a clear advantage over the other

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<sup>7</sup> Maliks expresses Kant's rejection of any partisan policy in terms of a test of universalization for proposed policies: "Subjecting proposed policies to the test of universalization without contradiction (reasoning according to the universal principle of right), legislators and subjects alike can methodically abstract from prejudices and loyalties to partial associations, assessing policy for its universal implications." (MALIKS, 2009, p.16).



two *formae imperii*. As Kant says, these “are always defective” because the power is exercised by one or few who by definition cannot represent all. Especially if they are not elected, let alone if unchecked by constitutional limits, one can at most hope that they freely choose to exercise their power in the right way. In contrast, in a republican democracy citizens have the chance to check that those in power (the delegates) further the general good and accept the burden of representation. There is no doubt, in fact, that Kant praises popular, we would say, ‘democratic’ control over the delegates. Remember that the criticism of democracy we are dealing with comes in the context of the first definitive article, whose main point is that republics are more peace prone than despotic regimes because republican governments, unlike despotic ones, are checked by the people in their decision to wage war.

Although Kant never explicitly mentions, let alone praises, a *republican* democracy, indirect evidence that he came to realize its possibility is to be found in the *Metaphysics of Morals* where he returns to the distinction among forms of government. As pointed out by Hanisch (2016, p. 70) in the *Doctrine of Right* we no longer find the idea that democracy is necessarily despotic. In paragraph 51 Kant says that the “united will of the people”, that is, the head of the state or the sovereign, can stand in three different relations to the people depending on whether one, several or all rule within the state.”(MS, 6: 338). Thus, “the form of the state will either be *autocratic*, *aristocratic*, or *democratic*.” (MS, 6: 338). This is the same classification of the forms of sovereignty we found in *To Perpetual Peace*. However, Kant does not add now that the democratic form necessarily degenerates into despotism. To be sure, he holds that autocracy is the simplest of the possible forms of state and, as far as the efficiency of the administration is concerned, is also the best. But he continues: “With regard to right itself, however, this form of state is the most dangerous for a people, in view of how conducive it is to despotism” (MS 6: 339). This seems the exact opposite of what Kant had told us in *To Perpetual Peace*. There, it will be recalled, we read that “the smaller the number of ruling persons in a state and the greater their power of representations, the more the constitution will approximate to its republican potentiality” (*ZeF*, 8:

353). with the consequence that monarchy is the form of state that has the greatest potentiality to “reach this one and only perfectly lawful kind of constitution [the republican].” (*ZeF*, 8: 353).

In the end, however, this complete reversal in the hierarchy of preferred forms of sovereignty is not important. What matters for Kant – and he is fully consistent in all his political writings on this – is the *forma regiminis*. Even in a monarchy the king may truly ‘represent’ the people. As we saw, we can have without contradiction a ‘republican monarchy’. In the end, it does not matter how many people exercise legislative power. What matters is 1) that legislators be clearly distinguished from those who interpret the laws (the judiciary), as well as from those who enact these laws (the executive)<sup>8</sup>; 2) that they exercise power and issue any laws (constitutional or ordinary) by having firm in mind the priority of the general good over private interests. Only on this condition is the Rousseauian/Kantian criterion of legitimacy satisfied and no one is in the position to claim that political power is exercised without his or her consent.

### 3. THE OPACITY OF THE GENERAL WILL

Assuming that the notion of republican democracy just suggested captures Kant’s intentions, one may want to move beyond the interpretative dimension and evaluate this notion from a normative perspective. An important objection one may have centers on the transparency of the general will on which everything turns. Kant seems to take for granted that for most, if not all, political decisions one can easily discern what the general will would say. This is, however, problematic. Who has the hermeneutical authority to indicate what decision furthers the general good in a society? Who knows what the general will wills in specific circumstances? Notice that the familiar problem of calculation suffered by utilitarianism is here exacerbated. It is already difficult to determine what political decision produces most happiness for the people affected.

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<sup>8</sup> While in *To Perpetual Peace* Kant distinguishes only between legislative and executive power, he now has a more familiar tripartite distinction between legislative, judiciary and executive (MS 6: 317). Evidently, a regime is despotic if any of these powers is conflated with any of the remaining two.

But determining what decision promotes the general good includes, in addition to utilitarian considerations, clear limits related to individual rights that cannot be sacrificed for the sake of general happiness. Also we know from Isaiah Berlin (and from common sense) that fundamental goods tend to compete with each other. Who knows whether the general good is better served by a certain amount of violation of our privacy for the sake of security? A generic appeal to the fundamental duty of the state to protect citizens' equal spheres of external freedom won't be much of a guide. One can think that an x% of the state budget should be moved from defense to public schooling, or vice versa, having *no* partisan interest in upholding one decision or the other, and being inspired by a sincere care for the general good. What guidance does Kant's reminder of legislating from the perspective of the general will offer in these circumstances, all too common and physiological in the process of political will formation of a mature democracy?

Rousseau had his – very problematic – solution to the puzzle. He thought that if citizens think autonomously and free from conditionings in the assembly, whereby 'conditionings' he meant partisan interests, the general will won't fail to manifest itself with sufficient clarity. What the general good requires for all political decisions will emerge from the free and honest discussion in the assembly, inspired by a sincere attempt to discover the truth. Thus Rousseau envisions something halfway between a constitutional constraint (unconditioned and free discussion as a prerequisite of an assembly with legislating authority) and a moral commitment (citizens expected to make a sincere effort to look after the identification of the general good).

Kant seems to have a more realist view of how assemblies work, given, among other things, his view of human nature, namely the famous 'crooked wood' mentioned in *Religion*. Unlike Rousseau, Kant does not mix up institutional and moral constraints. Rather he seems to introduce a clear divide between what we would call today ideal and non-ideal theory and speculate within the former with not much attention to the latter. In ideal terms, a republic is a system, as we said, that legislates from the perspective of the general will. The system must be *representative*

precisely to ensure that legislators (one, few or all) do not represent themselves only, or the groups that elected them, but the whole polity and its fundamental interests. A nice example of that is to be found in the Italian constitution where article 67 that reads “every member of the parliament represents the whole nation and exercises its functions non-tied by electors”. And this strengthens the point made above regarding the insufficiency of separation of powers and constitutional limits to qualify a system as ‘representative’. A public ethos devoted to the general good robustly spread in the minds of elected and electors seems to be as crucial as institutional mechanism to make the system representative, i.e. non despotic, in Kant’s sense. Real republics never work precisely in that manner, but their ‘quality’ can be ranked depending on how the legislating activity is far from sectarian interests.

Even if we accept Kant’s methodological choice in favor of ideal theory, however, the problem of the general will’s opacity remains. Kant avoids the article of faith Rousseau proposes (the general will won’t fail to manifest itself in free assemblies), but introduces an ideal standard that can at best serve to rule out only *evidently* partisan pieces of legislation. While it is relatively easy to show that allocating all state resources to citizens with blonde hair can hardly be compatible with the general will, and while it could be still relatively easy to show that the 1% of the population cannot control the 90% of the resources without similar problems of compatibility, for the vast majority of political decisions there is reasonable disagreement as to what decisions further the general good. We touch here perhaps the weakest point of Kant’s whole criticism of democracy. The model based on the free competition of particular interests, on votes freely cast to advance one’s own good – in a word, the non-republican, liberal model of democracy we are accustomed to and that Kant seems to reject – at least rests on simple mechanisms of decision-making. The most popular policy is selected. Moreover, the liberal-democratic model does not seem to assume the highly idealized view of citizens and rulers who prioritize the general good over their private interests. From them it is only expected an adherence to constitutional essentials within which they can exercise their political rights as mere opportunities. Finally, even if people do care

for the general good (recent empirical surveys show that in fact people take themselves to be voting for the national interest, not for their own interests), a ballot competition between different interpretations of general good seems to be the only way of dealing with the structural opacity of that concept.

The difficulties just mentioned should not lead to the conclusion that Kant's republican emphasis is useless. Insisting that a system is not just unless it looks after the general good binds political power to a certain line of conduct. Like in Rawls' decent peoples, governments have a duty to provide a compelling case that their decisions further not the good of a group but that of the whole community. Moreover, citizens retain a right to contest the argument offered by political authority, although not a right to revolt against it, showing that other solutions would have better served the same goal. The importance of this is that Kant's republican constraint rules out the all too common and familiar argument that privileging my interests or those of my group is not only allowed but required by the logic of democracy. "I am opposing this law because it runs against the interests of my group and I owe loyalty to them, as opposed to the nation as a whole." On our reading, it is ultimately this ideology that Kant, here following Rousseau closely, most fears. A constraint to present political decisions as serving the general good can be easily bypassed through rhetorical arguments that sell the pursuit of sectarian interests as something done in the interest of all (a version of Gramsci's notion of hegemony). And yet the constraint at least rules out the overt and straightforward endorsement of a corporate-like ideology in political life.

In addition, the same difficulties regarding the opacity of the general will should not lead to the conclusion that Kant's model is committed to some sort of super epistemic power to discern the general will or to the unrealistic ideal that there should also be general agreement among citizens (at least *in foro interno*) as to what the general will dictates. Within a Kantian perspective, at least interpreted as we did, there is room for disagreement among competing yet reasonable interpretations. A political system where political issues are at least *framed* in terms of competing interpretations of what best furthers the general good is already

in pretty good shape, and in any event closer to the republican ideal than a system in which partisanship is accepted as a rule of the game.

## CONCLUSION

Kant's reservations against democracy are everything but outdated, dully conservative, elitist concerns. Key in Kant's vision of a just system is the principle of representation. This principle sets high and highly ideal standards for political agency, because it presupposes that citizens and rulers take up what we called the 'burden of representation'. This obligation binds rulers and ruled to prioritize care for the common good over and above the pursuit of legitimate sectarian interests. The main effort they are supposed to make is to adopt the perspective of the general will for *all* political decision, not only those related to constitutional matters. To be sure, Kant, like Rousseau, does not say much on how citizens and rulers should discern what the general will wants in particular circumstances. Kant seems to take for granted that for any difficult political decision there is a clear answer as to what one should do to promote the general good, as if the identification of the 'just' policy were only a question of having the right intention. The fact that Kant operates within what we call today 'ideal theory', however, does not make his criticism of democracy less interesting. Some important lessons can be learned if his criticism is taken seriously: a) a democracy, even a constitutional democracy, may still be an highly unjust system, specifically when it promotes interests and rights of some at the expenses of those of others; b) it does not matter how many exercise powers, but the manner in which power is exercised; hence, we could very well have an oligarchic system that is more just than a political system in which there is perfect equality concerning civic and political rights; c) justice is different and more important than democracy, even if one thinks that democracy has intrinsic, not merely instrumental value; d) unrestricted, unconditional universal suffrage may be unjust, in certain circumstances.

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