

DEMOCRACY:
ITS PRINCIPLES AND ACHIEVEMENT

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Foreword

The word democracy is one of the most used terms of the political vocabulary. This vital concept, through its transcultural dimension and because it touches the very fundamentals of the life of human beings in society, has given rise to much written comment and reflection; nevertheless, until now there has not been any text adopted at the world-wide level by politicians which defined its parameters or established its scope. This concept was probably in some way frozen by the opposition between plain or "formal" democracy and "popular" democracy which was current until recently in world-wide multilateral circles. These times are past; democracy - now unqualified - seems to be the subject of broad consensus and its promotion is high on the agenda of international bodies.

On the initiative of Dr. Ahmed Fathy Sorour, then President of its Council, the Inter-Parliamentary Union decided in 1995 to embark on a Universal Declaration on Democracy in order to advance international standards and contribute to the process of democratisation under way in the world.

This project followed naturally on the earlier work of the Union which had recently published several studies on the conduct of elections and political activities - a key element of the exercise of democracy - and had adopted in Paris in 1994 a *Declaration on Criteria for Free and Fair Elections*. It was nevertheless fairly audacious for the Union, a world-wide political organisation, to embark on this work and a serious and prudent approach was therefore taken so that the wager could be won.

As a first step, the Union wished to gather written opinions and thoughts from personalities representative of the different geopolitical currents in order to have a solid basis before starting to frame a preliminary draft. Twelve leading figures and experts kindly took up the Union's invitation to present in writing and after consultation among themselves their views on the principles and achievements of democracy.

At the outset, the project captured the interest of UNESCO whose Director-General wished his Organisation also to be involved. Accordingly, the Expert Group members held a meeting at UNESCO Headquarters in Paris on 6 and 7 December 1996 in order to co-ordinate their contributions. This Group included: Professor Cherif Bassiouni, Professor of Law, President, International Human Rights Law Institute, DePaul University, Chicago (United States of America), President, International Association of Penal Law; President, International Institute of Higher Studies in Criminal Sciences, who had agreed to act as General Rapporteur; Professor David Beetham, Director of the Centre for Democratisation Studies of the University of Leeds (United Kingdom); Ms. Justice M. FathimaBeevi, Governor of Tamil Nadu State, former Supreme Court Judge, Madras (India); Professor Abd-El Kader Boye, Faculty of Law of the University of Dakar (Senegal); Dr. Awad El Mor, Chief Justice of the Supreme Constitutional Court, Cairo (Egypt); Professor Steven Hanser, former

Chairman of the Department of History, Georgia State University (United States of America); Professor Hieronim Kubiak, Jagiellonian University, Institute of Sociology, Krakow (Poland); Professor Victor Massuh, University of Buenos Aires (Argentina); Mr. Cyril Ramphosa, Former President of the Constitutional Assembly of South Africa (1994-1996); Mrs. Evi Fitriani, representing Professor Juwono Sudarsono, Dean of the Faculty of Political and Social Sciences of the University of Indonesia and Deputy Governor of the National Defence Institute; Professor Luis Villoro, Institute of Philosophical Studies (Mexico). Professor Alain Touraine, Director of the School of Higher Studies in Social Sciences, Paris (France), was unfortunately unable to attend the meeting. Mr. Janusz Symonides, Director of UNESCO's Division for Human Rights, Democracy and Peace, also contributed to the work of the Expert Group.

In the months that followed, ten of these experts and the General Rapporteur presented their written contributions. These texts were considered in April 1997 in Seoul by the IPU's Executive Committee which was then able to launch the second stage of the project: the drafting of the Declaration itself.

Drawn up in the following months by the General Rapporteur and the Secretariat of the Union, a first draft was closely studied by the Executive Committee whose members, representing all the world's geopolitical regions, devoted to this exercise an entire day specially added to the programme of their 225th session in Cairo in September 1997.

The text resulting from their deliberations was immediately made available to all the delegations of the Union gathered in Cairo for its 98th Conference and was presented some days later to the Inter-Parliamentary Council - the plenary governing body of the Union - which adopted it without a vote on 16 September 1997.

The inter-Parliamentary Union is pleased to publish in this book the text of the *Universal Declaration on Democracy* and well as the contributions of the members of the Expert Group and the overall report of the General Rapporteur.

The Union also wishes to take this opportunity to express its gratitude to these persons for their valuable help towards the successful outcome of the project and to UNESCO and its Director-General for their support to the undertaking. These thanks are also addressed to all those who, in various capacities, contributed to the exercise. Dr. Sorour deserves special mention for having had the merit of launching and closely following up this project which represents a fine achievement for the Inter-Parliamentary Union.

The Union's commitment to democracy will, however, be pursued far beyond the approval and publication of a text whose substantive implementation it is now striving to promote assiduously. Already, as these lines are written, the United Nations has taken note of this Declaration in a resolution adopted by the General Assembly. It may therefore be hoped that other stones will be added to the foundations which the Inter-Parliamentary Union has laid down with this political proclamation and will complement its scope, perhaps even leading to the adoption of an international juridical instrument.

Pierre Cornillon
Secretary General
Inter-Parliamentary Union

Universal declaration on democracy

Adopted* by the Inter-Parliamentary Council
at its 161st session
(Cairo, 16 September 1997)

The Inter-Parliamentary Council,

Reaffirming the Inter-Parliamentary Union's commitment to peace and development and convinced that the strengthening of the democratisation process and representative institutions will greatly contribute to attaining this goal,

Reaffirming also the calling and commitment of the Inter-Parliamentary Union to promoting democracy and the establishment of pluralistic systems of representative government in the world, and wishing to strengthen its sustained and multiform action in this field,

Recalling that each State has the sovereign right freely to choose and develop, in accordance with the will of its people, its own political, social, economic and cultural systems without interference by other States in strict conformity with the United Nations Charter,

Recalling also the Universal Declaration of Human Rights adopted on 10 December 1948, as well as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted on 16 December 1966, the International Convention on the Elimination of All Forms of Racial Discrimination adopted on 21 December 1965 and the Convention on the Elimination of All Forms of Discrimination Against Women adopted on 18 December 1979,

Recalling further the Declaration on Criteria for Free and Fair Elections which it adopted in March 1994 and in which it confirmed that in any State the authority of the government can derive only from the will of the people as expressed in genuine, free and fair elections,

Referring to the Agenda for Democratisation presented on 20 December 1996 by the UN Secretary-General to the 51st session of the United Nations General Assembly,

Adopts the following Universal Declaration on Democracy and urges Governments and Parliaments throughout the world to be guided by its content:

The principles of democracy

1. Democracy is a universally recognised ideal as well as a goal, which is based on common values shared by peoples throughout the world community irrespective of cultural, political, social and economic differences. It is thus a basic right of citizenship to be exercised under conditions of freedom, equality, transparency and responsibility, with due respect for the plurality of views, and in the interest of the polity.

2. Democracy is both an ideal to be pursued and a mode of government to be applied according to modalities which reflect the diversity of experiences and cultural particularities without derogating from internationally recognised principles, norms and standards. It is thus a constantly perfected and always perfectible state or condition whose progress will depend upon a variety of political, social, economic and cultural factors.

3. As an ideal, democracy aims essentially to preserve and promote the dignity and fundamental rights of the individual, to achieve social justice, foster the economic and social development of the community, strengthen the cohesion of society and enhance national tranquillity, as well as to create a climate that is favourable for international peace. As a form of government, democracy is the best way of achieving these objectives; it is also the only political system that has the capacity for self-correction.

4. The achievement of democracy presupposes a genuine partnership between men and women in the conduct of the affairs of society in which they work in equality and complementarity, drawing mutual enrichment from their differences.

5. A state of democracy ensures that the processes by which power is acceded to, wielded and alternates allow for free political competition and are the product of open, free and non-discriminatory participation by the people, exercised in accordance with the rule of law, in both letter and spirit.

6. Democracy is inseparable from the rights set forth in the international instruments recalled in the preamble. These rights

must therefore be applied effectively and their proper exercise must be matched with individual and collective responsibilities.

7. Democracy is founded on the primacy of the law and the exercise of human rights. In a democratic State, no one is above the law and all are equal before the law.

8. Peace and economic, social and cultural development are both conditions for and fruits of democracy. There is thus interdependence between peace, development, respect for and observance of the rule of law and human rights.

The elements and exercise of democratic government

9. Democracy is based on the existence of well-structured and well-functioning institutions, as well as on a body of standards and rules and on the will of society as a whole, fully conversant with its rights and responsibilities.

10. It is for democratic institutions to mediate tensions and maintain equilibrium between the competing claims of diversity and uniformity, individuality and collectivity, in order to enhance social cohesion and solidarity.

11. Democracy is founded on the right of everyone to take part in the management of public affairs; it therefore requires the existence of representative institutions at all levels and, in particular, a Parliament in which all components of society are represented and which has the requisite powers and means to express the will of the people by legislating and overseeing government action.

12. The key element in the exercise of democracy is the holding of free and fair elections at regular intervals enabling the people's will to be expressed. These elections must be held on the basis of universal, equal and secret suffrage so that all voters can choose their representatives in conditions of equality, openness and transparency that stimulate political competition. To that end, civil and political rights are essential, and more particularly among them, the rights to vote and to be elected, the rights to freedom of expression and assembly, access to information and the right to organise political parties and carry out political activities. Party organisation, activities, finances, funding and ethics must be properly regulated in an impartial manner in order to ensure the integrity of the democratic processes.

13. It is an essential function of the State to ensure the enjoyment of civil, cultural, economic, political and social rights to its citizens. Democracy thus goes hand in hand with an effective, honest and transparent government, freely chosen and accountable for its management of public affairs.

14. Public accountability, which is essential to democracy, applies to all those who hold public authority, whether elected or non-elected, and to all bodies of public authority without exception. Accountability entails a public right of access to information about the activities of government, the right to petition government and to seek redress through impartial administrative and judicial mechanisms.

15. Public life as a whole must be stamped by a sense of ethics and by transparency, and appropriate norms and procedures must be established to uphold them.

16. Individual participation in democratic processes and public life at all levels must be regulated fairly and impartially and must avoid any discrimination, as well as the risk of intimidation by State and non-State actors.

17. Judicial institutions and independent, impartial and effective oversight mechanisms are the guarantors for the rule of law on which democracy is founded. In order for these institutions and mechanisms fully to ensure respect for the rules, improve the fairness of the processes and redress injustices, there must be access by all to administrative and judicial remedies on the basis of equality as well as respect for administrative and judicial decisions both by the organs of the State and representatives of public authority and by each member of society.

18. While the existence of an active civil society is an essential element of democracy, the capacity and willingness of individuals to participate in democratic processes and make governance choices cannot be taken for granted. It is therefore necessary to develop conditions conducive to the genuine exercise of participatory rights, while also eliminating obstacles that prevent, hinder or inhibit this exercise. It is therefore indispensable to ensure the permanent enhancement of, *inter alia*, equality, transparency and education and to remove obstacles such as ignorance, intolerance, apathy, the lack of genuine choices and alternatives and the absence of measures designed to redress imbalances or discrimination of a social, cultural, religious and racial nature, or for reasons of gender.

19. A sustained state of democracy thus requires a democratic climate and culture constantly nurtured and reinforced by education and other vehicles of culture and information. Hence, a democratic society must be committed to education in the broadest sense of the term, and more particularly civic education and the shaping of a responsible citizenry.

20. Democratic processes are fostered by a favourable economic environment; therefore, in its overall effort for development, society must be committed to satisfying the basic economic needs of the most disadvantaged, thus ensuring their full integration in the democratic process.

21. The state of democracy presupposes freedom of opinion and expression; this right implies freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

22. The institutions and processes of democracy must accommodate the participation of all people in homogeneous as well as heterogeneous societies in order to safeguard diversity, pluralism and the right to be different in a climate of tolerance.

23. Democratic institutions and processes must also foster decentralised local and regional government and administration, which is a right and a necessity, and which makes it possible to broaden the base of public participation.

The international dimension of democracy

24. Democracy must also be recognised as an international principle, applicable to international organisations and to States in their international relations. The principle of international democracy does not only mean equal or fair representation of States; it also extends to the economic rights and duties of States.

25. The principles of democracy must be applied to the international management of issues of global interest and the common heritage of humankind, in particular the human environment.

26. To preserve international democracy, States must ensure that their conduct conforms to international law, refrain from the use or threat of force and from any conduct that endangers or violates the sovereignty and political or territorial integrity of other

States, and take steps to resolve their differences by peaceful means.

27. A democracy should support democratic principles in international relations. In that respect, democracies must refrain from undemocratic conduct, express solidarity with democratic governments and non-State actors like non-governmental organisations which work for democracy and human rights, and extend solidarity to those who are victims of human rights violations at the hands of undemocratic regimes. In order to strengthen international criminal justice, democracies must reject impunity for international crimes and serious violations of fundamental human rights and support the establishment of a permanent international criminal court.

* After the Declaration was adopted, the delegation of China expressed reservations to the text.

On 16 September 1097, 137 national parliaments were members of the Inter-Parliamentary Union. Representatives from the parliaments of the following 128 countries took part in the work of the Cairo Conference:

Albania, Algeria, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Benin, Bolivia, Botswana, Brazil, Bulgaria, Burkina Faso, Cambodia, Cameroon, Canada, Cape Verde, Chile, China, Colombia, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Djibouti, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Latvia, Lebanon, Libyan Arab Jamahiriya, Lidiuania, Luxembourg, Malawi, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Norway, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, San Marino, Senegal, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, The former Yugoslav Republic of Macedonia, Togo, Tunisia, Turkey, Uganda, United Kingdom, United Republic of Tanzania, Uruguay, Uzbekistan, Venezuela. Viet Nam, Yemen, Yugoslavia, Zambia, Zimbabwe

Toward a Universal Declaration on the Basic Principles of Democracy: From Principles to Realisation

PROFESSOR CHERIF BASSIOUNI *

General Rapporteur

"In democracy, liberty is to be supposed; for it is commonly held that no man is free in any government"

Aristotle, *Politics* (Lib. VI, Cap. ii. 350 BC)

"...And matters are by consultation between them."

Qu 'rein (*Surat al-Shum*, 42:38, (622))

"A commonwealth is said to be instituted, when a multitude of men do agree and covenant, everyone with everyone, that to whatsoever man, or assembly of men, shall be given by the major part the right to present the present of them all, that is to say, to be their representative; everyone, as well as he that voted for it as he that voted against it, shall authorize all the actions and judgments of that man, or assembly of men, in the same manner as if they were his own, to the end to live peaceably amongst themselves and be protected against other men."

Thomas Hobbes, *Leviathan* (OF COMMONWEALTH, Chapter XVII, "Of the Rights of Sovereigns by Institution", 1651)

"This country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of existing government they can exercise their constitutional right of amending it, or their revolutionary right to dismember it."

Abraham Lincoln, Inaugural Address, 1861

"Many forms of government have been tried, and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-lies. Indeed, it has been said that democracy is the worst form of Government except all those other forms that have been tried from time to time."

Winston Churchill, House of Commons,
11 November 1947

* Professor of Law. President. International Human Rights Law Institute. DePaul University. Chicago (United States of America); President, International Association of Penal Law; President, International Institute of Higher Studies in Criminal Sciences

From principles to realization: Some general considerations

A. Meaning and Content

The term "democracy" means different things to different people and that conclusion is accepted by most commentators.² Indeed, there is a wide range of perspectives as to the meaning and content of democracy as well as to the conditions of its realization; all of which vary depending on the proponents' philosophical, ideological, political, cultural, social, and economic perspectives. This range of perceptions goes from the higher conceptual plane as expressed, for example, by the great thinkers of western civilization³ and by other great non-western political philosophers,⁴ to the practical means of application as

¹ RANDOM HOUSE DICTIONARY (unabridged ed. 1967) defines *democracy* (di mok'ras_)/(, ni =cies. 1. government by the people; a form of government in which the supreme power is vested in the people and exercised by them or by their elected agents under a free electoral system. 2. a state having such a form of government. 3. a state in which the supreme power is vested in the people and exercised directly by them rather than by elected representatives. 4. a state of society characterized by formal equality of rights and privileges. 5. political or social equality; democratic spirit. 6. the common people of a community as distinguished from any privileged class; the common people with respect to their political power. 7. (cop. I U.S.A. the principles of the Democratic party, b. the Democratic party or its members. \<F. democratic, LL Democrat. < GK *dēmokratia* popular government, equiv. To *dēmō* =demo + *-kratic* =cracy. *Demokratia* was founded in Athens by Cleisthenes in the fifth century with the introduction of the Council of Five Hundred. For the history of *Demokratia* in Greece, see Raphael Sealey, *The Origin of Demokratia*, 6 CALIFORNIA STUDIES IN CLASSICAL ANTIQUITY 253 (1973); see also RAPHAEL SEALEY, *A HISTORY OF THE GREEK CITY STATES* (University of California Press, Berkeley, CA, USA, 1976); and JAKOB AALL OTTESEN LARSEN, *REPRESENTATIVE GOVERNMENT IN GREEK AND ROMAN HISTORY* (University of California Press, Berkeley, CA, USA, 1955).

² Even Herodotus said that "*Demokratia* has complex implications." See SEALEY, *supra* note 1, at 371. Herodotus deemed *Demokratia* to be the rule of law as opposed to the arbitrary rule of Tyrants. For the history of political institutions, see e.g. ANDRE AYMERI & JEANNEF: AUHOYLR. I L'ORIENT ET LA GREC I ANTIQUE (Presses Universitaires de France, Paris, France, 1913). JEAN IMBERT GERARD SAUIEL & MARGUERITE BOL LEI SAITEL, *HISTOIRE DES INSTITUTIONS ET DES FAITS POLITIQUES* (Presses Universitaires de France, Paris, France, Vol. 1, 1957, Vol.2, 1961).

³ See THOMAS AGUINAS, *BASIC WRITINGS OF SAINT THOMAS AQUINAS* (Anton C. Pegis ed., Random House, New York, NY, USA, 1945); ARISTOTLE, *NICOMACHEAN ETHICS* (Terence Irwin trans., Hackett Publisher Co., Indianapolis, IN, USA, 1985) (written in 350 BC); ARISTOTLE, *POLITICS* (Stephen Everson ed., Cambridge University Press, New York, NY, USA, 1984) (written in 350 BC); ERNEST BARKER, *THE POLITICAL THOUGHT OF PLATO AND ARISTOTLE* (Dover Publications, New York, NY, USA, 1959); JEAN BODIN, *DE REPUBLICA LIBRI SIX* (Apud Iacobum Du Puy Sub Signo Samaritanæ, Parisiis, 15Xn); MARCUS TULLIUS CICERO, *DE REPUBLICA DE LEGIBUS* (Clinton Walker Keyes trans., Harvard University Press, Cambridge, MA, USA, 1966) (Orig. pub. in 1670); CONDORCET, *OUTLINES OF AN HISTORICAL VIEW OF THE PROGRESS OF MAN* (Lang and Ustick, Philadelphia, PA, USA, 1796); GEORG WILHELM FRIEDRICH HEGEL, *THE PHILOSOPHY OF HISTORY* (J. Sibree trans., Dover Publications, New York, NY, USA, 1956) (2nd ed. pub. in 1857); THOMAS HOBBES, *LEVIATHAN* (A.R. Waller ed., Cambridge University Press, Cambridge, UK, 1904) (Org. pub. in 1651); DAVI HUME, *POLITICAL ESSAYS* (Charles W. H. Hand ed., Bobbs-Merrill, Indianapolis, IN, USA, 1953); EMMANUEL KANT, *THE CATEGORICAL IMPERATIVE* (Communitarian, Houston, TX, USA, 1990) (Org. pub. in 1797); JOHN LOCKE, *TREATISE ON GOVERNMENT* (Charles L. Sherman ed., D. Appleton-Century Co., New York, NY, USA, 1965); JOHN STUART MILL, *ON LIBERTY* (R.B. McCallum ed., Macmillan Co., New York, NY, USA, 1946) (Org. pub. in London 1859); THOMAS PAINE, *THE RIGHTS OF MAN* (Eckler, London, UK, 1792); PLATO, *THE REPUBLIC* (Penguin Books, London, UK, 1970); BAKON DE MONTESQUIEU, *SPIRIT OF THE LAWS* (Cambridge University Press, Cambridge, UK, 1989); THE STOIC AND EPICUREAN PHILOSOPHERS: THE COMPLETE EXTENT WRITINGS OF EPICURES, EPICETUS, LUCRETIVS (AND) MARCUS AURELIUS (Whitney Jennings Oates ed., Random House, New York, NY, USA, 1940). For a recent anthology which includes most of the major modern political theories, see *CLASSICS OF MODERN POLITICAL THEORY* (Steven M. Cahn ed., Oxford University Press, Oxford, UK, 1996).

⁴ See for example *THE HISTORY OF IRAN* (Ismail K. Poonawala trans., and annotated, State University Press, New York, NY, USA, 12 Vols. 1990); IBN KHALIUN, *THE MAQUADDIMAH* (Fray Rosenthal trans., Bollinger Series, New York, NY, USA, 3 Vols. 1958); Hamilton A.R. Gibb, *Some Considerations on the Sunni Theory of the Caliphate*, in *ARCHIVES HISTORIQUES DU DROIT ORIENTAL* 401-410 (Wetteren, Paris, France, 1939); Hamilton A.R. Gibb, *The Evolution of Government in Early Islam*. IV STUPEA ISLAMICA 1-17(1933). In Islam there are three relevant principles: One is that of *Ba'ia*, which is a form of popular election; *shura*, which is specified in the *Qur'an* and is equivalent to a popular referendum or to a legislative process; and *ijma* which means popular consensus, see M. Cherif Bassiouni, *Sources of Islamic Law and the Protection of Human Rights in the Islamic Criminal Justice System*, in *THE ISLAMIC CRIMINAL JUSTICE SYSTEM* 3-54 (M. Cherif Bassiouni ed., Oceana Publications, Dobbs Ferry, NY, USA, 1982).

expressed by contemporary experts.⁵ To be sure, however, the antithesis of democracy as recognized by almost all post 1900's political thinkers, are the ideologies of fascism, communism, and totalitarianism.⁶

Conceptually, there are three basic paradigms which are addressed by contemporary commentators. They are: (i) the universality or relativity of democracy; (ii) democracy as a process or a condition; and (iii) democracy as methods and modalities or as substance and substantive outcomes. Historical experience reveals, however, that all these paradigms are equally valid because democracy can be all of the above.

Scholars, experts and activists, however, agree that power is what democracy is essentially about, irrespective of whether it is the use, sharing, control or transfer of power, or the accountability of those who wield it and those who seek it. These questions of power are also perceived differently depending upon philosophical and ideological perspectives and that range from the ethical conceptions of Plato⁷ and Aristotle* on the one hand, to those devoid of moral and ethical content such as Karl Marx, Friedrich Engels,¹ and Vladimir Lenin."

Contemporary political realists see the disincorporation of power as a cornerstone issue,¹¹ while ethicists see it more in terms of means and outcomes.^{1:} Most contemporary modernists, however, view democracy as having elements of political realism and ethicism; some of them emphasizing it as the continuing struggle between power-holders and power-seekers or between power-systems and individuality.¹¹ Though these concepts are not mutually exclusive, they nonetheless reflect different philosophical perspectives which mirror the nature of "Man" and the nature of society. For certain religions, sovereignty rests in God and not in "man," consequently, human society must be guided by

⁵ See e.g., JI-AN BAIXHIL K. DIMOCRACY: AN ANALYTICAL SURVEY (UNESCO, Paris, France, 1995); Du in HI I-THAM AND KLVIN Bou.L. DLMOCKACY: QULSHONS ANL> ANSWLRS I UNESCO, Paris, France, 1995).

" If no consensus can be reached as to what constitutes democracy, or "genuine democracy." u term that has recently become part of the discourse on the subject, clearly, there is ample consensus as to what is not democrat*).

PIATO. *supra* note .1.

" AKI.STON I . *supra* note .\.

" KAKL MARX, FHIH>RICH HMIH S. THE COMMI'MST MANILLSTO (Bantam, New York. NY. USA. 1992) (On« pub. in IK4K) wherein Marx .sees power in terms of class struggle and in terms of legality.

" VLADIMIR ILICHI LLNIN, LA KLVOLUTIUN PROI LTAKILNNI- (Bibliothèque communale, Paris, France, 1921 > wherein he slates at p. 18 "ladiclatuieest tin pouvoirqui s'appuie sur la force et qui n'est soumis a aucune loi." Later in 1948, Mao Tse Tung echoed this thought in his *RKD BOOK*, wherein he states "truth comes out of the barrel of a gun." Fui the Lenin-Stalin period of application of this theory of force.:see LEONARD SHAPIRO. DI I.I NINI .STAJ INF: HISIOIRI DI PAKH CUMMI'NLVII. Dh i 'UMDN sovii-.ngil (Gallimard ed., Paris, France, 1967). For the Stalin purges, see Rom Hi COM.II I SI. THI.GRLAI TLRKUR(MacMillianPub.. London, UK. 1968). For the end of communist ideology .we FRANCOIS FI KI I. LI PASSE. II'LSK II I I SKIN (Robert Laffont: Calmann-Lévy, Paris, France, 1995). For the right to dissent from the constitutional political order, .see e.y. M. CHERIE BASSIOIM, THI. LAW OI- DISSENT VNII Runs [Charles C. Thomas. Publishers. Springfield, IL. USA. 1971); and HLNRY DAVID THORLAC, CIVIL DISOBERIFNCL (D.R. Gndirte. Bosion. MA. USA. 19691.

" See Abdel Kader Boye. *Ije queluues problemes el aspects important* de In demntie thins le canteue ties I-Jits d'Afrique noire. Infra* at p. 37 for the view that disincorporation of power is one of the main issues of democracy.

" See Alain Touniine, *I AS conditions, les ennemis el les chances de In democratic, infra* at p. K7, who raises moral and ethical questions about the conduct of slates and the hypocrisy of governments.

" See Hieronim Kubiak, *Democracy mui the Individual Will, infra* at p. 51. SWUf.wOIMMiiNITARIANISM AMI INUIVIOI - -i ISM (Shlomo Avineri and Avner De-Shalit eds. Oxford University Press, UK. 1992).

divine revelations, though, within this framework, democracy can exist.¹⁴ Conversely, secular philosophies place sovereignty in the people who are deemed to have the right to create and undo government, because government is, as Abraham Lincoln once said, "by the people, for the people."¹⁵

Contemporary political thinkers are far less ideological and much more pragmatic than their predecessors of the last century. This is why such modernists see democracy essentially as a process which is based on some principles, though recognizing that the mere existence of a formal process is not a sufficient guarantee to achieve substantive democracy.¹⁶ This approach raises another paradigm, namely: whether democracy is a modality through which authority is delegated by the multitude to the one or the few who are to exercise certain (defined or limited or undefined or unlimited) powers over them on the basis of that delegation of authority, or whether it is a series of interactive processes in which checks and balances constantly or periodically redress or equalize the scales of power between those who govern and those who are governed.¹⁷ To speak of allocation of powers, checks and balances, control and redress mechanisms presupposes a choice in the institutions of government, that is to say three branches of government: legislative, executive, and judicial. It is in this context that the debate about constitutionalism arises;¹⁸ and, whether constitutionalism has become the contemporary equivalent of the "social contract."¹⁹

Historical experience reveals that democracy cannot be attained without a system of government which divides power among three co-equal branches each with certain prerogatives of power, and where the role of the judiciary is to channel power-related conflicts through a legal process which uses agreed legal reasoning to interpret and apply pre-existing law.²⁰

¹¹ See *supra* note 4.

¹⁵ Abraham Lincoln, The Gettysburg Address, 19 November 1863. The preamble of the United States Constitution starts with "We the people..." as does the Preamble of the United Nations Charter, "We the peoples..."

¹⁴ See David Beetham, *Democracy: Key Principles, Institutions and Problems*, *infra* at p. 21. Beetham starts from the premise that "democracy is identified by principles, and by a set of institutions and practices through which these principles are realized."

¹⁷ JOHN STUART MILL, ON REPRESENTATIVE GOVERNMENTS (Longmans, Green and Co, Ltd., London, UK, 1926).

¹⁶ See CHARLES HOWARD MCILWALN, CONSTITUTIONALISM, ANCIENT AND MODERN (Cornell University Press, Ithaca, NY, USA, Rev. ed. 1947); ARTHUR EDWIN SUTHERLAND, CONSTITUTIONALISM IN AMERICA: ORIGINS AND EVOLUTION IN ITS FUNDAMENTAL IDEAS (Blaisdell Pub. Co., New York, NY, USA, 1965). See also, Louis HENKIN, CONSTITUTIONALISM, DEMOCRACY AND FOREIGN AFFAIRS (Columbia University Press, New York, NY, USA, 1990). Prior to the 19th century the question related to the powers of the judiciary to review decisions by the rules and by the legislative bodies. See e.g., SAMUEL PUKENDORE, ELEMKTORAM JURISPRUDENTIAL UNIVERSALIS (William Abbott Oldfather trans., Oceana, NY, USA, 1964) (Orig. pub. in 1660); JEREMY BENTHAM, INTRODUCTION TO PRINCIPLES OF MORALS AND LEGISLATION (Doubleday, Garden City, NY, USA, 1961) (Org. pub. in 1780); and, also e.g., C. FRIKDRICH, THE PHILOSOPHY OF LAW IN HISTORICAL PERSPECTIVE (University of Chicago Press, Chicago, IL, USA, 2d. ed. 1963); and GEORG WILHELM, FRIKDRICH HEGEL, ELEMENTS OF THE PHILOSOPHY OF RIGHT (Allen Wooded., H. Nisbet trans, Cambridge University Press, Cambridge, UK, 1991).

¹⁸ JHAN-JAI'QUES RNUSSHALI, DU CINTRAT SOCIAL (Ronald Gimsley ed., Clarendon Press, Oxford, UK, 1972) (Org. pub. in Amsterdam, 1762).

¹⁹ Implicit in that debate is the one concerning the role of constitutional adjudication and its outcomes. See ROSCOE POUND, THE DEVELOPMENT OF CONSTITUTIONAL GUARANTEES OF LIBERTY (Yale University Press, New Haven, CT, USA, 1957). See also ULRICH K. PREUSS, CONSTITUTIONAL REVOLUTION: THE LINK BETWEEN CONSTITUTIONALISM AND PROGRESS (Deborah Lucas Schneider trans., Humanities Press International, Inc., Atlantic Heights, NJ, USA, 1995). This view is represented in Awad el Mor, *Towards a Universal Declaration on Democracy*, *infra* at p. 47; and Mrs. Fathima Beevi,

The factors taken into account by contemporary commentators and proponents of different perspectives on democracy are not always clear or easily identifiable; and when they are, it is not always apparent that the various arguments they advance are followed consistently or logically.²¹ This is evident in the literature on contemporary political thought, but even more so in the public debate over democracy. One of the sources of this intellectual and political confusion is the fact that the term democracy is often used interchangeably and without distinction with respect to three different concepts for which the term is employed. They are:

1. Democracy as a process, with all that which it comports of mechanisms, procedures and formalities — from political organization to elections.
2. Democracy as a state, or condition, (*un etat*, the French equivalent, which more aptly conveys this meaning than its English counterpart), with all which this condition implies for given civil society and its governance, including the processes of democracy and maybe also democratic outcomes.
3. Democracy as an outcome, is putting into effect policies and practices which are generally agreed upon by the governed. Such an outcome may or may not be the result of a condition or state, and it may or may not be the product of democratic processes.

These three concepts are neither mutually self-excluding nor contradictory, on the contrary, they are on the same continuum. But it is important to distinguish between them because in a sense they represent three levels or stages of democracy.²² Whatever meaning and content is given to the term democracy, what essentially distinguishes it in essence from other systems of government is the right of popular participation in governance, and the legitimacy and legitimation of government and governance. The Vienna Declaration on Human Rights states: "Democracy is based on the freely-expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives,"²³ But, it would be misleading to read these assertions only in light of western cultural and socio-political experiences. As Secretary-General Boutros-Ghali stated in his 1995 Report to the UN General Assembly: "Democracy is not a model to be copied from certain states, but a goal to be attained by all peoples and assimilated by all cultures. It may take many forms, depending upon the characteristics and circumstances of societies."²⁴

The Judiciary in Damn-milt- Governance, infra at p. 31, where the author emphasizes the role of the judiciary. The history of constitutionalism is predicated on the notion that unbridled authority leads to abuse and that constitutions and laws control the power of those who govern. See, e.g., THOMAS PAIN, RIGHTS OK MAN (Heritage Press, New York, NY, USA, 1%!) (Org. pub. in 1791); ALJ-XANDLER HAMILTON, JOHN JAV & JAMKS MADISON, Tut. FKIM-RALISI PAH-KS (Bantam, New York, NY, USA, 19K2); we H/vv FRIUS-RICH, su/Jra note 16. A contrary position is expressed by Thomas Hobbes in LI-VIATHAN, the Latin version of 1670 slated "...sed authority, non Veritas, tacit legem." THOMAS HOHHI s. LLVIATHAN: SIVI. in MAIL-RIA. FORMA, IT PUFST vTH CJVITATIS EICLI-siASTic Ah LT Civn.is III I London, UK. 1K41).

²¹ See *Ri Ni. DIM AHTI-S, RI'LKS S-DRTH. DIKV-CTIONOI-THE MINI** (Elizabeth S. Haldane & Ci.R.T. Ross trans.. Encyclopediia Britannica, Chicago, IL, USA, 1953) (Org. pub. in 1629), and *RLNK DHSCARTLS, DISCOURSE, ON MI-THUD* (Laurence J. Lalleur trans.. Liberal Arls Press, New York, NY, USA, 1960) (Org. pub. in 1637) whose writings on the workings of the mind and the method of logic in reasoned expression has been the most influential since Renaissance thinkers.

²² As such, they reflect the degree to which democracy may be deemed "genuine," a term which this writer interprets as meaning •ubstantive.

²³ Vienna Declaration on Human Rights. Part I, para. 8. UN GAOR. UN Doc. A/CONF. 157/23 (1993).

²⁴ The UN Secretary-General's Report on New or Restored Democracies, para.5, UN GAOR. 50th Sess. UN Doc. A/50/332 (1995).

B. Democratization

A related term, democratization, has also recently appeared in the debate on democracy. At times it is used to refer to the processes of democracy, and at other times it refers to the "transitional stage" of government from non-democratic to the various emerging forms of power sharing, governance and public accountability in new regimes.²⁵ In both cases, however, the term democratization is process-oriented and it, therefore, represents a series of evolutionary developments.²⁶ Thus, the content of democratization is necessarily relative and contextual, particularly with respect to the issue of accountability for the abuses of prior regimes.²⁷ Democratization in transitional countries also encompasses societies which are deemed least developed countries (LDC) and whose priorities are both economic development and democracy. But, as much

⁻¹ See Council of Europe. Parliamentary Assembly, *Report on measures to dismantle the heritage of the former communist totalitarian systems*. A/DOC/7568, 3 June 1996. which states:

1. The heritage of former communist totalitarian systems is not an easy one to handle. On an institutional level this heritage includes (over) centralization, the militarization of civil institutions, bureaucratization, monopolization, overregulation; on the level of the society, it reaches from collectivism and conformism to blind obedience and other totalitarian thought-patterns. To re-establish a civilized, liberal state under the rule of law on this basis is difficult — this is why the old structures and thought-patterns have to be dismantled and overcome.

2. The goals of this transition process are clear: to create pluralist democracies, based on the rule of law and the respect of human rights and diversity. The principles of subsidiarity, freedom of choice, equality of chances, economic pluralism and transparency of the decision-making process all have a role to play in this process. The separation of powers of the media, the protection of private property and the development of a civil society are some of the means to attain the goal, as are decentralization, demilitarization, demonopolization and debureaucratization.

3. The dangers of a failed transition process are manifold. At best, oligarchy will reign instead of democracy, corruption instead of rule of law, and organized crime instead of human rights. At worst, the result could be the "velvet restoration" of a totalitarian regime, if not a violent overthrow of the fledgling democracy. The key to a successful transition process lies in striking the delicate balance of providing justice without seeking revenge.

4. A democratic state based on the rule of law must thus, in dismantling the heritage of former communist totalitarian systems, apply the procedural means of such a state. It cannot apply the procedural means of such a slate. It cannot apply any other means, since it would then be no better than the previous totalitarian regime which is to be dismantled. A democratic state based on the rule of law does have sufficient means at its disposal to ensure that the cause of justice is served and the guilty are punished — it cannot, and should not, however, cater to the desire for revenge instead of justice. It must instead respect human rights and fundamental freedoms, such as the right to due process and the right to be heard, and it must apply them even to those people who, when they were in power, did not apply them themselves. But a state based on the rule of law can also defend itself against a resurgence of the communist totalitarian threat, since it has ample means at its disposal which do not conflict with human rights and the rule of law, using both criminal justice and administrative measures.

Id. p. 1. See also Resolution 1096, June 27, 1996. Parliamentary, Assembly of the Council of Europe. See also Adrienne Quill, *Comment. To Prosecute or not to Prosecute: Problems Encountered in the Prosecution of Former Communist Officials in Germany, Czechoslovakia, and the Czech Republic*. 8 INU. INTL & COM p. L. REV. 165 (1996).

⁻² The Conference on Security and Cooperation in Europe (CSCE) was the mechanism through which human rights and political freedoms were brought to Eastern and Central Europe as of the 1970s. The Helsinki Final Act (HFA) was signed on August 1, 1975, and paved the way for the changes that accord in the late 1980s. The HFA was followed by the Helsinki Implementation (1992) which concluded other interim developments. See e.g. Thomas Buergenthal, *CSCE Human Rights Dimensions: The Birth of a System*, 1990 COLLECTED COURSES or THE ACADEMY OF EUROPEAN LAW 163 (Academy of European Law ed., Dordrecht, The Netherlands, Vol. 1, Book 2, 1992). See also, Roman Wieruszewski, *Human Rights and Current Constitutional Debates in Central and Eastern European Countries*, in THE STRENGTH LIE DIVERSITY: HUMAN RIGHTS AND PLURALIST DEMOCRACY (Allan Roses and Jan Melgesen eds., Martinus Nijhoff Publishers, Dordrecht, The Netherlands, 1992). See Charter of Paris for a New Europe, 20 I.L.M. 193 (Nov. 21, 1991). Relevant excerpts are attached as Annex H.

⁻³ See TRANSITIONAL JUSTICE — How EMERGING DEMOCRACIES DEAL WITH FORMER* REGIMES (3 Vols., Neil J. Kritz ed., US Institute of Peace, Washington, DC, USA, 1996) where the author collected an impressive series of articles on the issue of justice in which the question of accountability for prior regime crimes and fundamental human rights violations are covered in a wide range of situations.

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as these two goals do not appear to be in consistent, they are in fact very difficult to achieve in tandem. In that respect the Vienna Declaration on human rights states: "The World Conference on Human Rights reaffirms that least developed countries committed to the process of democratization and economic reforms, many of which are in Africa, should be supported by the international community in order to succeed in their transition to democracy and economic development."^{2*}

C. Democracy, Rule of Law and Human Rights

Democracy in any of its meanings, requires the existence and free exercise of certain basic individual and group rights without which no democracy, however perceived, can exist. These basic rights are *inter alia*: life, liberty, and property, due process of law, equality; non-discrimination, freedom of expression and assembly, and, judicial access and review. Each one of these basic rights in turn given rise to other substantive rights. But all substantive rights are dependent for their fair and effective implementation on procedural rights.²⁴ These rights are contained in the Universal Declaration on Human Rights,³⁰ the International Covenant on Civil and Political Rights,³¹ the International Covenant on Social Economic and Cultural Rights,³² and other human rights instruments, norms and standards." Regional Convention with implementation mechanisms such as the European Convention of Human Rights and Fundamental Freedoms and its Protocols,⁴ and the American Convention on Human

²⁴ The Vienna Convention on Human Rights. *supra* note 23, at Part I, para.9.

²⁵ See e.g. The Protection of Human Rights in the Administration of Justice: A Compendium of United Nations Norms and standards (M. Cherif Bassiouni ed., Transnational Publishers, Inc., Irvington-on-Hudson, NY, USA, 1994); and M. Cherif Bassiouni, *Human High:** in the *Contevof Criminal Justice: Identifying International Procedural Protections and Equivalent Protections in National Constitutions*. 3 DUKE JOURNAL OF COMPARATIVE AND INTERNATIONAL LAW* 235(1993).

³⁰ Universal Declaration on Human Rights, G A. Res. 217 A, II.N. GAOR. 3d Sess.. Supp. No. 1.at 135; U.N. Doc. A/810 (1948).

³¹ International Covenant on Civil and Political Rights (ICCPR), Opened for signature December 19, 1966; 999 U.N.T.S. 171; The Committee of Human Rights, established by the ICCPR had developed an interpretative jurisprudence of the ICCPR which can be found in its Annual Reports and in the *Yearbook of the Committee on Human Rights* (whose latest volumes are the years 1992-93).

³² International Covenant on Social Economic and Cultural Rights. Opened for signature December 19, 1966; 993 U.N.T.S. 3.

⁴ DONNA GOMIEN, DAVID HARRIS & Lio ZWAAK, LAW AND PRACTICE OF THE EUROPEAN SOCIAL CHARTER (1996); THE EUROPEAN UNION AND HUMAN RIGHTS (Nanette Neuwahl & Allan Rosas eds., 1995); THE EUROPEAN SYSTEMS OF THE PROTECTION OF HUMAN RIGHTS (R. St. J. Macdonald et al. eds., 1993); ECONOMIC, SOCIAL AND CULTURAL RIGHTS: A TuaronK (Ashjorn Eide, Catarina Krause & Allan Rosas eds., 1995); HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVE: A QUEST FOR CONSENSUS (Abdullahi An-Na' im ed., 1995); JACK DONNELLY, INTERNATIONAL HUMAN RIGHTS (1993); MARK JANIS, RICHARD KAY & ANTHONY BKMH I-Y, EUROPEAN HUMAN RIGHTS LAW: TEXT AND MATERIALS; D. J. HARRIS, M. O'BOYLE & C. WXRHRICK, LAW OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS.

⁵ European Convention of Human Rights and Fundamental Freedoms, Opened for signature November 4, 1950; ETS No. 5: 213 U.N.T.S. 221. as amended by Protocol No. 1, ETS 9, May, 18, 1954, Protocol No. 2, ETS 44, Sept. 21, 1970, Protocol No. 3, ETS 45, Sept. 21, 1970, Protocol No. 4, ETS 46, May 2, 1968, Protocol No. 5, ETS 55, Dec. 20, 1971, Protocol No. 6, ETS 114, Jan. 1, 1985, Protocol No. 7, ETS 117, Jan. 11, 1988, Protocol No. 8, ETS IIS, Jan. 1, 1990, Protocol No. 9, ETS 140, Jan. 10, 1994, Protocol No. 10, ETS 146, opened for signatures on Mar. 25, 1992, and Protocol No. 11, ETS 155, opened for signatures on May 11, 1994; the European Commission on Human Rights and the European Court on Human Rights have developed an extensive interpretative jurisprudence of the European Convention, its cases covering all the assets of fundamental rights and freedoms, as well as specific rights concerning elections, under Protocol I. These decisions are contained *inter alia* in the European Human Rights Reports. See also The European Social Charter, 529 U.N.T.S. 89 (Oct. 18, 1961).

Rights¹⁵ have significantly contributed to the strengthening of the fabric of democracy. The African Charter on Human and Peoples' Rights system of enforcement³⁶ is moving in the same direction as its counterparts in Europe and in the Americas, but at a slower pace;³⁷ while other efforts lag behind.³⁸ But the progress at the international and regional levels is consistent and constant; it also evidences the correlation between international, regional and national norms on human rights (which are the necessary foundation of democracy irrespective of how it may be conceived.)

The linkage between democracy, human rights, and the rule of law was evidenced in the Charter of Paris for a New Europe which states:³⁹

A New Era of Democracy, Peace and Unity

We, the Head of State or Government of the States participating in the Conference on Security and Co-operation in Europe, have assembled in Pairs at a time of profound change and historic expectations. The era of confrontation and division of Europe has ended. We declare that henceforth our relations will be founded on respect and co-operation.

Europe is liberating itself from the legacy of the past. The courage of men and women, the strength of the will of the peoples and the power of the ideas of the Helsinki Final Act have opened a new era of democracy, peace and unity in Europe.

Ours is a time for fulfilling the hopes and expectations our peoples have cherished for decades: steadfast commitment to democracy based on human rights and fundamental freedoms; prosperity through economic liberty and social justice; and equal security for all our countries.

The Ten Principles of the Final Act will guide us towards this ambitious future, just as they have lighted our way towards better relations for the past fifteen years. Full implementation of all CSCE commitments must form the basis for the initiatives we are now taking to enable our nations to live in accordance with their aspirations

¹⁵ American Convention on Human Rights. Opened for signature November 22, 1969; 36 O.A.S.T.S. 1; 114 U.N.T.S. 123; THOMAS BUERGENTHAL AND DINAH SHELTON, *PROTECTING HUMAN RIGHTS IN THE AMERICAS* (N.P. Engel ed., Institut international des droits de l'Homme, Kehl, Germany, Strasbourg, France., 4th rev. ed. 1995).

³⁶ African Charter on Human Rights and Peoples' Rights, 21 I.L.M. 59, adopted June 27, 1981, entered into force Oct. 21, 1986.

³⁷ FATSAH OUCIÛRGÖÜÜ, *LA CHAKTI- AERICAENE DES DROITS L-F L'HOMME ET DKS PKUPLES: UNE APPRDCHF. JURIDIQUE PES DROITS DEL' HOMME ENTRHTRAL-ITION ET MOPHRNITE* (Presses Universitaires de France, Paris, France, 1993); KEBA M'BAVH, *Lts DROITS DE L.'HOMME EN AKRIQIK* (Pedone, Paris, France, 1992); *see also* THE PROTECTION OF HUMAN RIGHTS IN AFRICAN CRIMINAL PROCEEDINGS (M. Cherif Bassiouni & Ziyad Moulaeds., Martinus Nijhoff Publishers, Dordrecht., The Netherlands, 1995).

³⁸ The Organization of the Islamic Conference developed an Islamic Charter on Human rights, but it remains without effect. The League of Arab States developed a draft Arab Charter on Human Rights patterned after a project developed by a group of experts meeting in December 1985 in Siracusa, Italy and adopted by the Union of Arab Lawyers. *See e.g.* M. Cherif Bassiouni, *The Arab Human Rights Program of the International Institute of Higher Studies in Criminal Sciences, Siracusa, Italy*, 12 HUMAN RIGHTS QUARTERLY 365 (1990).

³⁹ Charter of Paris for a New Europe, 30 I.L.M. (Nov. 21, 1991).

Human Rights, Democracy and Rule of Law

We undertake to build, consolidate and strengthen democracy as the only system of government of our nations. In this endeavor, we will abide by the following:

Human rights and fundamental freedoms are the birthright of all human beings, are inalienable and are guaranteed by law. Their protection and promotion is the first responsibility of government. Respect for them is the essential safeguard against an over-mighty State. Their observance and full exercise are the foundation of freedom, justice and peace.

Democratic government is based on the will of the people, expressed regularly through free and fair elections. Democracy has as its foundation respect for the human person and the rule of law. Democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person.

Democracy, with all its representative and pluralist character, entails accountability to the electorate, the obligation of public authorities to comply with the law and justice administered impartially. No one will be above the law.

We affirm that, without discrimination.

Every individual has the right to:

freedom of thought, conscience and religion or belief,
freedom of expression,
 freedom of association and peaceful assembly,
 freedom of movement,

no one will be:

subject to arbitrary arrest or detention
 subject *to* torture or other cruel, inhuman *or* degrading treatment *or* punishment,

everyone also has the right:

to know and act upon his rights,
 to participate in free and fair elections,
to fair and public trial if charged with an offense,
 to own property alone or in association and exercise individual enterprise,
 to enjoy his economic, social and cultural rights.

We affirm that the ethnic, cultural, linguistic and religious identity of national minorities will be protected and that persons belonging to national minorities have the right freely to express, preserve and develop that identity without any discrimination and in full equality of the law.

We will ensure that everyone will enjoy recourse to effective remedies, national or international, against any violation of his rights.

Full respect for these precepts is the bedrock on which we will seek to construct the new Europe.

Our States will co-operate and support each other with the aim of making democratic gains irreversible.⁴⁰

Also the Vienna Declaration on Human Rights States: "Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing... The international Community should support the strengthening and formation of democracy, development and respect for human rights and fundamental freedoms in the entire world."⁴¹

D. Democratic Processes and Civil Society

Democracy is an ever-perfecting and perfectible goal, likely never to be attained, but always meritorious enough to be pursued with commitment and good faith. But to understand what is sought to be achieved is not enough, for without democratic processes, which need constant enhancement of their effectiveness and integrity, democracy as a goal can never be achieved.

Democratic processes must not be measured in terms of what they are intended to achieve, but by what they actually achieve. This means that certain operational conditions are to be deemed part and parcel of these processes. They include: (i) access and openness of public institutions to the citizenry without discrimination or intimidation; (ii) transparency in the workings of public institutions; (iii) integrity of the processes; and (iv) accountability mechanisms capable of effecting outcomes and effectively redressing wrongs. Public institutions, however, are administered by bureaucracies which can be an impediment to democracy and a means by which public corruption can be subvert democracy.⁴²

All governments have bureaucracies, and most of them are a great rubber wall against which very little bounces off, but which, instead, seems to have the capacity to absorb so much.⁴³ Bureaucracies are, therefore, the ideal means through which those who control power can stifle democracy unless they are prevented or checked by accountability and redress mechanisms. That is why these accountability and redress mechanisms are so necessary to safeguard democracy, democratic processes and justice. Democratic process, however, must also be safeguarded through the application of the rule of law, which should never be suspended.⁴⁴

•" *id.*

⁴⁰ Vienna Declaration on Human Rights, *supra* note 23. al part 1, para. 8.

⁴¹ All societies endure some form of corruption, but some do more than others. Corruption is the bane of developing societies, where oligarchies of the military or party type shamelessly profit from their fellow citizens and destroy national economics. Civil society can stop it, and democracies ultimately find a way to correct these abuses. Interamerican Convention Against Corruption. OEA/Ser.K.xxxiv. 1 CICOR/Doc. 14/96 Rev. 2 (March 29. 1996); UN Declaration Against Bribery and Corruption, UN GAOR, 51st Sess., Supp. No. 3. UN Doc. A/51/3/RCV.1. Victor Massuh. "Democracia: delicado equilibrio y universalidad." *infra* p. 67. Emphasizes the importance of civil society and substantive rights over processes which can be subverted for private interest and corruption.

•" In developing countries the problems of institutions and bureaucracies is more acute than in developed ones because of the lack of resources, personnel, and skills and because of the lack of effective accountability and control mechanisms. But in developing countries the subtle control exercised by economic elites is greater over institutions and bureaucracies than in developed ones and that too constitutes a threat to democracy. All societies, however, have bureaucracies which have lives of their own and that can achieve illegal or unethical outcomes without any external power manipulation. This is also true of international organizations. That is one reason why the term "genuine democracy" has also become more in use in the contemporary debate.

⁴⁴ See M. Cherif Bassiouni, *lex Etats d'urgence et d'exception*, in DROITS INTANGIBLES ET ETATS D'EXCEPTION (Etablissements Emile Bruylant. Bruxelles. 1996).

Among the many social and political issues facing democracy are those of states comprised of multi-ethnic and multi-religious groups. These states face the difficult, and sometimes intractable, problems of achieving a balanced socio-political pluralism while preserving group identity within overall social integration. The results since WWII has been more disastrous than generally perceived. Internal conflicts, wars of secession and tyrannical regimes have produced more victimization than conflicts of an international character.⁴⁵ The existence of democracy and democratic processes may have saved the political integrity of these states; above all, it may have saved millions of lives and untold human and material harm. This is where democracy can make its largest contribution to humanity and to civilization.

It should be noted that in all tyrannical regimes which caused massive victimization, these regimes at first destroyed or sapped civil society, and then established power on discriminatory or intolerant ideologies, while concurrently placing in positions of power persons who carried out the fallacies that brought about the victimization.⁴⁶ In most cases, these persons were either from among the worst elements of society, or they relied on some of the worst elements of society to carry out horrendous deeds. It is, therefore, the combination of the absence of civil society and the lack of social controls which created the vacuum in which the policies and practices of victimization were carried out. In many of these cases, the elimination of civil society also permitted rampant corruption, which like the human victimization produced by these regimes occurred in a climate of impunity⁴⁷ and with the expectation of future impunity. This is why the need for such post-regime accountability is indispensable as a deterrent for similar future occurrences.⁴⁸ The restoration of civil society and democracy must, therefore, always be accompanied by accountability whatever form it may take in light of the future goals of each society. Past crimes are never left hanging in the limbo of history, they remain locked in an everlasting present, either crying for vengeance or hoping for redress. Coming to terms with the past is an indispensable element of future reconciliation. To do otherwise, is, to paraphrase the philosopher George Santayana, to be condemned to repeat the mistakes of the past.

Democracy cannot exist without civil society, and civil society cannot exist without a population that has the will and capacity to act in defense of its values and institutions. In the final analysis, however, it is people who make and live

⁴⁵ One author estimates that since WWII these conflict situations have produced more than 150 million casualties. See RUDY RUMMLT., *DLATH HY GOVLRNMKNT* (Transactions Publishers, New Brunswick, USA, 1994); DANIEL CHIROT, *MODKRN TYRANTS* (Princeton University Press, Princeton, NJ, USA, 1994). For a humanistic political perspective, see HANNAH AKLNDI, *Tin. OKIILINS DI TOTALITARIANISM* (Harcourt, Brace, New York, NY, USA, 1951).

⁴⁶ For the example of the Former Yugoslavia, see Final Report and Annexes of the Commission of Experts Established Pursuant to Security Council Res. 78(1) (1992); see also United Nations Commission of Experts Established Pursuant to Security Council Res. 780 (1992) in 88 Am. J. Int'l L. (1994).

⁴⁷ See Naomi Roht-Arria/a. & Michael Scharf [MCB]

⁴⁸ M. Cherif Bassiouni. *From Versailles to Rwanda in Seventy-Five Years: The Need to Establish an Permanent International Criminal Court.* IOHARV, HUM. RTS. J. 1 (1997).

democracy, and who can also undo it and destroy it. Thus, people must have the knowledge and capacity to exercise their individual and collective rights in order to bring about democracy, preserve democratic processes, and insure that these processes work effectively and with integrity so that democratic outcomes may be attained — and this is where the larger questions of education and resources become relevant to the debate. Education is indispensable and allows a citizenry the capacity to develop civil society and to act in defense of its values and institutions. Lack of education is probably the single most factor which causes apathy and indifference in a society. Such apathy and indifference is what allows the few to malgovern, to abuse individual and collective rights, and to exploit their fellow citizens. No genuine democracy can long exist while the citizenry is apathetic or indifferent to the ways of government — engagement and participation in public life, and in support of civil society is indispensable to democracy.

E. Democracy, Pluralism and Social Solidarity

The Vienna Declaration on Human Rights stated that "Democracy" is one of the "aspirations of all the peoples for an international order based on the principles enshrined in the Charter of the United Nations."⁴⁹ The Charter, in its Preamble and in Articles 1, 55, and 56 recognizes as a basic principle the equality of states and peoples, the right of equal self determination of peoples, and respect for individual collective human rights and fundamental freedoms. Implicitly it can be said that the principles of the charter, when read in conjunction with international norms on individual and collective rights, provide for two essential social rights which are pivotal to democracy. They are pluralism and social solidarity. The first requires non-homogenous societies to strive for consocialization, tolerance and respect for group rights. The second requires social and economic solidarity for all groups within a society. Pluralism and social solidarity are reflected in the simple prohibition of discrimination and the injunction to afford equality. But unlike certain ideologies like Marxism which have also claimed as one of its goals to achieve pluralism and social solidarity, democracies goal to achieve both is founded on the philosophy of social humanism. While this philosophy is consistent with free enterprise capitalism with respect to pluralism it is not necessarily so with respect to social solidarity. The later is closer to what is commonly referred to as social democracy. Which is a form of liberal socialism.

It is quite clear from the above that a discourse on pluralism and more so on social solidarity will necessarily draw into the debate considerations of political economy on which there is significant divergence of views. Since the demise of Marxism and socialism as a form of government notions of social solidarity in the context of democratic societies have also regressed in the face of a

^{1,1} The Vienna Declaration on Human Rights, *supra* note 23.

more aggressive form of free enterprise capitalism. Democratic societies will therefore have to face the difficult task of determining whether social solidarity is a fundamental element of democratic society or not.

Along a different path democratic societies will also face the question of whether pluralism is an indispensable element of democracy or not, and whether societies can be exclusivists, either on a racial, ethnic or religious basis and still be deemed democratic for their own and to the exclusion of others and still be deemed democratic or do they become undemocratic when they reject or separate from those who do not constitute part of their homogenous group.

F. A Developing Consensus

As is evident from the above discussion, the inherent difficulties of the subject of democracy and the intellectual confusion that surrounds it makes it more difficult to develop a consensus understanding of what it is and how it should or could be achieved in different cultural, political, social and economic contexts.⁵⁰ Developing an international definition of democracy or even a consensus as to its content, other than for the intellectual challenge of the undertaking is a daunting task, instead a more realistic one would be to inquire into the values, principles, goals and methods that emerge as a consensus among scholars, experts and public activists representing all regions and major cultures of the world. The starting point, however, is the need to develop a method whereby it is possible to: (i) identify the factors and considerations that go into the making of a given conception of democracy; (ii) identify its values and value-oriented goals; (iii) appraise these values and value-oriented goals in relation to other competing values and other value-oriented goals; (iv) ascertain the minimum required conditions of democracy as a state or condition; (v) determine the structures and institutions that are needed to transform the values of democracy into processes through which these identified values and value-oriented goals can be achieved, or at least channeled in the direction of their expected realization; and (vi) to determine the means by which to maximize the integrity and effectiveness of the processes which are deemed indispensable to the attainment of the pursued goals. Such a method would at least serve the purposes of facilitating comparative analysis and help assess the differences and divergences of perspectives in the world's different cultures. But such an undertaking is beyond the scope of this report, whose purpose is to identify the basic framework for the exercise of democracy. In that respect, it appears that four sets of elements are common to these various contemporary perspectives on democracy, even though the content and mixture of these elements vary from one perspective to the other.⁵¹ These four common sets of elements are:

⁵⁰ For the position of developing and non-Western countries, see LARKY DIAMOND, JUAN L. LIU/ AND SKYMOUR MAKI IN *LifShT, Lbs FAYs tN nPvhi.oppFMFNT FT t'KXPPRIKNet »K LA DEMOCRATIK* (Nouveaux Horizons, 1990) referred loin ABDH KAIIFH BOYH, *supra* note 9, a p. 37; Luis Villoro, *Dos sentidos de 'Democracia,' infra* at p. 95; Juwono Sudersono, *Problems of Democratic Standard Senium, infra* at p. 81; and Cyril Ramaphosa, *The Main Elements of Democracy: A South African Experience, infra* at p. 73.

⁵¹ Indeed, the broader the generality, the greater the consensus, while the more specific the content the wider the divergence.

1. A system of governance which gives the governed a choice about those who govern, for how long, and about policies and practices of the government;
2. The recognition of certain collective and individual rights susceptible of effective implementation;
3. The establishment of fair, free and effective processes by which government, governance, and collective and individual rights can be exercised; and
4. The development of accountability mechanisms at the political and judicial levels to ensure the legality and integrity of political and administrative processes for those in power and for those seeking power.

Because we live in an era of oversimplification, the shorthand formula used to reflect the first set of elements is contained in the term "free and fair elections," while the other three sets of elements are referred to in the shorthand formulas of "rule of law" and "respect for and observance of human rights." Clearly, these shorthand formulas mean much more than what their labels convey.⁵² But more importantly, democracies and democratic processes must rely on national capabilities which at their turn are dependent on a variety of factors ranging from education to technology — all of which are dependent upon availability of resources.⁵³

G. Internationalization of Democracy

Another new concept of extending democracy at the international level has also emerged in the last few years. It is referred to as the "internationalization of democracy," though it is still largely inchoate.⁵⁴ It is used to signify equal vote and equal representation of states in international organizations. But it also sometimes has the implication of a weighted approach to the equalization of power in international decision-making processes. This latter approach is a form of international "affirmative action," as that term is understood, in some national systems whereby certain social imbalances are sought to be redressed or adjusted by providing preferential treatment to some over others. At the international representational level, this redress of power imbalance between states is

⁵² See e.g. ANDRE RESZLER, LE PIJRAUSMF: ASPECTS THEORIQUES ET HISTORIQUES DES SOCIETES OUVERTES (Georg ed., Geneva, Switzerland, 1960); AKEND LIJHART, DEMOCRACIES: PATTERNS OF IMAGINATIONS AND CONSENSUS IN GOVERNMENT IN TWENTY-ONE COUNTRIES (Yale University Press, New Haven, CT, USA, 1984); AREND LIJHART, DEMOCRACY IN PLURAL SOCIETIES: COMPARATIVE EXPLORATION (Yale University Press, New Haven, CT, USA, 1977); JAMES VISCOUNT BRYCE, MODERN DEMOCRACIES (The Macmillan Co., New York, NY, USA, 1924).

⁵³ *National Capacity - Building for Democracy*, Report of Proceedings of the Feb. 12-14, 1996 Stockholm Conference of the Institute for Democracy and Electoral Assistance.

⁵⁴ See BOUTROS BOUTROS-GHAU, AN AGENDA FOR DEMOCRATIZATION (United Nations, New York, NY, USA, 1996). Relevant excerpts are attache as Annex I. See also, The Parliamentary Vision for International Cooperation Into the 21st Century, Declaration adopted by the Special Session of the Inter-Parliamentary Council (New York, UN Headquarters, August 30-September 1, 1995). The Declaration emphasizes the links between human rights and democracy. And see, The Vienna Declaration on Human Rights, *supra* note 23; The UN Secretary-General's Report on New and Restored Democracies, *supra* note 24;

The essence of both being:

1. Democracy is a single and universal concept, based on the "freely-expressed will of the people."
2. There are certain "minimum conditions" and defining features of "democracy," and
3. "Democracy may take many forms, and in expressing their will, the people of different countries may determine different political, economic, social and cultural systems, depending on the characteristics of their societies.

reflected in the formula of "equitable geographic representation," and it give developing states a larger numerical representation in international bodies than developed states. But the substantive extension of that concept into the international economic field, such as transfer of technology from developed to developing states, sharing of natural resources, and assumption of certain costs by industrialized societies is largely unheeded by the developed states, notwithstanding the UN's Declaration on the Economic Rights and Duties of States.⁵³ The questions of "internationalization of democracy" as applicable to economic rights and duties is, however, further complicated by the fact that multinational corporations dominate international trade and investments and the development of technology.⁵⁶ These multinationals are guided by the profit motive and are not subject to the same legal constraints applicable to states in their mutual relations. Furthermore, multinational corporations are not concerned by the same considerations that some state voluntarily take into account in their foreign relations."

The "internationalization of democracy" can also be seen as a substitute for the short-lived concept of the "new world order."^{55*} The extension of the right to democracy into the context of peace and security was manifested in 1990 when the UN General Assembly in Resolution 940 authorized the resort to "all necessary force" to restore the legitimately elected government in Haiti that had been removed by military force. (1996)⁵⁹ Thus, for the first time since the adoption of the UN Charter, there has been collective action including the use of force to restore democratic government.TM

The "internationalization of democracy" can also be viewed from the perspective of the growth and development of international and regional protection of human rights, which is the area where the greatest advances in establishing the foundation of democracy can be seen.⁶¹

H. Democracy and Peace

Lastly, there is another new concept that is making its way in the public discourse, namely that democracy as a national form of government fosters international peace and security.⁶ This concept is certainly appealing and has merit.

" See Charter on Economic Rights and Duties of States, UN GAOR, 29th Sess. Supp. No. 31, UN Doc. 9631 (1974), reprinted in 14 I.L.M. 251 (1975). Nevertheless, the economic dimension of the internationalization of democracy has some recognition in the UN's budget-sharing cost, which is based on the resources of states.

* The regulation of multinational corporations have been attempted by the UN and OECD for the last 30 years with limited results. Some standards have, however, been established to limit the corruption of public officials in states, presumably developing states, where multinational corporations seek to do business.

" This is evident in the various foreign assistance programs undertaken by certain developed states.

" This term was used by President George Bush in connection with the 1990 [check date] Gulf War. [see if there is anything published under heading of "new world order"]

"" See Thomas Frank, *The Emerging Right to Democratic Government* in DF.MOTRACY FORIM 23-31 (Broderna Carlssons Boktryckeri AB, Varberg 1996)

"" Scharf, *supra* note 47,

"" See *supra* notes 18-32 and corresponding text.

"" See BOUTROS BOUIROS-GHAU, *supra* note 50. See also, UN Declaration on Friendly Relations and Co-operation among States, G. A. Res. 2625, UN GAOR, 25th Sess., Supp. No. 28, UN Doc A/8028 (1970).

But a national democratic form of government does not necessarily translate into international democratic conduct or conduct in international relations that is in conformity with the preservation of peace or observance of international legality.⁶³ Indeed, the conduct of states in their international relations, even those that have democratic governments, is still essentially guided by power considerations and by economic interests. These considerations may not necessarily produce what would generally be considered to be democratic, namely, lawful or fair and equitable conduct. There is, therefore, a danger in oversimplifying the relationship between national democratic forms of government and international peace and security and surely more so in matters of political and economic fairness and equity in the sharing of resources and technology between developed and developing societies.

There is, however, another international track in progress that surely enhances the opportunities for the realization of world order,⁶⁴ namely international justice. The greater acceptance of the International Court of Justice's authority,⁶⁵ and the establishment of two *ad hoc* international criminal tribunals for the Former Yugoslavia⁶⁶ and Rwanda,⁶⁷ are encouraging signs. But perhaps more hopeful are the prospects of establishing a permanent international criminal court to prosecute those responsible for such international crimes as aggression, genocide, crimes against humanity and war.⁶⁸ If there is not the certainty, there is at least the expectation that the realization of international justice enhances not only peace, but also the internationalization of democracy, in the sense of a more lawful and legitimate world order.⁶⁹

** See e.g. the case of *Nicaragua v. U.S. Military and Paramilitary Activities (Nicar. v. U.S.)*, 1984 I.C.J. 169 (r Oct.)

⁶³ See MYRF.5 MCDUGALAND & FLORENTINE P. FELICIANO, *LAW AND THE MINIMUM WORLD ORDER* (Yale University Press, New Haven, CT, USA, 1961).

⁶⁴ See e.g. SHABTAI ROSENNE, *THE WORLD COURT* (Martinus Nijhoff Publishers, Dordrecht, The Netherlands, 5th revised ed., 1995). But the ICJ's authority has its limitations. See MOHAMMED BHDJAOUI, *THE NHW WORLD ORDER AND THE SECURITY COUNCIL: TESTING THE LEGALITY OF ITS ACTS* (Martinus Nijhoff, Boston, MA, USA, 1994); and *AFRICAN POLITICAL SYSTEMS* (E.E. Evans-Pritchard and M. Fortes eds., Oxford University Press, Oxford, UK, 1940). For the concept of stale and its bearing on different forms of governments, see R. ARON, *ETUDES POI ITIQUIS* (Gallimard ed., Paris, France, 1972).

** See M. CHERIF BASSIOUNI (IN COLLABORATION WITH PETER MANIKAS). *THE LAW OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA* (Transnational Publishers, Irvington-on-Hudson, NY, USA, 1996).

" Larry Johnson, *International Criminal Tribunal for Rwanda*, 67 *REVUE INTERNATIONALE DE DROIT PENAI* 211(1996).

** See General Assembly Resolution on the Establishment of an International Criminal Court, 17 December 1996, UN Doc. A/51/627; Report of the UN G.A. Preparatory Committee for the Establishment of an International Criminal Court, UN Doc. A/51/22 (Vol I & II); *THE INTERNATIONAL CRIMINAL COURT: OBSERVATIONS AND ISSUES BEFORE THE 1997-98 PREPARATORY COMMITTEE* (M. Cherif Bassiouni ed., 13 *NOUVELLES ETUDES PENALES* (1993). M. Cherif Bassiouni, *The Time Has Come for an International Criminal Court*, 1 *INDIANA INTERNATIONAL AND COMPARATIVE LAW REVIEW* 1 (1992); M. Cherif Bassiouni and Christopher Blakesley, *The Need for an international Criminal Court in the New International World Order*, 25 *VANDERBILT JOURNAL OF TRANSNATIONAL LAW* 151 (1992).

⁶⁹ The recent establishment in December 1996 of the International Tribunal for the Law of the Sea is another positive development.

ANNEX I

Excerpts from the United Nations Secretary-General's Agenda for Democratization⁷⁰

1. *Democratization is a process which leads to a more open, more participatory, less authoritarian society. Democracy is a system of government which embodies, in a variety of institutions and mechanisms, the ideal of political based on the will of the people.*
2. *In places from Latin America to Africa, Europe and Asia, numbers of authoritarian regimes have given way to democratic forces, increasingly responsive Governments and increasingly open societies. Many States and their peoples have embarked upon a process of democratization for the first time. Others have moved to restore their democratic roots.*
3. *The basic idea of democracy is today gaining adherents across cultural, social and economic lines. While the definition of democracy is an increasingly important subject of debate within and among societies, the practice of democracy is increasingly regarded as essential to progress on a wide range of human concerns and to the protection of human rights.*
4. *Both democratization and democracy raise difficult questions of prioritization and timing. It is therefore surprising that the acceleration of democratization and the renaissance of the idea of democracy have met with some resistance. On the practical level, the world has seen some slowing and erosion in democratization processes and, in some cases, reversals. On the normative level, resistance has arisen which in some cases seeks to cloak authorization in claims of cultural differences and in others reflects the undeniable fact that there is no one model of democratization or democracy suitable to all societies. The reality is that individual societies decide if and when to begin democratization. Throughout the process, each society decides its nature and its pace. The starting point from which a society commences democratization will bear greatly on such decisions. Like the process of democratization, democracy can take many forms and evolve through many phases, depending on the particular characteristics and circumstances of societies. And, in every society, the persistence of democracy itself requires an ongoing process of political renewal and development.*
61. *Democratization internationally is necessary on three interrelated fronts. The established system of the United Nations itself has far to go before fulfilling to the extent possible the democratic potential of its present design, and in transforming those structures which are insufficiently democratic. The participation of new actors on the international scene is an acknowledged fact;*

providing them with agreed means of participation in the formal system, heretofore primarily the province of States, is a new task of our time. A third challenge will be to achieve a culture of democracy internationally. This will not only require a society of States committed to democratic principles and processes; it will also demand an enlarged international civil society deeply involved in democratic institutions, whether State, inter-State or supra-State, private or quasi-private; committed to democratic practices, procedures and political pluralism; and composed of peoples ingrained with those habits of openness, fairness and tolerance that have been associated with democracy since ancient times.

62. *There are of course substantial differences between democratization at the international level and democratization within States. At the international level there are international organizations and institutions, and international decision-making and international law, but there is no international structure equivalent to that of State government. International society is both a society of States and a society of individual persons. Nonetheless, the concept of democratization as a process which can create a more open, more participatory, less authoritarian society applies both nationally and internationally.*

63. *There are likewise substantial differences between the ideas of national democracy and international democracy. Growing recognition of the practical importance of democracy within States has nevertheless contributed to growing recognition of the practical importance of democracy among States, and generated increased demand for democratization internationally.*

64. *Individual involvement in the political process enhances the accountability and responsiveness of government. Governments which are responsive and accountable are likely to be stable and to promote peace. Many internal conflicts stem from the belief, justified or not, that the State does not represent all groups in society or that it seeks to impose an exclusive ideology. Democracy is the way to mediate the various social interests in a particular community. In the international community, it is the way to promote the participation of all actors and to provide a possibility to solve conflicts by dialogue rather than by force of arms. The process of democratization internationally can therefore help promote peaceful relations among States.*

65. *With participation, economic and social development become meaningful and establish deeper roots. Building democratic institutions at the State level help to ensure that the priorities of diverse social groups are considered in the formulation of development strategies. In the international economic system, democracy can mean that the relationship between developed and developing States is one not of assistance but of cooperation. Instead of chronic reliance on emergency relief, the concerns of developed and developing States can be mediated in conferences and other United Nations intergovernmental consultations, which also engage relevant non-State actors. Democratization, therefore, can help guarantee that, through the United Nations, the poorest countries will have an ever growing voice in the international system. It can help*

ensure that the international system does not leave a vast portion of the world to fend for itself but truly promotes the integration and participation of all peoples.

66. *If democratization is the most reliable way to legitimize and improve national governance, it is also the most reliable way to legitimize and improve international organization, making it more open and responsive by increasing participation, more efficient by allowing for burden-sharing and more effective by allowing for comparative advantage and greater creativity. Moreover, just like democratization within States, democratization at the international level is based on and aims to promote the dignity and worth of the individual human being and the fundamental equality of all persons and of all peoples.*

67. *The new world environment has strengthened this fundamental link between democratization nationally and internationally. Once decision-making in global affairs could have only a limited effect on the internal affairs of States and the daily lives of their peoples. Today, decisions concerning global matters carry with them far-reaching domestic consequences, blurring the lines between international and domestic policy. In this way, unrepresentative decisions on global issues can run counter to democratization within a State and undermine a people's commitment to it. Thus, democratization within States may fail to take root unless democratization extends to the international arena.*

121. *Peace can be seen as essential for without some degree of peace, neither development nor democracy is possible. Yet both development and democracy are essential if peace is to endure. The articulation between development and democracy is more complex. Experience has shown that development can take place without democracy. However, there is little to suggest that development requires an authoritarian regime and much to suggest that, over the long term, democracy is an essential ingredient for sustainable development. At the same time, development is an essential ingredient for true democracy so that, beyond formal equality, all members of society are empowered to participate in their own political system.*

128. *While democratization must take place at all levels of human society — local, national regional and global — the special power of democratization lies in its logic, which flows from the individual human person, the one irreducible entity in world affairs and the logical source of all human rights. At the same time that democratization will rely upon individual commitment to flourish, democratization will foster the conditions necessary for the individual to flourish. Beyond all the obstacles lie bright prospects for the future.*

Democracy: Key Principles, Institutions and Problems

PROFESSOR DAVID BEETHAM*

Democracy is identified by certain key principles, and by a set of institutions and practices through which these principles are realised. Its starting point, like that of human rights, is the dignity of the individual person. However, democracy also has a specific focus - that of decision-making about the rules and policies for any group, association or society as a whole - and a distinctive conception of citizens, not only as the bearers of rights and responsibilities, but as active participants in the collective decisions and policies which affect their lives. The basic principles of democracy are that the people have a right to a controlling influence over public decisions and decision-makers, and that they should be treated with equal respect and as of equal worth in the context of such decisions. These could be called for short the principles of popular control and political equality, respectively.

It is important to start a discussion of democracy with its basic principles or "regulative ideals", rather than with a set of political institutions (elections, parties, parliaments, the separation of powers, the rule of law, etc.), for a number of reasons. First, what justifies our calling these institutions democratic is not merely a matter of convention, but of the contribution they make to the realisation of these underlying principles. They have not been handed down to us in their current form ready made, but have evolved out of popular struggles to make government more accessible to popular influence, and to make that influence more inclusive. Secondly, to define democracy simply in institutional terms is to elevate means into ends, to concentrate on the forms without the content, and to abandon any critical standpoint from which these institutional arrangements can be judged more or less democratic in their given context and manner of working. Democracy is always a matter of the degree to which certain principles are realised, rather than some final state of perfection. Thirdly, to define democracy in terms of its basic principles enables us to recognise democracy at work beyond the formal level of government itself. In particular, whenever people organise collectively in civil society to solve their problems, to protect or promote their interests, to persuade fellow citizens to their point of view or openly to influence government policy, this can be as much an expression of democracy as the arrangements of government at such.

For similar reasons, it is important to begin any consideration of democracy with the citizen, rather than with governmental institutions. It is from the citizens that democratic governments receive their authorisation, and it is to the citizens that they remain accountable and responsive, both directly and through the mediating organs of parliament and public opinion. The citizen is both the starting point and the focus of the democratic process. At the same time, that process requires certain qualities, among its citizen body to be effective and sustainable. Among these, two are decisive. One is the ability and willingness to play a part in common affairs, whether local or national, whether sectional or societal, and to acknowledge some responsibility for them. The second is a respect for the rights of other citizens, an acknowledgment of their equal dignity, and the recognition of their right to an opinion, especially when it differs from one's own. The essential counterpart to the democratic principles of popular control and political equality is thus a publicly active citizen body which is capable of exercising tolerance.

Citizenship rights

If the starting point of democracy, then, is the right of citizens to have a say in the decisions that affect their lives, on a basis of equality with others, then it requires a framework of other rights to make this basic political right effective. These are the familiar rights and freedoms of expression, association and assembly. The right to unimpeded expression of opinion requires the existence of independent media and of legislation preventing undue concentrations of media ownership. The right of free association includes the right to found new associations for economic, social and cultural purposes, including political parties. The right of peaceful assembly entails the right of free movement within and between countries. None of these rights can be exercised effectively without the liberty and security of the person, and the guarantee of due legal process. Democracy is thus inseparable from fundamental human rights and freedoms, and from the responsibility to respect the same rights and freedoms for others.

It is a matter of some debate among theorists of democracy whether a guarantee of economic, social and cultural rights also constitutes a necessary condition of democracy, or whether it merely forms part of the agenda for democratic contestation between rival programmes and parties. To this writer it seems self-evident that, for civil and political rights and freedoms to have any value, citizens must possess the capacity to exercise them. Those who lack the necessary education to play an effective social role, or any secure means of livelihood, are unlikely to have the capacity for democratic agency. As the history of our century suggests, social exclusion leads to civil and political alienation on the part of those excluded, and provides a breeding ground for political intolerance and repressive policies which impair the quality of democracy for all, even when they do not actually threaten its survival. Whatever the strategies for economic development that are pursued, therefore, a prior claim on

society's resources to ensure the minimum requirements of effective citizenship for all should be regarded as an important condition, rather than merely a possible outcome, of democracy.

Another debated issue is whether, or how far, the disabilities which particular groups face in exercising their civil and political rights on an equal footing with others require affirmative action measures that go beyond the anti-discrimination policies which all agree are a condition for equal citizenship. Of particular concern here is the fact that women are often hindered by traditional domestic roles and responsibilities from playing their full part in public affairs, and that they are poorly represented in democratic parliaments and governments compared to men. It is worth noting that those countries have been most successful in modifying this imbalance which have adopted affirmative action policies, whether formally or informally; and that such policies are explicitly endorsed as temporary measures by the UN Convention on the Elimination of All Forms of Discrimination against Women.

As many recent writers have stressed, the principle of equal citizenship has to allow room for difference - of belief, of life-style, of identity. Societies today are everywhere characterised by pluralisms of language, religion, culture or ethnicity. It is now an acknowledged democratic principle that such diversity should be welcomed, and where necessary given protection, on the basis of equal respect and on the condition that equal respect is shown to others. And where diversity gives rise to disagreement or conflict, the democratic method for its resolution is through discussion and dialogue, rather than imposition or coercion. Equal citizenship thus entails a complex form of equality, rather than simple uniformity.

Securing equal rights of citizenship, to enable people to influence the decisions that affect their lives, thus constitutes the foundation of democracy. To give such rights special legal or constitutional protection cannot therefore be regarded as any infringement of democratic principle, even though they may run counter to the expressed will of the majority on a particular occasion. Majoritarianism is at best a necessary procedural device for resolving disagreement when other methods have been exhausted, rather than the acme of democratic perfection. Moreover, since its justification as a procedural device derives from the principle of political equality ("everyone to count for one and none for more than one"), it can only be self-contradictory for it to be employed to override or limit that same principle.

The political institutions of democracy

If on the one hand, then, the democratic principles of popular control and political equality require the guarantee of basic rights of citizenship for their realisation, on the other they need a set of distinctive political institutions for their effectiveness. Although such institutions may take different forms according to the culture and tradition of a given country, there must also be a limit

to their possible range of variation consistent with democracy. In particular, the characteristic institutions which emerged in the West from struggles to subject the modern state to societal control do have an exemplary character for democracies everywhere. This is not because of any inherent superiority of Western arrangements. It is simply that the centralising state, with its claim to a monopoly of administrative and coercive power over a given territory, is now itself universal. And attempts in our century to democratise it - through populist, Marxist or single-party regimes - without multi-party competition, the separation of powers or the rule of law, have all proved illusory.

Democratic political institutions are those designed to ensure the popular authorisation of public officials, and their continuing accountability and responsiveness to citizens. Popular authorisation is achieved through regular competitive elections according to universal secret ballot, which ensure voters a choice of candidates and policies and give them the opportunity to dismiss politicians who no longer command their confidence. The role of political parties in this context is to help focus electoral choice by aggregating policies into distinctive programmes, to help select suitable candidates for public office, and to provide the continuity necessary for ensuring that the governmental priorities endorsed by the electorate can be realised- Electoral choice and electoral control will, however, be frustrated where no clear separation is maintained between party and government, or where there is no independent body such as an electoral commission with the powers to ensure that elections are "free and fair" and that their results are accepted by all contestants. They will also be frustrated if the electoral system fails to ensure fair representation for the different sections of society in the legislature.

Although elections form a key mechanism for the popular control of government, they are of limited effectiveness on their own without institutions that secure a government's continuous accountability to the public. Here, the task of parliaments is not only to approve proposals for legislation and taxation on behalf of the electorate, but to keep the policies and actions of the executive under continuous scrutiny; and they require sufficient powers and independence to do this effectively. A further crucial dimension of accountability is the requirement that all public officials act within competencies explicitly authorised by parliament or the constitution - the so-called "rule of law" - and this in turn depends on the independence of the courts and judiciary from all executive and party interference. Finally, no effective accountability of government is possible without the openness of their activities to public inspection, according to the principle of freedom of information.

A third condition of democratic government, alongside electoral authorisation and ongoing accountability, is that it be responsive to public opinion. Democratic governments are characterised by systematic procedures for the consultation of relevant interests in the formation and administration of policy, by their openness to independent sources of expertise and by their readiness to entertain partnership with appropriate associations of civil society. In addition,

they provide scope for the views of users in public service provision and for mechanisms of citizen redress, such as an Ombudsman, in the event of maladministration. Although such procedures may often be time-consuming, they make an essential contribution to both the effectiveness and the acceptability of government policy. It is in this context particularly that the *argument* for an elected system of local government, close to the electorate it serves, is at its strongest.

Popular authorisation, public accountability, responsiveness to society - these are the hallmarks of the distinctive political institutions of democracy, which give them their claim to be democratic. As I argued earlier, it is not that multi-partyism, electoral competition, the separation of powers, the rule of law, and so on, are democratic because they are what so-called "democracies" do. It is because they have been proven over time to be necessary mechanisms to secure the continuing popular control and public accountability of government. And it is these same criteria that can be used to assess the democratic effectiveness of these institutions in any given context, as well as to judge the democratic potential of such institutional innovations or variations as may be thought appropriate to particular historical cultures and traditions.

Some problems of democracy

It is often said that the problem of democracy is not so much to define what it is or to agree on its basic principles and procedures, as how to realise and sustain these under imperfect conditions. Such problems are most acutely felt in new or developing democracies; yet they are not absent from developed democracies either. Indeed, the supposed global triumph of democracy since 1989 has coincided with a widely felt malaise of the democratic process in long-established democracies. Some of the most serious of these problems will be briefly rehearsed here.

To begin with, it is often held to be a precondition of democracy that there exists an established state structure with effective authority over its whole territory; that its personnel are motivated by public service rather than private gain; and that there is agreement on a common nationhood among the people of the territory. Yet some or all of these conditions may be lacking or only uncertainly established in new democracies. Whereas the older democracies were able to establish state authority, a public service ethos and a common nationhood over the centuries prior to the process of democratisation, now these all have to be constructed or consolidated simultaneously. In some cases, democratic processes can themselves seem to exacerbate, rather than provide the solution for, these other tasks of state- and nation-building. Thus the exercise of civil and political freedoms, especially by opposition elements, may appear to weaken the authority of the state; the struggle to win an electoral following in pursuit of public office may encourage the use of state positions for private ends; majority rule may drive excluded minorities to question their loyalty to the state and seek an alternative basis for nationhood.

There is no easy solution to such problems. Authoritarianism for its part provides no security against corruption, and no guarantee of effective statehood or national cohesion; in addition, it always comes at a high price in terms of human rights abuse. So there is no serious alternative to the difficult project of constructing democracy and its preconditions simultaneously. Yet it may well be that some types of democratic institution are more appropriate than others for facilitating these other tasks. For example, the so-called Westminster model, with its highly centralised state, its winner-take-all electoral system and its lack of any constitutional constraint upon the executive, may be least appropriate for containing or reconciling deep ethnic and other divisions. In such circumstances, systems where a parliamentary or governmental majority has to be constructed across major divisions and through negotiation, where there is broad scope for local and regional self-government and where basic cultural and other rights are constitutionally guaranteed may well prove more appropriate. As the example of Northern Ireland indicates, this is not a problem confined to new democracies, though it may be more general there.

A second problem experienced acutely by many new democracies is that of widespread poverty and a comparatively low level of economic development. On the one hand, this tends to be associated with a low level of cultural development, and with a citizen body that may seem unsuited for, as well as unaccustomed to, the working of democratic institutions. On the other hand, the organisation of democratic institutions is expensive and time-consuming, and may be a low priority for the expenditure of scarce public resources in comparison with more urgent issues of economic survival and development. Can impoverished countries either afford or sustain democracy?

It should be said that the precise relationship between democracy and economic development is a matter of considerable debate in the academic literature. Yet some simple observations can be made that are hardly contestable. First, education is a vital resource for both democracy and economic development, and there is no conflict between the two in this key priority. Second, facilitating and enabling people's own capacity for self-organisation to meet their economic needs in their local communities likewise serves democratic as well as developmental goals simultaneously. Third, although the operation of democratic institutions at the governmental level is costly, the cost of not having them can be much higher. Where government is open and accountable, damaging policies can be identified and publicly debated before they become chronic; the use of public resources can be effectively monitored; and government policies can be made responsive to public need. External support has an important role to play here in assisting both economic and democratic development, but only if the mode of intervention is itself facilitative rather than coercive, and is based upon a genuine partnership. Nothing discredits democracy more than development strategies, whether economic or political, being seen to be imposed from outside without popular domestic endorsement.

This brings us to the contested question of the relation between a market economy and democracy, and between strategies for economic liberalisation and democratisation, respectively. Although there have historically been no political democracies that were not also market economies, the market can have negative as well as positive consequences for democracy, and the relationship is therefore much more ambivalent than has often recently been assumed.

On the positive side, the market sets limits to the power of the state by decentralising economic decisions and by dispersing opportunity, information and resources within civil society. It prevents people from being beholden to the state for their economic destinies or for the financing of any independent political and cultural activity. It encourages the principle of free movement and exchange between citizens in the market place. In treating the consumer as sovereign, it reinforces the idea that individuals are the best judges of their own interests and discourages a purely paternalistic relationship between those who exercise authority and those subordinate to it. In all these ways a market economy can be supportive of democracy.

However, the market also has negative consequences for democracy which are the other side of the coin from its positive ones. Thus the location of economic decisions in the private sphere leaves major issues affecting the well-being of society and the public interest beyond the reach of political, let alone democratic, control. In intensifying the differences of economic and human capital that various economic agents bring to it, the market deepens social inequalities and allows the subordination of politics to the interests of the economically privileged and powerful. For the economically disadvantaged, the experience of unemployment, insecurity and harsh working conditions contradicts the dignity conferred by democratic citizenship. Furthermore, the logic of the market elevates individual choice above the collective choices of democratic politics, and, insofar as it penetrates the public sphere, corrodes the distinctive ethos of public service on which effective government depends. Such effects are particularly acutely felt where market liberalisation is most rapid or unrestricted. Yet democratic governments are not entirely powerless in the face of these effects. Measures can be taken to limit them, e.g. by restricting the political salience of economic wealth, by regulating and containing the market in the public interest and by guaranteeing welfare rights for those unable to provide a livelihood for themselves or their families. As already argued, democracy has to have an effective social dimension if it is to retain popular support.

It is precisely at this point, however, that possibly the most serious problem for democracy is evident, and one that is common to new and old democracies alike. This is the discrepancy between the national level at which political decision-making takes place and the global range of the economic institutions and forces which determine the parameters of such decisions. Can the democratic control of government be at all meaningful when so much that matters for

the welfare of citizens escapes the control of government? For the developed democracies, the pressures of international competition have led to the erosion of the economic security, welfare expectations and employment rights on which the popular support for democracy has typically depended. For many developing democracies, the structure of the global economy seems loaded against them, and their economic policies are subordinate to the priorities of the multi-national companies and international institutions in which they have no voice. All alike are threatened by environmental degradation, resource depletion and the pressures for large-scale migration, which lie beyond their control.

In the face of these problems, it is evident that part of any contemporary agenda for democracy must involve consolidating and extending the reach of institutions of governance at the international level, and making them more representative of population and more accountable to cross-national forums of public opinion. Although the idea of an effective world parliament may currently seem fanciful or Utopian, there are good grounds for believing that the consolidation and democratisation of institutions of governance at the international level is now a necessary counterpart to the consolidation of democracy at the level of the nation-state and that, without the former, the latter will necessarily remain insecure and incomplete.

Summary statement on democracy

The main points of this contribution can be summarised as follows:

1. The foundation of democracy is the right of all adults to have a voice in public affairs, both through the associations of civil society and through participation in government; this right should be exercised in conditions of equal citizenship and with respect for the voice of others.
2. The right to have a voice presupposes that the rights and freedoms of expression, association and assembly are guaranteed. The right to unimpeded expression of opinion requires the existence of independent media and of legislation preventing concentrations of media ownership. The right of free association includes the right to found new associations for economic, social, cultural and political purposes, including political parties. The right of peaceful assembly entails the right of free movement within and between countries. None of these rights can be exercised effectively without the liberty and security of the person, and the guarantee of due legal process. Democracy is thus inseparable from fundamental human rights and freedoms, and from respect for the rights and freedoms of others.
3. The right to participate in government includes the rights to take part in public service, to stand for elective office and to elect public officials by universal secret ballot under arrangements that are "free and fair" according to international standards. It includes the right to hold public officials accountable, both directly, through the electoral process, and indirectly, through the supervision of an elected legislature that is independent of the executive.

4. Democratic accountability requires the accountability of all non-elected officials of the executive, including the police, the military and the secret services, to elected officials. It entails a public right of information about the activities of government. It includes the right to petition government and to seek redress, through elected representatives, the courts, the Ombudsman, etc., in the event of maladministration. Democratic accountability is underpinned by the basic principle of the rule of law: that the competence of all public officials is defined and circumscribed by the law and the constitution, as interpreted and enforced by an independent judiciary.

5. Equality of citizenship entails that all persons are protected against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. It further requires the progressive elimination of the obstacles which hinder any groups or categories of citizens from exercising a voice or participating in government on terms of equality with others. Special measures taken to correct existing inequalities do not constitute discrimination. Equal citizenship is unattainable in the absence of guaranteed economic and social rights, such as access to education and a basic income.

6. Respect for the voice of others presupposes that democratic societies are characterised by differences of opinion and a diversity of cultures and identities. A democratic state will guarantee the conditions for all cultures and identities to pursue their distinctive way of life, subject to the law and the principle of equal citizenship, and will foster public institutions which enable any disagreements between them to be resolved through dialogue. Tolerance of diversity and a readiness to engage in dialogue are a basic responsibility of citizens as well as governments.

7. The application of the democratic principles outlined above to the economic sphere entails the following rights: to own property, both individually and collectively; to engage in free exchange with others; to found and take part in associations for the defence of economic interests; to exercise a voice in the running of one's place of work. All these rights are subject to regulation in the public interest, including the interests of future generations, as determined by a democratically elected legislature.

8. A democratic society will seek to educate young people in the rights and responsibilities of democratic citizenship, and to develop the capacities and attitudes necessary for them to exercise it effectively. It will aim for the progressive extension of democratic practices within the spheres of both civil society and government. It will seek to extend democracy internationally, through solidarity with democratic governments and NGOs abroad, through a fairer distribution of the planet's resources and through the democratisation of international institutions.

The Judiciary in Democratic Governance: Some Insights from the Indian Experience

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Democracy is a political philosophy for good governance recognizing the dignity of the individual. It is no doubt the highest form of political organization that human societies have evolved over the years. Despite its inherent weaknesses and acquired organizational distortions, the democratic form of government continues to appeal to the popular mind everywhere. There is no alternative form credible enough to warrant attention today. Nevertheless, the dangers to democratic governance are many and varied. They are as real and imminent as in the past when feudal authoritarian regimes prevailed in many parts of the world. The reasons for this apparently paradoxical situation are different in different countries, although some of them are common across cultures and political boundaries. For most parts of the developing world, the challenge is from the pervasive poverty and attendant inequalities and injustices. Political freedom without economic and social justice, Dr. Ambedkar contended, is hollow and unsustainable. The dilemma before countries like India is how to overcome the problems of poverty while keeping democratic values and commitment to human rights. In brief, access to justice is the key and the *sine qua non* for democratic survival for newly independent countries long subjugated under feudal and colonial regimes.

Access to Justice: Key to Democratic Survival

Access to the justice dimension of democratic organization can be examined at different levels. From the political angle, although adult franchise has technically brought about the democratic form, it has not accomplished the spirit of participatory government which ultimately is what democracy is all about. The reform of electoral laws and the devolution of power to grassroots level democratic organizations are expected to make a difference in political democracy in the country. The present trend towards fixing quotas for women and weaker sections of society in elected bodies from the village to the parliament level will hopefully make participatory governance in political terms more meaningful to marginalized sections of Indian society.

At the social level, democracy succeeds to the extent of social integration achieved. India has been a greatly divided society in terms of caste hierarchies

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and narrow loyalties of language and regional sub-cultures. Nevertheless, it is the level of tolerance and peaceful co-existence displayed in abundant measure in the Indian psyche which made it possible for several religions to come to India and take roots in its soil. Indians take pride in their culture characterized by the axiom "unity in diversity". Indeed, it is a matter of sheer amazement and disbelief to many foreigners to find India prospering in its democratic path despite the vast differences which are seemingly irreconcilable and often explosive. The partition of the country on the basis of religion did create deep cleavages in the population. Yet a substantial portion of Muslims, who today represent more than the total population of Pakistan, preferred to stay in Hindu-dominant India rather than to settle in the Islamic Republic of Pakistan. There is a clear message in this historical fact of Hindu-Muslim understanding which characterizes the Indian vision of secularism. Of course, no country is free from communal conflicts. What is to be looked at in terms of the democratic prospects is the totality of the situation. Politics can be dirty when parties fight each other to get people's support. When there is freedom and liberty to canvass your point of view and propagate your religious faith and belief, it is possible to envisage situations in which religion gets mixed up with politics. The issue to be seen is the methodology of containing and managing such conflicts. To the extent that rationality prevails and the government of the day observes constitutional neutrality, one can argue that there is no danger to the pluralist texture and democratic spirit of the policy. An objective observer of the Indian scene will tend to give the benefit of doubt to the wisdom of the people of India, be they Hindu or Muslim, Christian or Parsee, in nurturing democratic practices despite the challenges inherent in a plural, unequal society.

Social Justice and Social Integration

Social integration is high on the national agenda. Secularism and socialism (of the Indian constitutional variety) are the chosen strategies for social solidarity and national integration. It is in this context that the attention of policy makers has to be directed. Social justice is an imperative necessity for democratic survival in India. The country did succeed in the last four decades to generate self-sufficiency in food production and to prevent successive famines which had been the basic fate of Indian people during the colonial regime. Yet, in the matter of education, health, housing and employment there are large gaps which deny almost half of the population of the country the benefits of freedom. Successive governments at the Centre and in the States have been launching their own programmes in the name of "war on poverty". Economists attributed part of the problem to the uncontrolled growth of population which reportedly neutralized the achievements of development plans and programmes. Others attributed the causes to the inherent defects of a planned centralized economy and counseled a free-market orientation. All seem to be in agreement that unless widespread poverty and growing unemployment are arrested on a

priority basis, the future of social and economic democracy will be bleak for the country.

It is in the above context that one has to assess the role of judiciary in governance in India. An independent and strong judiciary is what the democratic federal constitution has evolved for maintaining the rule of law and for protecting basic human rights. Access to justice is the primary interest of every living creature and in politically organized societies, it is the primary obligation of the State to ensure as broad and varied a scheme as possible to give access to justice. By this process, not only the rights of the people are protected but the scope for violent, destructive conflicts is minimized. The political, legislative and administrative processes in varying degrees do provide access to justice particularly in policy matters. However, in a large, complex policy there are inherent limitations particularly for individuals and for weaker sections of society to seek justice through political and administrative processes. In a party system of government, those who are in the opposition or in the minority are bound to suffer when the ruling party behaves in an arbitrary manner based on its overwhelming majority in the legislatures. Indian democracy seems to have learnt its lessons from the experience of dominant one-party rule. Of late, it has been throwing up hung legislatures in elections, compelling political parties to go for coalition governments. The process does have the advantage of the smaller minority groups having their say in political decision-making. Time alone can reveal whether coalition politics is going to stay in India. However, as a result of executive apathy or high-handedness and consequent denial of rights of different sections of the people, the judiciary became an increasingly popular player in constitutional politics. Judicial activism is a popular concept which seems to have carved out a legitimate place in administration of justice in India. The rest of this essay will be devoted to a broad assessment of what judicial activism has done in the recent past to enlarge access to justice, contain social conflicts and promote democratic prospects in India.

Judicial Activism and Democratic Prospects

The liberalization of the doctrine of *locus standi* in entertaining public interest litigation on matters affecting fundamental rights opened up new avenues for judicial activism in recent times. The increase in governmental inaction and indifference in discharging legal obligations provided several occasions for taking public grievances to court. The inability of the political and legislative institutions to extract executive accountability further contributed to the drift towards judicial remedies even in matters which normally should have been resolved at the political level. Indeed, the judiciary is being overused today because of the shortcomings of the other two wings of government which is perhaps not good for democracy in the long run. In this regard, the observation of the Chief Justice of India that judicial activism is a temporary phenomenon is to be welcomed. Meanwhile, it is necessary to find strategies for institutionalizing activism in the judicial process so that it will be revived when occasion

demands and will be contained within constitutionally acceptable limits in the spirit of democracy and the rule of law.

In recent times, judicial activism manifested itself in three important areas, namely, political corruption, environmental pollution and issues involving right to life and liberty. Corruption, no doubt, is the major public enemy today and it is growing along with the criminalization of politics. The Vohra Committee Report has given the dimensions of the problem and the potential threat it poses to the integrity and stability of the country. With the executive controlling investigation and prosecution, there is virtual impunity for corrupt elements in high places even where police records disclosed evidence of culpability. Besides endangering the rights of law-abiding citizens, executive inaction in this regard contains the potential for jeopardizing the capacity of the criminal justice system to maintain democracy and the rule of law. This was one type of situation in which the Supreme Court became activist at the instance of public-spirited individuals, encroached what in normal times is the domain of the executive, and directed the investigating agencies to ensure that the law took its course irrespective of the consequences.

Another significant jurisdiction in which the Supreme Court as well as several High Courts have been active in recent times is in the matter of environmental degradation through non-enforcement of pollution and civic laws by a number of agencies of the Central, State and local governments. Closing down of industries giving employment to several persons and adding to the economic prosperity of the nation is not a pleasant task; however, in the face of pollution control legislation and declaration of policies on sustainable development, it is incumbent on courts even to take *suo moto* action to discipline polluting industries, as the consequence of not doing so is silent death for generations to come. The greatest of industrial tragedies which took place in the Union Carbide plant in Bhopal should at least remind the law enforcement agencies of the consequences of neglecting the environment. Activism in this sphere deserves to continue, given the marketization process under way.

The third important area of judicial activism came about in giving meaning and content to the guarantee of right to life. Having declared that the right involves "life with dignity" and not mere animal existence, the Court adopted an expansive jurisdiction invoking "due process" interpretation into the phrase "procedure established by law" in Article 21 of the Constitution. Today, the right under Article 21 has produced a number of related rights such as the right to legal aid, to education, to a speedy trial, to livelihood, to a clean environment, etc. In the application of these rights to specific situations, courts might have stepped into executive or legislative territory in significant ways. In fact, it is this approach of the Supreme Court which led to the doctrine of non-amendability of the basic structure of the Constitution. Judicial review indeed is a powerful weapon in a written Constitution and certainly, the Constitution-makers intended it that way. The scheme of the Constitution and the unique status given to the judiciary under it demonstrates that intention in ample measure.

The problem is to know the limits of activism and to ensure that it is confined to such limits. The Constitution does not countenance unlimited or uncharted power in any institution of government including the judiciary. By training and experience, judges are people who naturally act with restraint, keeping in mind the demands of judicial discipline and the oath of office. Nevertheless, the citizens should know the parameters of judicial power and should have reasonable certainty of law irrespective of the judge handling the situation. If activism is left to the choice of individual judges, there are possibilities of abuse even with the best of judges. Furthermore, it is one thing to restrain the executive from performing an illegal act or performing a legal act in an illegal way. It is part of the judicial function. Courts can well strike down executive or legislative actions which violate the Constitution. When it is vigorously and frequently done it may appear activist. But using the power of judicial review to command the executive or the legislature to do things involving policy issues and budgetary allocations is questionable in many ways. If judicial activism can be matched with executive or legislative activism, there is no problem; otherwise, confrontationist situations develop and courts are forced to invoke contempt jurisdiction too often causing discomfiture all around.

In short, judicial activism is part of the judicial function. It is part of the power of judicial review for which the Indian Constitution has endowed special authority on the High Courts and the Supreme Court. However, the limits of this authority are not spelt out either in the Constitution or in judicial process. Hence there are legitimate apprehensions in the public mind whenever borderline cases are taken up by courts and directions are given to be obeyed within prescribed time periods. After all, the Constitution envisages complementarity of executive, legislative and judicial institutions for achieving democratic governance, and public perception in this regard is as important as legitimacy of governmental actions. Power in a democracy is essentially political in nature, and judicial process has to tread cautiously while adjudicating issues affecting the constitutionally assigned division of State power.

Judicial activism through public interest litigation in a country in which half the population is desperately poor and illiterate is indeed an imperative necessity for good governance. But for some activist judges in the Supreme Court of India, the Directive Principles of the Indian Constitution which promise socio-economic justice to the weaker sections of society would not have become operational as part of the human rights agenda. Today, the vast masses of poor in India have a stake in the judicial process. They realize that equality, the rule of law and social justice are still alive and accessible through democratic institutions. The judiciary is inventing new tools and remedies revolutionizing constitutional jurisprudence and, in the process, re-enforcing the democratic and rule of law commitments of the nation.

The system of democracy becomes synonymous with the idea of justice as the glorious words of Daniel Webster thus indicate:

"Justice is the greatest interest of man on earth. It is the ligament which holds civilized beings and civilized nations together. Wherever her temple stands, there is a foundation of social security, general happiness and the improvement and progress of our race. And whoever labours on the edifice with usefulness and distinction, whoever clears its foundation, strengthens its pillars, adores its entablatures or contributes to raise its august dome still higher in the skies, connects himself in the name and fame and character with that which is and must be durable as the frame of human society."

Some Important Problems and Aspects of Democracy in the Context of the Black African States

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Any dissertation or debate on democracy requires a prior clarification of the concept. In fact, the meaning given to the word democracy can vary (and often has) in relation to the models, ideology, context and culture to which one refers. It is therefore necessary and useful to point out that the term democracy is understood in this paper in its sense of a political system "distanced and dissociated from the socio-economic system in which it operates" (Cf. Larry DIAMOND, Juan J. LINZ and Seymour Martin LIPSET, *Developing countries and the experience of democracy*, Collection *New Horizons*, 1990, p. 9). Understood in its purely political form, democracy describes the system of government which, in the opinion of the overwhelming majority of authors, meets three necessary conditions: (i) the real existence of competition between individuals or groups of individuals organised into political parties to gain power and public office, at regular intervals and according to peaceful procedures which are pre-established and generally accepted; (ii) the right of citizens to participate in the choice of leaders through the holding of free, transparent and fair elections; (iii) recognition and the juridical guarantee of the exercise of civil and political freedoms and rights which are recognised under international conventional law as an integral part of human rights: freedom of expression, freedom of association, freedom of the press, right to security of the person and property against any form of arbitrary infringement, etc.

These three conditions constitute what might be called the "hard core" of any democratic political regime. But even if this hard core is necessary, it is far from sufficient to enable a political system to be described as unequivocally democratic. Unfortunately, in many countries experience shows that the existence of this hard core has not evolved beyond its formal state. Beguiling words about the exemplary nature of the democratic system are betrayed by practices which are the opposite of what is required by democratic values. If this situation prevails mainly, but not exclusively, in many black African States, this is first of all due to the absence of other elements or factors which must necessarily be associated with the hard core whose effectiveness is even problematical

in certain situations (formation of far-sighted political elites motivated by concern for the public good, existence of political parties reflecting horizontal divisions and having an incontestably sound sociological basis, promotion of public debate on all problems of society, etc.); it is also due to the great imbalance (or gulf) existing between the State and society whose members are belaboured by a culture made up of irrational impulses and the lack of impartial mechanisms to arbitrate between opposing interests. The entire history of the development of democratic systems in the world shows that these presuppose the existence of some degree of rationality, and a high degree in the view of some, and this must apply even if it has long been acknowledged in ethnological circles, *vide* Claude LEVI-STRAUSS, that any society (even a primitive one) operates according to forms of rationality dependent on its structures. However, there is no question - if one is open-minded - of likening African societies to backward or even primitive societies. They are societies which are dynamic and open to the world; they are thus confronted by the challenge of modern life, some of whose values have clashed directly with the traditional values particular to African societies. The most visible values of modernity in these societies today are those of democracy. They are revealed by the democratic hopes shared by broad sectors of the population and which are in conflict with the wishes of social groups keen to maintain their domination. Now, democracy cannot function without democratic institutions which make democratic life possible. The two main questions which arise (and can be applied to any democratic political regime) are the following: how, over and above the solidity of democratic institutions, are these institutions to be conceived as guaranteeing the interplay of democratic forces, and next, how is democratic life to be given form. These questions take on quite another dimension when seen in African contexts.

I. THE IMPORTANCE OF THE ROLE OF DEMOCRATIC INSTITUTIONS

While democracy is more than just the sum of its institutional parts, we would be wrong to underestimate these aspects. In fact, it is these institutions which make possible, by guaranteeing it, the free interplay of democratic forces. But it is necessary to ensure that they effectively perform that function according to the logic inherent in their nature and goals. In the opposite case, these institutions remain merely formal while helping to give legitimacy to the monopolisation of power by social groups which mistake their own interests for those of society. On this point, scrutiny of the institutions established in black Africa and an analysis of their real working leads one to consider a precondition for the emergence of any democratic political regime: the disembodiment of power.

A. The disembodiment of power: a precondition

The disembodiment of power is the essence of democracy. It signifies that power is understood as an attribute which cannot be appropriated in law or in

practice by any individual or group. It is the prime condition which makes it possible to conceive of power being assumed through elections and the interplay of alternating entities. This concept of power, which has triumphed in the advanced modern societies through the maturing of ideas and a change in social and economic relationships which have led to a separation of the areas of politics, religion and culture and to the growing autonomy of civil society, is confronted in Africa by a neo-partimonial concept of power which results in the *de facto* appropriation of the political arena by the Prince who governs, and consequently by the appropriation of both the domestic and foreign resources of society (Cf. Bernard BADIE, *L'Etat importe - L'occidentalisation de Vordre politique*, Ed. Fayard, 1995, p. 23 ff.; On the question of the disembodiment of power, Cf. Alain CAILLE, *La demission des clerics - La crise des sciences sociales et Voubli dupolitique*, Ed. La Decouverte, 1993, p. 234, ff.).

This neo-partimonial concept of power is to be found in many African countries, even in those which cloak themselves in the mantle of democracy. It is at the origin of the long life of the political regimes, the men and women who embody them and the jamming of the democratic process. In a subtle way, the governing principle makes compromises of the democratic type by establishing formally democratic institutions and accepting political pluralism, the whole process being crowned by elections held at regular intervals to meet internal requirements of democracy and the requirements of external partners, the providers of financial assistance (States, national and international multilateral institutions). But in reality, this is done in such a way that the system established does not basically call into question the nature of the monopolistic power (manipulation of elections, encouragement to set up numerous small political parties most of which are only sub-sections of the dominant party, appointment of incompetent and corrupt judges, restricted media access for opponents and other non-conformist intellectual elites, etc.). Such a system can best be seen in certain West African States which the developed foreign countries, blinded by questions of form or voluntarily shutting their eyes for reasons of interest, over-hastily classify as democratic States. This way of organising society is not only harmful as regards the promotion and enjoyment of freedoms but also harmful on the economic level to the extent that it feeds on itself and stays in place by distributing economic development resources to a political clientele which is increasingly numerous on account of the growing scarcity of internal resources. In any event, as long as power has not been totally disembodied, there can be no hope of seeing a democratic political regime emerge. It remains to be seen how this can be brought about and what are the objective factors which promote such a process. Without wishing or being able to reply systematically to that question, it may be thought that a proper definition and the proper functioning of formally democratic institutions can, in certain circumstances, help to make a political regime democratic.

B. Definition and functioning of democratic institutions

It is necessary to repeat once more that the existence of formally democratic institutions in a country is no guarantee of the real existence of a democratic

regime. In this respect, there are no institutions of a universal nature specific to the democratic political regime. Institutions are or should be the upshot of the requirements of a particular society. They must vary from one society to another in relation to the history, geography, culture, state and level of development of each. For example, in most African countries there exists what is known as the Independent National Electoral Commission (INEC) entrusted with the practical organisation of elections, the collection of the results and the provisional proclamation of the ballot in order to forestall the administration which is the secular arm of power in these countries. Such an institution is unthinkable in countries where democratic traditions have been deeply rooted for one hundred years or even less. But every political regime has permanent institutions: the judicial system, the executive power, the Parliament, local communities. In order for these institutions to play their role fully, their working must meet certain ethical conditions and certain standards.

I. The judicial system

The term judicial system is preferred in this paper to that of the judicial power since justice is not considered everywhere as a power equivalent to the other powers. The Constitutions in force in the world refer sometimes to judicial power and sometimes to judicial authority. This is not just a question of words. The disparity in terminology masks problems of political philosophy concerning the role and place of justice in society, often linked to a country's history. But there is not a single country in the modern world which officially proclaims that judges are dependent on the political power. Thus the real problem which arises is that of knowing how to ensure the credibility of the judicial system. It is not enough to enshrine the principle of the independence of judges in the Constitution or an organic law or other juridical instrument if this independence is rendered theoretical by a whole legal arsenal of rules governing the appointment, promotion, transfer, etc. of judges which are in the hands of the political power. Similarly, the weaknesses in the system of selecting and training judges, the lack of public information about decisions of justice subjected to the constant scrutiny of an enlightened doctrine, the scarcity of funds for the judicial system - all these scarcely help to ensure the impartiality and hence the credibility of justice. Moreover, citizens are discouraged from taking part in elections and the definition of public policies when they come to believe that the judicial system merely rubber stamps governmental practices. The rules of the democratic game will never be respected if, in practice, the judicial system has neither the will nor the power to sanction violations. In this respect, there is no need to inflate the institutional mechanisms of this system by creating a multitude of judicial bodies: Constitutional Councils, State Councils, Appeals Courts, etc. In any case, the scarcity of domestic resources in African countries prevents this, unless a regime wishes to endow itself with a democratic gloss out of the pockets of the tax-payers. It is sufficient to set up a simple, effective and credible judicial system. This does not seem to be the case in many African

countries which have purely and simply copied the judicial system of a developed country without and tangible gain for society.

2. *The Executive*

The Executive must take part in the working of the democratic regime, even if it exercises real political power by defining and carrying out public policies. It must be subject to legal regulations and to the principle of the legality of its acts since democracy is scarcely conceivable without the existence of the rule of law. If a country's leaders feel themselves to be above any judicial sanction or any political sanction (elections, vote of confidence in Parliament) they will naturally be inclined to abuse their power. Moreover, the exercise of power in a responsible society calls for great virtues. Not just anybody is fit to wield power. The law must therefore lay down certain very stringent conditions both as regards the eligibility of citizens and the exercise of certain public functions, and these conditions will be defined in relation to the society's level of development.

3. *The Parliament*

In the classical tradition of representative democracy, it is the elected representatives of the nation who adopt laws and scrutinise the execution of public policies. This tradition still prevails in today's world with some variations from country to country as regards the powers of Parliament. In black African countries, the general pattern which stems from the former one-party systems is still characterised by the domination of Parliament by the elected members of the governing party due, in large part, to the practices of electoral fraud often masked by this new "race" of foreign independent observers (who so rarely are in fact independent). And the system of patronage leads the dominant party to include in its list of candidates persons having neither the intellectual capacity nor the moral rectitude required to perform their role as representatives of the people. The function of a member of Parliament is seen more as the means of ensuring personal resources and as a factor for personal advancement. How else is one to interpret the presence in these Parliaments of men and women who are completely illiterate or with limited intellectual abilities. Parliament must be the forum where the most representative political sensibilities of society speak out on the major issues in full knowledge of the facts. Here, the method of voting and the question of responsibility are crucial. The law must foresee a method of voting which fosters such political representation and lay down conditions of eligibility corresponding to those which apply to the Executive.

4. *The local or grass-roots communities*

Local or grass-roots communities are understood as decentralised or devolved bodies: regions, departments, towns, villages. There is a strong current of

opinion in favour of the decentralisation of political power seen as a response to the call for grass-roots democracy and as an effective instrument for managing the nation's resources. This view has so taken root in the minds of the experts of the multilateral and national development aid institutions which provide assistance for developing countries that decentralisation has become a precondition. The term regionalisation crops up frequently in the literature produced by these institutions and in the political vocabulary. Although grass-roots communities in black Africa are recognised in traditional societies, this concept has to be considered with great prudence in fragile nation-States. Whereas the principle of grass-roots democracy is valid as regards its function of promoting the participation of the population in defining and satisfying local needs articulated round centrally defined public policies, it is by no means sure that the twin goals of basic democracy and the effective management of local resources can be carried out in any situation. If democracy works correctly at the national level and if society has reached a certain degree of social cohesion, decentralisation can be a workable response to the requirements of grass-roots democracy. If not, there is a risk that two phenomena will occur: either a recrudescence of the central patronage system or the incipient spread of regional separatism. But everything can also depend on the degree of autonomy granted to the basic local authorities. In any event, these cannot be exempt from the democratic rules and procedures since, if democracy is a matter of institutions, it is also and above all a question of democratic life.

II. DEMOCRATIC LIFE

The proper working of a democratic political regime can be seen in the vitality of democratic life, and the latter depends primarily on the level of training and the degree of social integration of the citizens.

A. A precondition: the training and social integration of the citizens

No society can readily advance without open conflicts. These can take the form of opposing interests between different social groups, different professional categories and the State or businesses, etc., and can also take the form of clashes of ideas. So far, only the democratic political regime has shown itself capable of extracting the best from such conflicts and channelling them in a peaceful and tolerant setting. But if there is to be a clash of ideas, the rational expression of social claims and needs in a free and responsible manner, it is essential for the citizens to have received a minimum of training and education. Indeed, without that minimum, the citizens would have no awareness of the freedoms and rights to which they are entitled. Such civil and political rights would remain merely theoretical. It can easily be shown that the vitality of democracy in the developed countries has depended on the development of the living standards of the citizens, which has been a factor of the growth and

quality of public education and training. The democratic challenge in black Africa can be put in the same terms: there will be no real democratic life until education and training have reached all layers of the population. The degree of literacy is a good indicator in this respect. On this point, current statistics are worrying: they show that literacy rates which were high in certain States have fallen sharply on account of the structural adjustment policies imposed by the Bretton-Woods financial and development institutions (IMF and World Bank). Indeed, school is not only the place for the training of citizens, it is also the best possible instrument for socialisation and social integration when it fulfils its mission properly. Consequently, investment in education and training must be a priority, along with the production of goods and employment. Social marginalisation destroys national cohesion and democratic rule. The responsibility for ensuring that citizens are educated and trained falls first and foremost on the State, but political parties, associations and NGO as well as the media and intellectual elites all play a supporting role in this respect.

B. Political parties

In a political regime characterised by representative democracy, political parties are vectors of democracy. They are essential to the functioning and durability of democracy since they are not only the instruments through which power is attained by means of free, fair and transparent elections but also the setting for working out practical ideas and proposals which may constitute alternative programmes to the government. They also constitute the means through which individuals may influence public affairs, express their discontent or support governmental action. As David BEETHAM and Kevin BOYLE rightly point out: "While open competition between political parties in the framework of elections is one of the indispensable characteristics of representative democracies, it is also their Achilles heel. Open competition between parties vying for the management of a country's affairs is a socially and politically divisive factor and the stakes are generally high for those involved in this competition. It is therefore important - and this is one of the conditions for democracy's survival - that the cost of defeat is not unbearable for those parties and their followers who find themselves on the sidelines of power." (Democracy - Questions and Answers, illustrated by PLANTU, UNESCO, 1995, p. 20.)

In the light of these pertinent remarks, the problem posed by the existence and functioning of political parties in Africa is three-fold: first, whether or not the social basis of the political parties represents all components of society, i.e., regardless of ethnic, religious or other considerations; second, what chances of coming to power does the political system offer to the different political parties; and third, what resources do the parties have to carry out their various missions throughout the entire territory of the State. The first problem relates to the kinds of divisions felt to be represented by the political parties (horizontal or vertical divisions), and this problem is all the more important and topical in the light of ethnic conflicts which seem on the rise everywhere; the second

problem relates to the principle of political change inherent in any democratic political regime but which some such regimes, although democratic in form, make impossible by means of numerous anti-democratic contrivances (cf. part LA above); the third problem is that of the funding of political parties, especially those in opposition, since the party in power generally make shameless use of the means and resources of the State to impose its domination in the absence of any checks and balances by an independent body. The scarcity of resources and the penury of opposition militants and followers make this a crucial problem for the democratic process. If solutions are not found, political change runs the risk of taking place through violence on account of frustrations which have piled up.

C. Non-governmental associations and organisations

Like political parties, non-governmental associations and organisations are valuable vectors of democracy. They differ from political parties only in their final goal, but they all contribute to consciousness-raising, defence of the legitimate interests of groups of individuals and the protection of individual and collective rights and freedoms. The efficacy of the work of civil society depends on the extent to which such associations are autonomous or institutionalised. When they have relatively formal links to the State or political parties, they lose some of their autonomy and thus their ability to intervene in all freedom in the management and conduct of public affairs and in the working of institutions according to arrangements deriving from their governing principle of special interests. NGOs, while being associations, have more pronounced concerns in the area of the protection of human rights and humanitarian law. Such concerns urge them to intervene in the political field even if they claim to have nothing to do with politics.

The richness of the activities of NGOs is readily perceptible in the developed countries of the North since this activity is part and parcel of a strong civil society. The question is more problematical in black Africa where the existence of civil societies is not so evident. Bernard B ADOE remarks that at least three distinct principles must underlie the construction of the concept of civil society: "separation of private social spheres from political spheres; individualisation of social relationships which give priority value to the citizen's allegiance; the horizontality of relationships within society which favours the logic of association over community structures and which thus marginalises the identification of particular interests in favour of State-national interests" (op. cit. p. 116). Indeed, it is difficult to gauge whether and to what extent these criteria are fulfilled in each African country. But there can be serious doubts, at least with respect to some countries where identities based on ethnic groups and religion predominate over identities of citizenship, as to whether civil society has really been established. It is nevertheless true that the growth of professional associations and national NGOs is making a strong contribution to the consolidation of civil society in these countries.

D. The press

Freedom of the press is essential in a democracy. The press plays a role in the political training of citizens and democratic culture by informing them of the scope of public policies, the management and conduct of affairs by those responsible at both the State and grass-roots level, "by providing and offering the members of the community the means of communicating with each other" <Cf. David BEETHAM and Kevin BOYLE, *op. cit.* p. 148). But if the press is to perform those functions, it must be free and independent, it must have sufficient material and human resources to deal with all the important problems of society in an unendangered juridical setting.

Since the early 1980s, the development of the press in black Africa has been spectacular. But after a decade of experience, the verdict on that press is somewhat mitigated. On the one hand, the audio-visual media are still largely in the hands of those who hold power. Moreover, the so-called private press (written and spoken press) has in some countries succumbed to the temptations of the neo-patrimonial State or other pressure groups and/or the desire for immediate profits (which harms the proper handling of information). Wherever the press has taken an irreverent attitude towards the public authorities by pointing out their turpitude, the judicial apparatus has been brought into action to silence journalists or make them toe the line. In certain countries, disproportionately heavy penalties have been imposed on journalists for offences deliberately defined in vague or imprecise terms (in relation to definitions contained in Penal Codes) which were used as pretexts by rather unscrupulous judges obeying the command of the authorities to impose severe penalties. This will suffice to show that, in the absence of an independent judiciary, freedom of the press would be reduced to freedom to misinform. The importance of the press in a country is not dependent on the number of newspapers or private radio and television stations but on the quality of the information provided to the public. Generally speaking, the tradition of freedom of the press is better rooted in the English-speaking African countries than in the French-speaking countries. This is undoubtedly due to the colonial heritage.

E. Intellectual and political leaders (elites)

Any society that wishes to progress must produce elites in all sectors of social life. This at least is the lesson to be learned from the development of societies. The formation of such leaders depends largely on the quality of the educational system.

The roles which intellectual and political leaders are called on to play in a democracy are determining although they differ one from the other. They are usually to be found at the heart of the great political and social movements. The prospects for a process of democratization or a long-standing democratic political system depend largely on the ability of these leaders to put forward new ideas and to translate into action the diffuse democratic hopes of the populace;

these can be ideas and measures designed to accelerate the democratic process or to repair a democratic system which has broken down. But these leaders must be imbued with democratic values and be able to see that these are shared with the different layers of the population. In black African countries, a large question mark hangs over the role of these leaders on account of the setbacks which the democratic process is undergoing in various places. The development of inter-ethnic conflicts, the jamming of the democratic process, the spread of corruption, etc., all attest either to the lack of political and intellectual leaders, or to the mediocre calibre of these leaders who involve the illiterate populations as instruments in causes which are formally democratic but in reality are basely mercenary. The embryonic nature of the separation of the different orders (political, economic, religious, cultural, intellectual) makes it difficult to impute the responsibility for this state of affairs only to the political leaders rather than to the intellectual leaders since they often blend together. Similarly, the fact that strong civil societies have not fully developed scarcely helps the formation of an autonomous category of intellectual leaders. It is against a background of isolation and in an insecure environment from both the material and political point of view that these intellectual leaders are trying to promote a public debate on the problems of their societies. And it is essential in democracy that those whose profession it is to think should have a public space where they can intervene/be heard.

NB. It is deliberate that no country has been mentioned in order to avoid ruffling feathers/treading on toes.

Towards a Universal Declaration on Democracy

DR. AWAD EL MOR*

1. Democracy is not a right in itself but rather an integral system comprising certain norms, the core of which lies in the concepts of free debate and informed choice. Democracy therefore generates rights and freedoms, all of which aim to secure conditions and promote channels which enable all individuals to exert their influence and control over their government on an ongoing basis.

In the liberal approach which is inherent in democracy, all forms of power are rooted in the will of the people. This approach enhances the rule of law as one of the basic foundations of democracy; it affirms the separation of powers as a vehicle for their restraint; and it promotes individual's rights and freedoms as a prerequisite for their dignity.

2. Democracy cannot be felt or effectuated behind closed doors, nor be based on an authoritarian rule or repression in lieu of competitive political parties, informed vigilant opposition, the active influence of the masses over their rulers, and the independent right of the people to organize and criticize. Indeed, attempts to institute democracy without liberalism are doomed to failure, given the fact that different powers are normally in conflict, and that their harmonization demands adequate safeguards. Such safeguards would need to accommodate and reinforce the restructuring of an overall liberal environment basically established on the free and equal trade in ideas and its concomitant of autonomous selective choices, dispersal of opportunities, fair distribution of wealth and decentralization of economic decisions coupled with substantial market regulation and due intervention.

3. Constitutions normally limit governmental actions in two ways: through the goals to be pursued, and the actions to be taken for their attainment. The State may not inhibit or absorb the creative powers of the mind, nor stand for the domination of the most vital aspects of our life; rather, it has to enhance the collective way of thinking and avoid viewing the public mind as one of its own tributaries or advocating concepts based on narrowness or one-sidedness.

4. The bedrock of any democratic system lies in the preservation of basic human rights for all, including minorities who should have their proportionate share in the exercise of power, along with the right to have their vital interests

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carefully considered if threatened in proposed legislation, and to practise their own culture.

5. The influence which the people at large may have on the government is not necessarily achieved through assemblies of a deliberative nature or effected by majority rule, since both may produce on different occasions anti-democratic results.

It is mainly through the right to assemble freely in association with others that influence may be exerted, especially in the form of political parties which by their very nature promote and generate political discourse and bring together like-minded citizens who share similar views and interests.

Unjustified restrictions in the formation of political parties are totally proscribed, particularly if based on political opinions, religious beliefs or affiliation with minorities.

When understood in this sense, the formation of political parties ought to be beyond the control of the executive, either initially or in the course of conducting their business.

In fact, the freedom to form political parties is not the reserved domain of a particular group or class, nor is it an infinite privilege assigned to them; rather, it is a channel for collective participation in political life combining educational values with vindication of the interests of their supporters.

In all events, political parties provide their members with the requisite information upon which priorities shall be outlined, appropriate decisions taken and activities evaluated and administered.

6. The undeniable freedom to form political parties ensures the people's supremacy, secures their participation in the exercise of power, the mobilization of public activities and the outlining of national policies and values, and recognizes the enjoyment of fundamental rights and freedoms, including freedom of expression and the right to conduct elections so as to choose freely their own representatives in the administration of governmental affairs.

7. Associated with the freedom to form political parties is that of the freedom of expression to which all individuals are entitled.

Indeed, ideas need to flourish and expand, and not retreat in concealment or lie in darkness.

Freedom of expression implies that those who advocate or defend a particular cause have the right not only to do so, but also to choose the means they consider most appropriate and effective in its furtherance, even if other methods are available for the expression and dissemination of their opinions. Evidently, freedoms are mostly endangered if consumed by formalities and not spread in brightness.

The actual enjoyment of the basic freedom of expression logically involves the assumption of responsibilities which must necessarily accompany the exercise of this freedom.

In addition, freedom of expression lies at the heart of any democratic regime. Infringements thereon negate the fact that the tools of this freedom are in constant movement with its neutral content and legitimate objectives.

By its very definition, freedom of expression extends to all aspects of life. It should not therefore be subject to any prior or subsequent restrictions.

Besides, the concept of free trade in ideas was envisaged as a vehicle for plurality of opinions, based on neutrality of information, to help in shedding light on truth, particularly in consequence of different conflicting ideas touching on the same subject matter and the need to determine the degree of their accuracy.

In nature, opinions are various, motivated by different interests, associated either with clear and present danger, or tending to accomplish a desirable change peacefully.

However, all opinions have to be revealed and ideas from whatever quarters received and largely transmitted, notwithstanding political boundaries and regardless of the means of their diffusion.

In the last resort, it is the exactness of circulated ideas which would enlighten the path for freedom, instruct the dimensions of all achievements and bring about consistency in public conduct.

In no way may public authorities overpower the public mind or enforce their own yardsticks for restraining opinions related to its formation. Thoughts must not be whispered or secretly placed in our conscience, but overtly and plainly transferred, even if manifestly opposed or hated by public authorities.

Careful consideration of public issues serves no end but to enhance the attentive discussion on their different aspects. Given the fact that people normally and substantially differ as to a clear-cut criterion demarcating the dividing line between extravagant and moderate opinions, since ideas are mostly advocated with excess, the maintenance of public order should not be taken as a pretext to limit in advance the freedom of expression.

8. The highly esteemed values inherent in freedom of speech contradict the confinement of an open and frank dialogue to a particular class of individuals or to specific issues arbitrarily delineated, since the content-oriented values of this freedom implies diverse and interchangeable ideas, opinions and concepts, in order to free the circle of choices and not maliciously control its dimensions.

It should also be recalled that freedom of expression, whether by utterance, printing photographing, publicizing or by any other means, has been maintained in most constitutions in order to guarantee the expression of ideas and their circulation. Freedom of association rests firmly on open discussion and would become obsolete if participants therein are denied the right to express their opinions, unconstrained by others.

In fact, unless opinions are categorically expounded, irrespective of their falsity or veracity, and regardless of their collision with or awareness of public interest, the path for a secured life will grow cloudy and become gloomy.

9. Therefore, alignment of constitutional provisions with the concept of a marketplace of ideas in all matters of public concern, is a must. Enforced discussion will restrain talented behaviour along with imagination and aspirations, and ultimately breed fear coupled with coercion and constraint.

Consequently, constitutional protection of freedom of expression, without invading its core or disregarding its goals, shall extend to even acrimonious criticism of public servants.

Considering every fact that would discredit a public servant to be presumably false or coloured with bad faith is flagrantly misleading. Declared opinions damaging his image, should not be evaluated apart from the need to disclose all relevant information that would reveal his failure to meet the standardized criterion of public interest in conducting the business entrusted to him.

10. It is necessary to view as inextricably bound together freedom of expression and that of ordered assembly established by a group of persons anxious to discuss matters of common concern, to exchange different opinions related thereto, and to disseminate their difficulties and aspirations.

The arrangement of any structural gathering, whether of a political trade unionist or professional nature, implies a voluntary formation in which adherence thereto or withdrawal therefrom shall not be compelled.

In substance, assembly is nothing more than a forum comprising individuals approaching their concerns in order peacefully to express their stance and unfold their hardships. In fact, the right to assembly freely mirrors an affirmation of the integrity of personal liberty, preservation of the privacy of life, and a requirement for constructive debate.

It also recognizes a pattern of conduct enjoyable before the emergence of all written constitutions, and finally an attendance to the requisite guarantees specified therein for rights and freedoms. The fact that the right to assemble freely has found its main thrust with the development of civilization shall not be open to question. Throughout history, the essence of this right lies in gatherings having no objective but to overtly and peacefully discuss specified issues within a particular circle, not to be outlined by the legislature, and acting as the recipient of all information that would advance the power to decide.

Only within any form of assembly may the tributaries restructuring the human personality arise and grow.

Breaking this freedom ruins any regime of governance based on popular will, encourages the prevalence of arbitrariness, and lowers democratic values.

11. In line with the prominent values related to the freedom of expression and that of association, the right to elect and to be elected shall emerge as one of the major characteristics of democratization.

There is no denying that the right of candidates to be elected freely in forums of a representative nature is inseparable from the right of the electorate to make its own choices, to indicate and advance its preferences and to cast votes in favour of its selected candidates.

Hence, both rights are from a constitutional perspective totally connected, mutually in exchange of influence and antagonistic to limitations which would affect the integrity and the reliability of the electoral process or touch upon its fairness.

All relevant information thereto must flow unhindered in order to preserve its neutrality and provide equal opportunities among all competitors.

Therefore, undue restrictions impeding a particular class of candidates from a fair chance to strive for winning seats in popular assemblies shall be void.

In no way may the entire electoral process be monopolized by a particular group directing its course and dominating its outcome. Here, it should be noted that most modern constitutions have not limited themselves to the preservation of political rights against encroachments thereon, but have considered the exercise of such rights a duty not to be ignored in order to save and generate the representative character of the government.

In order to guarantee the effectiveness and fairness of the electoral process, citizens eligible to vote must equally be able to affect its outcome, being those who assure their responsibilities vis-a-vis public affairs.

In particular, the number of seats allocated to different constituencies must be proportionate to the number of their population, and no group or class of citizens shall have a say in forums of a representative nature unless so mandated by the weight of their votes.

12. Added to the right to elect and to be elected are other political rights including that under which citizens are entitled to express their opinions in public referenda. Governments in most developing countries resort to referenda in order to legalize and seal a particular legislation or attitude in their favour. Initially, a referendum is traced to matters of significance which have arisen in connection with a legitimate State interest. However, in practice it has been ordained to have the acceptance of the electorate in matters not separately introduced in accordance with the substantive aspect of each, but amalgamated in one issue despite the fact that its components are disassociated.

Administered in this context, it has been contended that referenda, as a reflection of the direct popular will imply the introduction of a constitutional amendment even if their outcome defies constitutional restraints. Against this argument, the Egyptian Supreme Constitutional Court stated that amendments to the Constitution are subject to stringent procedural requirements, and that in the absence of their observance, no constitutional amendment will ever take place. Indeed, statutes framed in line with the outcome of a referendum are not immune from the power of judicial review, which other legislations are, since in both cases the statutes in question are inferior in rank to the Constitution.

13. Democracy and development are interrelated, and the ingredients of both lie in education in that development largely relies on the restrained order within which education has been placed, and the levels which it has attained.

It should be taken into account that education is not plowing in the sea, but an edifice on which the expenditures will be ultimately recouped in the form of restructuring a civil and advanced society, accompanied with national affiliation and the tools for a productive live.

Undeniably, education raises public concern, induces the proper course of action, instigates the path for truth, and arranges in an orderly fashion for the masses an informed life in which rights and duties are duly considered, equally respected, and actively enforced.

Therefore, education is not a subsidiary or subservient right, but rather an original and creative one, independently claimed, feasibly approached and openly admitted to all those objectively complying with the rational requirements for its exercise.

In this light, the government should not look at education over its shoulder, but should strictly observe and carefully examine its different forms, outline its effective and expansive means with a view to widening the range of their potentials, taking into account that the worthiness of education and its inclusive role in the democratic process depend to a large extent on the level of its administered structures.

14, The equal protection clause is largely considered a safety valve in any evolving democratic process. It has been repeatedly asserted that this clause was not framed to extend mathematical equality to all but only to embrace citizens who are similarly situated with respect to the requirements set forth for the exercise of the right of freedom in question. Categorically, the general and abstract character of the rule of law does not necessarily denote sameness or uniformity of treatment. In fact, a rule of law, despite its general application to those meeting its requirements, may make different provisions for some as against others, and therefore may involve invidious, capricious or preferential treatment incompatible with the substantive-oriented values of the equal protection clause requiring the absence of distinctions except for those different circumstances.

Inherent in the primitive nature of all human beings is the belief in justice embedded in the equal protection clause to which all political regimes and organized societies have acquiesced.

It has been asserted that the principle of equal opportunities as well as that of the equal protection clause serve and advance the same ends. However, while the equal protection clause confers a negative right, denial of which arises only when the State actively intervenes in a discriminatory manner, the principle of equal opportunities presupposes that the missing opportunity is one which the State has undertaken to provide. Failing this, the question of inequality in the enjoyment of that opportunity will never arise.

In the determination of whether or not a statute produces unreasonable or arbitrary distinctions among individuals as to their rights and privileges, courts have on many occasions adhered to the long-established comparative rule

applicable in the context of the power judicial review, namely that of rational basis test, or the so-called rational relationship test, according to which a legislative classification producing distinctions among citizens is to be regarded as inconsistent with the equal protection clause if proven to be irrationally connected with a legitimate governmental interest which that classification intends to serve.

However, legislative classifications based on differences, race and other irrelevant distinctions are commonly regarded as inherently suspect, and therefore to be strictly scrutinized in order to subject their examination to the most exacting judicial review, under which the State must show that the statute in question furthers a compelling State interest accommodated with the least restrictive means practically available, a requirement in the face of which only a very few statutes have been upheld.

15. The preservation of human rights - the final objective of the democratic process - demands the integration of political rights with those of an economic, social and cultural nature. However, it should be noted that their integration does not infer that attainment of the latter rights is a precondition for the performance of the former, but that all have to be duly respected in order to dismantle or at least weaken the far-reaching hand of the State, even cautiously and gradually, without setting aside the legal premise that basic human rights and freedoms are not to be undermined by restrictions that go beyond their rational limits, including the invasion of the breathing space which encircles the vital sphere of their existence.

16. Democracy guards against opportunities for abuses of power and ensures that they are rectified should they occur, especially through the system of checks and balances, considered paramount for a viable observance of the principle of separation of powers.

While this latter norm denotes different jurisdictions attached to the three main branches of government and implies that each of these has to exercise its allocated competencies within constitutional limits, the workability of this principle depends on how each power could confront and tackle deviations of the other from its defined mandate. As Montesquieu aptly put it, a power may not be stopped except by its equivalent.

However, in most developing countries, the perceived balance between different and sometimes overlapping powers was viewed as a theoretical approach rather than a viable instrument. Indeed, from a practical perspective, Parliament has become an extension of the Executive which holds a firm grip on its majority and dominates the prevailing trends therein. In such a situation, the principle of the separation of powers will cease to have life and substance, along with the representative character of Parliament. The separation of powers does not necessarily entail their isolation, nor the reduction of understandable cooperation. What really matters is the level of this cooperation which should in no way turn into obedience to governmental instructions.

Legally, in the application of the principle of the separation of powers, the main concern is to preserve intact the competencies allocated to each power, especially those in line with its natural structure, without setting aside the need to achieve a kind of understanding far short of ending in subordination, or the ranking of a power beyond its ordained boundaries.

Unless the application of this principle is reinforced with public awareness and pressure along with a wider circle of persuasion through the media and other means of mass communications, its strict observance will probably fall into ruins especially in the absence of an independent and impartial judicial power capable of taking the reins in its own hands to address grievances with appropriate enforceable remedies adaptive to the times, and unimpeded by excessive delays or substantially tainted procedural rules or even the manipulation of political or ideological influence.

17. The effectiveness of the role of the judicial power in compliance with the rule of law derives from the fact that constitutional provisions in democratic countries are not dead letters, but ought to breathe by all available means, the most important of which lie in the exercise of the power of judicial review, according to which statutes repugnant to the constitution are considered invalid.

18. In this regard, the institutionalization of power within the requirement of "cases and controversies" necessitates *inter alia* affirmation of the right to litigate with its concomitant of enforceable and pertinent judicial remedies, the exclusion of exceptional and special courts, the confinement of martial law to its natural domain, the recognition of at least a minimum standard of rights accorded to aliens in defence of their legitimate interests, the observance of standards associated with the fair administration of all trials, the enforcement of the procedural and substantive aspects of the due process clause, and the application of human rights, with due regard to their international dimensions along with the right to have a retained or assigned counsel for their vindication.

19. Despite the expected tension which would result in some societies in consequence of the application of the democratic processes, their supreme importance for the different criteria and standards of progress and for the liberation of humanitarian values from intimidation or inhibition by public organs and their agents are beyond question.

Indeed, undemocratic systems are less benign and more repressive, corrupt and unstable. Therefore, compliance with democratic processes ordains a well-defined area of individual freedom adaptive to contemporary realities, along with openness especially in relation to the rotation of power, pluralism, tolerance and the right to be different. Of no less importance are recognition of the universal character of human rights together with their impact on development, and promotion of minimum cultural levels negating ethnic distinctions, largely dependent on the effectiveness of the educational system, and equal treatment of women and men in all matters of public concern in both law and practice.

Law in fact is not a divine supernatural concept, but simply a positive formula adaptive to societal-oriented needs which should take the dignity of all individuals as the base for their fundamental rights and freedoms, taking into account that unless the modalities of their exercise are fairly outlined without breaching the nucleus of each, commitment to democratic principles shall not stand.

20. A democracy should support democratic principles in international relations and extend its genuine solidarity to those who are victims of human rights violations at the hands of undemocratic regimes.

Democracy and the Individual Will

PROFESSOR HIERONIM KUBIAK*

'Democracy is neither black nor white nor red. It is the emporium of passions and interests, the blend of outrage with virtue, sacredness with villainy. Its value and taste is especially recognisable when it's already losing the game under the pressure of fundamentalistic ideas. This may be the most important message of the 20th century.'

Adam Michnik, *Szare jest piekne /The Gray Is Beautiful/,* Gazeta Wyborcza, 4-5 January, 1997.

Considerations presented in this essay take for granted that:

(a) Human nature and democracy are an accumulated effect of human actions, although these actions are never free from "given structural conditions inherited from the past". It is people who "at the same time reinforce or modify these conditions - H,K/ for their future successors" /Sztompka 1991:271/. Hence, *homo creator and homo sociologicus* make their societies - civil, "the non state sphere of social activity", political, "the representative sphere of social activity", states, "the administrative-coercive sphere of social activity and "the public sphere: the informational sphere of social activity" /Kennedy 1992:301-302/. It is they who make history.

(b) The growing sovereignty of individuals is one of the most important advancements of humankind. Sovereignty enables people to make choices, according to their own ambitions, possibilities and sensitivities, and enables them to "run away from the *gulag* of religion, race, region and nation" /Llosa 1996:13/.

(c) Human nature and democracy are congruent. If human nature is "free, end-oriented and calculating /rational/ reasonable", therefore only democratic order is able, by its rules, devices and procedures, "to overcome the consequence of human freedom, sociability and conflictuality" /Baechler 1995:65/.

(d) Participation, direct or through freely chosen representatives, of free and equal citizens in the polity, acceptance of the rules of the game and trust in the social contracts are the crucial factors for democracy.

But participation, as other forms of human activities, is always contextual. The context is being created over and over again by actors' personalities, their

attitudes, beliefs, opinions, values and interests; by a dramatic confrontation between needs, wants and means; by ties of social structure; by learned competence and incompetence.

It has to be remembered that democracy is the only political order which has, by the very nature of free and fair elections, a built-in mechanism of self-correction, and, under the pressure of persistent or mounting cleavages/ethnic, religious and socio-economic especially/, if a majority of voters wishes so, self-destruction. But, at the same time, only democracy possess the ability to question itself and to correct its own mistakes without resort to naked force.

Democracy is not a consequence of the 'laws of history', or the 'last word' of humankind's, history; nor can it exist simply through inertia. During the historical process of humankind, democracy has not only emerged in several places and forms but has similarly disappeared for a myriad of reasons. The vitality of democracy, especially in its poliarchic form /Dahl 1995:325-336/, depends on everyday plebiscites, involving millions of individuals and thousands of social entities, the momentum of which comes at the time of voting. The ballot today plays the role of Plato's *demurge*.

There is no reason to object to Karl Popper's assertion that democratic institutions ought to be built in such a way as to prevent evil and incompetent politicians from doing us too much harm. Of course, such institutions should be built. Moreover, it is also true that democracy in our time has become in many cases the autonomous value and an important component of several ideologies as well as a rationale for numerous governments. Nevertheless, it is the voter who, under democratic rules, may or may not place these incompetent politicians on top of democratic institutions, and legitimise or not the entire political order. In short, people are the subject of democracy, not ideas, norms or institutions. The determinants that condition the voters' behaviour are located not only inside the set of democratic norms, procedures and institutions, but also in people's minds and their everyday existential experience. If the future of democracy is determined by the will of voters, it is this will and not only normative and institutional arrangements that should receive the analytical attention of all those who study or, even more, intend to defend democracy.

It seems obvious, or maybe even trivial, that, if democracy has to preserve its capacity for self-defence, the majority of polity members must want to live under a democratic regime, observe the rules of democracy, and trust in its institutions and officers. But this want is generated not only by the formal right "to eat off the golden plate", as the 19th century metaphor states, but also by the possession of real means needed to do so. This, in turn, means that political freedom and social rights are inseparable in modern democracy where under the majority of today's constitutions, citizens of a given country, being at least 18 years of age on the election day, have the right to vote, and elections to parliaments are universal, direct, equal and are held by secret ballot.

The hope for improving the conditions of life, which usually supports drives to political freedom and often arises when political freedom is already

achieved, is indeed a powerful force motivating self-restraint vis-a-vis social and economic demands. But this does not last forever. Freedom, when already possessed, does not make up for shortages of other goods. Quite the contrary, it serves rather as a means of protest against deprivation. The recent history of East Central Europe provides a wealth of evidence regarding this generalisation. The systemic transformations in this part of the continent had to simultaneously bring about the attainment of the twin goals of: democracy and market economy. But it soon became evident that democratisation is, at least from the formal-normative point of view, a much easier and faster process than the transfer from a nationalised, "command" economy to a free market able to bring benefits to the majority of society. The first process resulted in practically no losers, if members of the former political elite are not taken into account. This was not the case with the second process. Economic transformations, coming as they did at a time of long-lasting and deep economic crisis, brought on the beginning of a substantial lowering of GNP per capita, huge unemployment and a dramatic increase in social inequalities. The feeling of social insecurity grew rapidly. Large segments of society held their breath. The political effect of this was immediately evident in the legislative elections of 1992-1993. Society demonstrated its ingratitude. The leaders of the democratic revolution lost their mandates.

The present situation in several East Central European countries, particularly in the Czech Republic, Hungary and Poland, is determined by two contradictory processes. On the one hand, there are already all seven institutions which together represent the *conditio sine qua non* of Dahl's poliarchical polity /Dahl 1995:310-12/. The three branches of a democratic government - legislative, executive and judicial - are separated. The legislature, elected in free and fair elections, is empowered to control those who wield administrative authority. Elections are universal, direct, equal, proportional and are held by secret ballot. Practically all citizens, regardless of gender, religion, race, nationality etc., who are at least 18 years of age are eligible to vote and to be elected at genuine periodic elections. Freedom of opinion, expression and access to information are assured. Citizens have the right to freedom of association with others, including the right to form and join social movements, associations, political parties and trade unions. Political parties flourish, and opposition parliamentary as well as non-parliamentary parties enjoy a full panoply of rights in accordance with international standards. National parliaments and local councils are elected in accordance with the Declaration of Criteria for Free and Fair Elections adopted by the Inter-Parliamentary Council in Paris, on 26 March 1994. Law-making procedures are obeyed. Property rights and the rules associated with a free market economy are guaranteed by constitutional law. Finally, civil society emerges out of the former authoritarian freeze. On the other hand, however, it is not difficult to notice that not all social categories benefit equally from the economic changes, that some social strata are growing indifferent towards the formal rules of democracy and despair at its inefficiency. Fundamentalism, often mixed with nationalism, is coming to life once again. Political

movements generated by these ideological orientations are already catching the public eye. If the parliamentary election were held in Poland, for instance, in January 1997, the movement of the Ruch Odbudowy Polski type would receive the support of about 15 per cent of all voters. Taken together, these factors create fertile ground for a new populism. Democracy, once again, is confused with demophilia/Sartori 1994: 581-584/. The new populism has not got a name yet, but its components are already visible. As Adam Michnik notes /1997:9/, it has "a little of fascism and a little of communism, a bit of egalitarianism and a bit of clericalism". A radical critic of the Enlightenment spirit is mixed with the strong language of moral absolutism. And both the critique and the language express a longing of those who do not benefit from the systemic changes, for the lost feeling of social security.

Is there an explanation for the coexistence of these two contradictory tendencies? Typical answers point out, for instance, the *homo sovieticus effect*/Tischner 192/, civilisational incompetence /Sztompka 1993/ or the syndrome of limited sovereignty/Kubiak 1994/. Tischner asserts that the effectiveness of transformation is slowed down due to the global effect of socialisation during the years of real socialism. *Homo sovieticus*, the product of this socialisation, is described as a farrago of cockiness and lack of confidence in his/her own abilities, unable to discern the difference between his/her personal interests and the common good, and thus capable of "burning a cathedral as long as he could cook his scrambled eggs over the fire". He/she is always feeling like the injured party and always ready to blame everyone but himself/herself, pathologically mistrustful, steeped in an awareness of his/her unhappiness, incapable of making sacrifices. *Homo sovieticus* treats possession of power as the substitute for non-possessed property. If you cannot have property, you should at least have power. After all, "only when you have power can you be sure that you really exist". In the changed world, *homo sovieticus* "has lost his backbone and feels like a leaf blown on the wind", and "expects today from the capitalists what he expected yesterday from the communists".

Sztompka's concept of civilisational incompetence states that real socialism not only blocked the appearance of civilisational competence needed for constituting the modern triad of civil society, the rule of law and market economy, "but in many ways helped to shape its opposite - civilisational incompetence". This state manifests itself especially in the deficiency of four cultures: the enterprise culture/ "indispensable for participation in a market economy", including among others an "innovative push, achievement orientation, individualistic competitiveness, rational calculation and the like"/; the civic culture/ "indispensable for participation in democratic polity", including such components as "political activism, readiness to participate, concern with public issues, rule of law, discipline, respect for opponents, compliance with the majority" etc./; the discursive culture/ "indispensable for participation in free intellectual flow", including components like "tolerance, open-mindedness, acceptance of diversity and pluralism, scepticism, criticism and the like"/, and the

everyday culture/ "indispensable for daily existence in advanced, urbanised, technologically saturated and consumer-oriented society". "Neatness, cleanliness, orderliness, punctuality, body care, fitness, facility to handle mechanical devices" and so on are the most evident components of this culture"; Sztompka 1993:88-89/.

The concept of limited sovereignty turns attention to the far-reaching consequences for a modal personality and political culture /in G.A. Almond and S. Verba's meaning of the term/ of acting for a long time under the pressure of a foreign or/and authoritarian power. The consequences of which are seen in the following thirteen intertwined phenomena :

1. Limited skills with regard to pragmatic social self-organisation, selecting political elites and fighting political battles in parliament;
2. The mythologising of social consciousness and the compensatory restoring to spheres of national symbolism, the glorification of a distant "glorious" or simply "better" past while surrendering to rumour and illusions of immediate change;
3. Social solidarity built not on a choice of value but rather on the negation of "foreign", unlegitimised, external and/or minority domination, and opposition to state structures perceived as foreign;
4. The politisation of religion and religious institutions, treated for a long time as the basis for community identity and opposition infrastructure;
5. Persistence of newspeak and a glib capacity to replace the old propaganda code with a new one of generally comparable primitiveness;
6. Legal instability and violations of the principles *pacta sunt servanda* and *lex retro non agit* often motivated by "historical justice", the general tenuousness of the laws and a tendency to act outside the law;
7. A tendency to explain one's own, individual and group, failures as the result of unfavourable outside conditions, foreign pressures, conspiracies, the work of secret service agents, etc.;
8. The easy penetration of the political elite by individuals with fundamentalist orientations and mentality of the street barricade; these individuals feel best in conditions that require neither autonomy nor open competition based on merits;
9. Unskillfulness at achieving a comprehensive view of natural and planned processes or tactical and strategic aims ; confusion of action designed to mask symptoms with action designed to eradicate underlying causes;
10. The lack of a pragmatic middle-term view and the lack of socially accepted models of individual success: in economy, power structures and other value systems that carry social prestige;
11. A tendency to view historical process in discontinuous terms; a psycho-social readiness to begin everything "from the very beginning"; submission to wishful thinking;

12. The conviction of belonging to a group /nation-state/ that is underappreciated, misunderstood, and unrewarded by the international community in relation to its merits;

13. The lack of a recipe for one's own sovereignty and a lack of skill at realistically perceiving the justifiable interests of other nation-states, while simultaneously wanting to appear in the role of a "specially privileged ally" of other states, although not necessarily one's immediate neighbours.

Nobody acquainted with the Central and East European reality would consider these explanations as unreasonable. And, in the case of countries like Poland, it is easy to prove that, for instance, the tradition of acting *contra legem*, hostility towards state and government - as both were often "theirs" not "ours", a cult of opposition, inclination for improvisation and disposition for informal structures have much older conditioning than the period of state socialism. Their roots date back to the 18th century and are related to the absence of an independent Polish statehood and legal political life for the entire 19th century. As plausible as this way of reasoning may sound, a not unreasonable *sed contra* can still be expressed. The process of recreating the Polish state after the year 1918 was quick and effective. In the year 1989, it was Tischner's *homo sovieticus* who, in defiance of half a century of indoctrination, successfully revolted against "their" power. And the change of system in 1989 occurred through the Round Table negotiations, by contract, without bloodshed. The loss of political power by the Solidarity camp in the 1993 elections took place in accordance with the rules of a stable parliamentary democracy. The winning Alliance of Democratic Left (ADL) did not turn back the process of systemic changes. The coalition of ADL and Polish Peasant Party acts, by and large, in conformity with the concept of systemic reforms and the Polish *raison d'etat* already established by the Solidarity camp, so on, and so on. There is no doubt that institution-building takes time and democratic habits are not simply formed overnight. Nevertheless, it seems that, despite an evident handicap of lacking political experience, the decisive majority of people learns the rules of a modern democracy fast. Recovery from autocratic/authoritarian and totalitarian/regimes was successful in the case of Federal Republic of Germany, Greece, Spain and Portugal. It may be the same in Central and East Europe. And, hence, if this way of reasoning is rational, the main threat to democracy lies not so much in what had been inherited, but is related to the nature of problems people have to solve *hie at nunc*.

Political systems come and go. But the exit of a given system from the historical scene does not automatically cancel out problems which that system was unable to overcome or had created itself. On the contrary, many such issues only then become apparent. Even if, by good fortune, most countries are not facing a situation where "the state is bankrupt, the president is ill, the government is helpless and the Duma is powerless" /Zyuganov 1996/, the new democracies still face enormous problems. Among those inherited, for instance, are: international security, economic underdevelopment, standard of

infrastructure /transport, communication, services/, low GNP per capita and standard of living /housing, health, nutrition/. And the process of transformation is by no means painless. Transformation from semi-colonial dependence to sovereignty forces the dramatic search for a new identity within the international community and new security guarantees. The grey zone does not seem to be very safe. The reconstruction of state - from overextended to limited - has brought not only new impulses for civil society but activated disintegrative forces as well. Privatisation of such magnitude has revived the economy but correspondingly resulted in huge misappropriations, treated by some politicians simply as the unavoidable cost of creating *the* middle class. Consequently the much-needed market economy has shown not only its advantages but also a sharp differentiation of family income, large-scale unemployment and a feeling of social insecurity, especially among new graduates unable to find employment and among a growing stratum of retired people. Workers, so crucial in the eighties as the agency of political change, have found themselves in a losing position. Some disappointed groups began to perceive democracy not as "power of the people, for the people and by people", but as power of political elites, by elites and for elites. A sharp division between "us" and "them" has made itself felt again. There are some indicators that the systemic changes may recreate class and strata cleavages. Even if the former - at the time of state socialism - significant reduction of income differences and social inequalities was essentially achieved by means of common impoverishment, it was still treated by many as a value. "Moreover, upward social mobility, particularly during the early years of the *ancien regime*, helped to create the feeling of equality of opportunities" /Wiatr 1996:110/. Now these processes seem to have been interrupted.

Needs that had been awakened already at the time of state socialism but not satisfied are now beginning to merge with the new feeling of deprivation. Freedom from the foreign yoke and abolishment of the utopia were supposed to entail the rapid satisfaction of the other needs. In reality, all these have led first of all to a realisation of how big those other needs were. Upon taking power from an autocratic regime, a political opposition is usually ensnared by its own earlier promises. When the range of needs is as great as it is, and when these needs are connected with the fundamental rights of man - and thus derive from the pressure of everyday life rather than from the influence of ideological choices - they cannot be satisfied by calls for sacrifice. It is worth noting that the previous elites - from the socialist period - and the present governing elites have both demanded sacrifices in basic social categories: earlier, in the name of the "Happiness of future generations", and now, so that "the transformation can succeed". But in neither case does this type of argument really appeal to public imagination.

People do not reject deprivation because someone has convinced them to do so. The refusal to accept conditions of life that people perceive as unjust is not caused by past indoctrination or an ideological infection of a recent origin. It is,

as a matter of fact, an autonomously recurring lack of acceptance of the socio-economic *status quo*. The failure to perceive this fact, or the denial of its political importance, under democratic conditions results in the rise of radical forces. Sometimes, as for instance in Germany in the thirties, democracy itself is defeated via this process. Populist slogans, programmes and movements spring up naturally on such soil. As Daniel Bell noted in the sixties /1961/, "the stage is thus set for the charismatic leader, the secular messiah, who, by bestowing upon each person the semblance of necessary grace and of fullness of personality, supplies a substitute for the older unifying belief...".

Overt conflicts of interests and fierce debates as such do not bode ill fortune nor destruction for democracy because "democracy is a permanent debate". What remains destructive to democracy is a situation of intense conflict "when sides, by going to the fundamentalist extremities, might become unable to compromise"/Michnik 1997:10/.

It now seems that, for the foreseeable future, the only realistic route of escaping from poverty, political oppression and social unrest on a huge scale leads through a rational linkage of democracy and market economy. But this type of linkage is not possible if civil and political rights are separated from economic, social and cultural rights. Withdrawal of the latter or a substantial limitation of them must inevitably bring about drastic social differentiation and a new radical social Utopia. It is possible to imagine that, for a certain while, masses of voters may exchange, or even trade, freedom for material prosperity. But it is hardly possible that, having obtained political freedom, they will not endeavour to better their standard of living. Therefore, democracy without economic and social rights may only drift towards self-destruction. Paradoxically, the use of political freedom by masses of voters, and their force as a pressure group, may help to solve the contradictions of contemporary capitalism as well as establishing a consensus over the public good - "the classic problem of every *polis*" /Bell 1994 :290/.

Social science may support this process by enabling people to understand themselves and their own reality, without limiting their field of observation through fear or ideological dogma: to increase the scope of freedom through knowledge of the social reality. The need for the Promethean function of social science is much greater today than ever before. The classic cleavages, as defined by Lipset and Rokkan, have not vanished, nor have the "great issues" disappeared. Nor does economic activity have a purely pragmatic nature. There are dozens of questions that we have to rethink or, even, unthink - using Immanuel Wallerstein's term -, if a dynamic stability of the modern democracy is to be achieved.

References

- Almond, Gabriel A. and Verba, Sidney /eds/ /1980/ *The Civic Culture Revisited*. Boston-Toronto: Little, Brown.
- Baechler, Jean /1995/ *Democracy: An Analytical Survey*. Paris: UNESCO Publishing.
- Bell, Daniel /1978//1994/ *The Cultural Contradictions of Capitalism*. Quoted hereafter from the Polish edition. Warsaw : Wydawnictwo Naukowe PWN.
- Bell, Daniel /1961/ *The End of Ideology. On the Exhaustion of Political Ideas in the Fifties*. New York: Collier Books.
- Dahl, Robert /1989//1995/ *Democracy and its Critics*. Quoted after the Polish edition. Crakow: Znak.
- Kennedy, Michael /1992/ *Transformations of Normative Foundations and Empirical Sociology: Class, Stratification, and Democracy in Poland*, in: Connor W.D. and Ploszajski P. Zeds/ *Escape from Socialism*. The Polish Route. Warsaw: IFiS Publishers, pp. 283-312.
- Kubiak, Hieronim /1994/ *Social Science and the Challenge of Transition: The Polish Case*. Strasbourg: Council of Europe, AS/Science, /1994/7.
- Lipset, Seymour M. and Rokkan, Stein /1967/ *Party Systems and Voter Alignments: Cross-National Perspective*. New York: The Free Press.
- Llosa, Mario Vargas /1996/ *'Run away from the Captivity of Race, Nation, Fanaticism'*, *Gazeta Wyborcza*, 28-29 December 1996.
- Michnik, Adam /1991/ *'Szare jest piękne' /Gray is Beautiful/*, *Gazeta Wyborcza*, 4-5 January 1997.
- Rokkan, Stein /1970/ *Citizens, Elections, Parties*. Oslo: Universitets Forlaget.
- Sartori, Giovanni /1987//1994/ *The Theory of Democracy Revisited*. Quoted hereafter from the Polish edition, Warsaw: Wydawnictwo Naukowe PWN, pp. 582-584.
- Sztompka, Piotr /1993/ *'Civilizational Incompetence: The Trap of Post-Communist Societies'*, *Zeitschrift fur Sociologie*, Jg.22, Heft 2, April, pp. 85-99.
- Sztompka, Piotr/1991/ *The Theory of Social Becoming: An Outline of the Conception*, *The Polish Sociological Bulletin*, no. 4/96/, pp. 269-279.
- Tischner, Jozef /1992/ *Etyka solidarnosci i Homo sovieticus /The Ethics of Solidarity and Homo Sovieticus/*. Crakow: Znak.
- Wallerstein, Immanuel /1991/ *Unthinking Social Science. The Limits of Nineteenth-Century Paradigms*. Cambridge: Polity Press.
- Wiatr, Jerzy J. /ed/ /1996/ *Political Sociology and Democratic Transformation in Poland*. Warsaw: Scholar.
- Zyuganov, Gennadi /1996/. Quoted from Michael Specter, *'Waiting for Miracles in Russia'*, *International Herald Tribune*, 7-8 December 1996, p. 1.

Democracy: A Delicate Balance and Universality

PROFESSOR VICTOR MASSUH*

Democracy is the worst form of government, except for all the others (Churchill), but it is the most difficult because it requires a delicate balance between opposing terms. Democracy attempts to satisfy the will of the majority without sacrificing the minorities, to favour equality without ignoring differences, to make room for civil society without devaluing the role of the State, to preserve the rights of the individual without neglecting the general interest. It encourages a subtle electoral mechanism by taking pains not to dampen democratic enthusiasm or its vitality; it sees to it that private and public interests interact without tension, ruptures or corruption.

This delicate balance, this difficult vigilance of the citizen can lead to lassitude, uncertainty and disappointment. The electorate is expected to behave cautiously and in accordance with the rules, respect others, follow the rule of law, remain informed on an ongoing basis, enjoy liberty without restrictions but not without limits, be daring without going overboard and choose wisely its representatives, whose actions must however be strictly overseen. As democracy is the system of private initiative, the citizen *must* see to his or her own fulfilment while giving thought to those left out. In addition, as the Delors *Report* "Learning: the treasure within" show recently, democracy also requires *ongoing education*, a learning process which begins in early childhood and ends only with death. In short, the ordinary citizen must be virtuous and well-educated and be willing to make an effort; he or she is subjected to extreme *stress*.

As a result of the subtlety of its procedures and the legitimate progress of individual rights, democracy is becoming more complex for the ordinary citizen with every passing day. It is difficult to be a democrat. It requires a high degree of rationality in a world dominated by the irrational stimuli of passion, propaganda, sports and the televised image; in a world invaded by the fear of unemployment, illness and the proximity of those left out, which is experienced as a warning; in a society where individualistic hedonism, the cult of the spectacle, mass effects and the various manifestations of a sensorial, activist culture are becoming more pronounced.

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All this makes democracy a political luxury, a great strain which gives rise to fear and fatigue in the ordinary citizen. Through its demands, it can become its own enemy and yield to the temptation of one extreme or the other: *authoritarianism* or *indifference*. In the first instance, citizens aspire to a strong government which frees them from the burden of responsibility; in the second case, democracy becomes a lifeless habit, a routine which blurs into the understood and indifference.

Authoritarianism is common in Latin America, a continent whose history is marked by despotism, a succession of military coups d'Etat and the fragility of civil institutions. Not infrequently democracy creates a dual anguish in citizens - that of a cause which he has just conquered or one which he is on the verge of losing. Yet there is no gainsaying that Latin American politics has lost much of its instability over the past decade.

Whereas Latin America tends towards authoritarianism, Europe is lapsing into indifference. In Europe, democracy is considered to be a gain, a second nature, a habit whose contents do not require describing. This may well make democracy a cause which no longer draws crowds: the benches of Parliament have become mere fora set aside for negotiation, where sectoral interests have replaced the clash of ideas.

Democracy today runs the risk of lapsing into authoritarianism or indifference. Creating awareness of this danger could help to revive political passion, liven up deserted parliaments, breathe life into the feeling of collective membership, and stem the advance of individualism which disintegrates not only civil society but also the State.

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There is no gainsaying that, despite this risk and despite the imperatives of rationality, moderation and respect for others, the ordinary citizen accepts democracy and submits to it of his own free will. This phenomenon has become more pronounced in recent decades. If we take the case of Latin America, we see that after long periods of authoritarian turbulence, it now has a stable democratic experience virtually throughout its territory. Brazil, Chile, Haiti, Nicaragua, Paraguay, Peru, El Salvador, Uruguay and Argentina have acceded to democracy and, through it, to certain levels of economic growth. Citizens have gone from the hindrances imposed by a despotic State to the exercise of acceptable political autonomy and more flexible regulation of the market.

In the past, the average Latin American felt that economic liberalism and political liberalism were not necessarily indissociable. History has proven the contrary. Without democracy, the production and distribution of goods cannot advance. This has been the experience of countries like Chile, Peru and Argentina which, through the free play of the institutions of an open society, have reached hitherto unknown levels of growth. This has also been the case with the majority of the other countries of the Latin American sub-continent.

Latin America's history over the past decade has shown that it is not necessary to interrupt the exercise of democracy or establish a system based on force in order to overcome problems such as misery, drug trafficking, corruption or terrorism. Experience has proven that only democracy can lead to adequate, lasting solutions. Today, it would appear that authoritarian messianism is clearly on the wane.

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In Europe, democracy is manifesting its vitality even if, as I explained earlier on, it only occupies a limited place today in the values of social education or the media: it is considered to be a definitive, irremovable conquest. Even the most prestigious and popular monarchies submit to the democratic system - a system which is accepted and becomes as natural as the air we breathe. Democracy is not called into question, but it is not one of the causes that brings crowds onto in the streets, like unemployment, exclusion, discrimination, the educational crisis, social security, corruption, and economic imbalances between the EU member countries. Yet if these causes mobilize crowds, it is because democracy is alive in Europe: it is the cornerstone of the building, the active "void" which allows the wheel to turn (Lao-Tse).

Democracy is also alive in the former East bloc countries. There, however, democracy is a hope, an edifice under construction, a challenge. It is true that much is expected from it: that it combines with prosperity, the freeing of the economic forces which will enlarge the market, that it attracts foreign investments; that it overcomes the backwardness accumulated by the previous system; that it corrects the defects of democratic practice which have shown up in other parts of the world, and lastly, that it respects the national identity and traditions forged by millennial ethnic groups. This hallucinating mixture of old and new in countries which used to be under the yoke of communism is now at the heart of the democratic experience.

Democracy also manifests itself in the South-East Asian countries, where it has replaced authoritarian regimes. Today, it mobilises political spontaneity and generates levels of prosperity and production which are sometimes superior to Western canons.

These reflections are aimed at showing that democracy has imposed itself throughout the world, with the exception of certain countries of Africa and the Islamic world. It is the most original experiment in contemporary history: it constitutes a case of political globalization rarely reached by humanity. The fall of the Berlin wall in 1989 and the collapse of communism are the clearest manifestation thereof. Since then, there is no longer any opposition ideology capable of appearing as an alternative. Moreover, democracy has ceased to be an ideology and has now become a universally recognised truth.

Another noteworthy consequence must be mentioned there. The democrat, who must show great rationality and moderation and must respect others, is an exceptional social product: he is an elitist, who works within democratic institutions to preserve their purity and best ensure their survival. Often, he forms part of a limited group of citizens who consider that there is a need to defend "the government of the people" against the assaults of demagogy, manipulation and populism. This selective vigilance displayed by a great many sincere democrats has led to political pessimism which only fully recognizes democracy when it is an experiment in a vacuum, relatively unrepresentative, for a limited period and carried out in favourable conditions. In ancient Greece, democracy was limited to Athens and only nobles were entitled to participate therein. The republic of the Renaissance was erected in blood and had limits tied to social rank; the American republic was restricted to white landowners; the nation-State of the 19th century tried different filters of representativeness before recognizing the equalizing framework of political parties. The "classless" society of our century has stifled democracy, which has self-destructed. Its biggest lie has been invoking a limitless opening-up to the "masses" in order to concentrate the exercise of power in the hands of an elite.

Only in our era has democracy opened up to inside and outside alike, included women, recognized equality between ethnic groups, social classes and minorities, and overcome religious barriers and differences in wealth and education. It has spread in widely differing countries. It recognizes its imperfect nature and accepts being modified or replaced by models which turn out to be better. Even if its exercise is difficult, and even if only a few manage to exercise it fully, it has over time become the ideal of the ordinary man because it best expresses his profound being. Democracy has proven that it is a universal value.

Why is democracy a universal value if there are different cultures, religions, races, nations and social classes, each of which constitutes a legal identity, an inalienable particularity? Why should the universal take precedence over the particular? Some feel that the categorical imperative of democracy is outside interference, a form of alienation which is detrimental to a national or religious identity whose principles supposedly do not dovetail with either democratic egalitarianism or its intrinsic secularism.

Yet democracy is superior to the dictatorship of the proletariat, to theocracy, to the government of the ayatollahs, to absolute monarchy or lifelong presidency. Because it has overcome internal exclusions and the privileges of corporations, because it has enlarged the field of individual representativeness, democracy has simply become the ideal of the ordinary man, the expression of that which characterizes the "generic" human being, i.e. the inhabitant of Earth - freedom.

Freedom is what makes the human being "generic" - it is the first act of the universal which is valid anywhere at any time. It is the value which provides a basis for the other values, such as justice, truth, beauty and the sacred. None of

them has meaning if human beings have no opportunity to choose. Biblical wisdom is great indeed: man is free to *choose* between salvation and condemnation, and the will of God cannot oppose free choice. Freedom is a space which God cannot penetrate because it is there that man creates himself. It is the fundamental act par *excellence*, and finds its supreme expression in democracy. As freedom is creative, democracy gives it the means to become something other than a solitary attempt. Democracy saves freedom from the fiction of solipsism and gives it the framework of others, to ensure that its individual projection takes on collective plenitude.

If the state of being a democrat is, as we have seen above, a difficult condition, it is because freedom is difficult for the human being. It is easier to turn away from the imperatives of constant self-creation, to give up dominating oneself and respecting others, to yield to docility and the path of least resistance. Yet we can be encouraged by the fact that the system of the "government of the people" coincides with the highest possible affirmation of the rights of the individual and propagates itself throughout the planet as a *universal value* which goes beyond the particularism of cultures, religions, traditions or prejudices and encourages consensus.

This is all the more true since certain phenomena are pushing contemporary civilization in the opposite direction: violent fanaticism; hedonism which leads people to forget others; freedom which is likened to chaos, not internal order; technology and industry which show no consideration for nature; a certain seduction linked to television and computers which devours reality and replaces it by representations. These new horsemen of the Apocalypse have grown up in democracy and are capable of destroying everything in their path. Only democracy has the power to stop them.

The Main Elements of Democracy: A South African Experience

CYRIL RAMAPHOSA¹

For many years - indeed as long as human beings have structured their activities along social lines - people have sought political systems which can best contain and mediate the competition for resources and power which has increasingly become a factor of social existence.

In recent times, democracy has become widely accepted as the most appropriate vehicle to play such a role.

This acceptance of democracy has, however, not led to universal agreement on what democracy means, nor has it led to world-wide implementation of democracy in at least one or the other of its forms.

The exercise of outlining the chief elements of democracy should not be an academic one.

Indeed, South Africa has in recent years had to grapple quite practically with precisely this question, particularly during the process of writing its new Constitution.

I would like to use this particular example - as opposed to making broad, universal claims about democracy - precisely because it is through the application of democracy that it achieves its meaning. Unless applied to the lives of ordinary people in a specific situation, democracy remains a nebulous and untested concept.

I have chosen to explore the main elements of democracy through an examination of a particular nation's struggle to define democracy and to mould institutions and mechanisms to give expression to it. Though constrained, of course, by the limitations of time and place, I am convinced that there are sufficient lessons of universal import to be drawn from this one instance.

The antithesis of democracy

For several decades, South Africans have eloquently defined democracy by what it is not. In their daily lives, they were governed by, and interacted with, a system which was regarded as the antithesis of democracy.

It was a system which held no regard for the protection of basic human rights, to the point of denying the majority of inhabitants the right of

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citizenship. It denied the majority of South Africans - defined in terms of racial criteria - the right or opportunity to choose their government, or to participate at all in the structures by which they were governed. It was a system which elevated opaqueness and secrecy to new heights, and which had no respect for the rule of law, oppressive as these laws were.

To the majority of South Africans, democracy has for so long been no more than the exact opposite of apartheid. South Africans learnt about democracy by being denied it.

From antithesis to synthesis

As it became abundantly clear that apartheid was nearing its end, South Africans had to begin grappling with what should replace apartheid. Everyone accepted that democracy needed to succeed apartheid, but there was little agreement on the substance of that democracy.

In the South African situation, the need for a political system to mediate between conflicting interests was exacerbated by a vastly inequitable distribution of resources and power. Relations between the country's different racial groupings were not merely defined by areas of tension. Instead, they were defined by a system which placed their respective interests in direct conflict with each other. The promotion of the interests of black South Africans were shaped by apartheid to constitute a direct threat to the interests of white South Africans, and vice versa.

This situation demanded of a South African democracy not merely to maintain an equilibrium in a relatively stable situation, but to redress inequity and reconcile what were perceived to be irreconcilable differences.

South Africans had to develop their vision of democracy in conditions which were far from perfect. They could not construct some sort of Rawlsian "veil of ignorance" behind which principles of universal application could be created divorced from considerations of self-interest. On the contrary, South Africans had to create a democracy in a situation where the powerful white minority still controlled key centres of power, such as the economy, and - in the early stages of the process - the machinery of government and the security forces. As the balance of forces shifted towards the majority, most notably with the election of 27 April 1994, the conditions for achieving a more democratic solution improved.

Nevertheless, this solution - in the form of the new Constitution - was a negotiated solution, born of compromise and concession.

Accepting these limitations, it is significant that the Constitution which was eventually arrived at bears a close resemblance to what one could consider a suitable framework for the establishment and promotion of a truly democratic State.

Popular access to power

One of the main elements of democracy must surely be the provision of access for the people to the key centres of power. This access needs to allow for

competing views of how that power should be exercised to be managed in a fair and equitable manner.

Where there is no consensus on how to exercise particular power, the will of the majority should prevail. The alternative is either a minority veto or, perhaps even worse, paralysis - neither of which maximises justness or fairness.

At the same, any democratic system needs to create the maximum number of channels possible for people to impact on decisions which affect them. It is for this reason that all tiers of government need to be popularly elected and accountable to their specific electorate. It is for this reason also that the nature of interaction between structures of government and the people should not be limited to elections, but should be dynamic, ongoing and take place at a number of levels. Much of this interaction would fall outside of the formal processes prescribed in the Constitution. It would relate, for example, to the effectiveness and independence of the media, or to the political culture of the country.

However, much of the interaction can and should take place within formal processes. The legislative process, for example, needs to be accessible to all, and everyone should have the opportunity - and capacity - to input at some level into the process. It places a responsibility on organs of government to invest resources and energy into interacting with the public and ensuring that the legislative processes are understood and appreciated. The South African Parliament, in a radical break with its past, has put much effort into opening the doors of the institution to ordinary citizens. On any given day, the public gallery of the National Assembly can be seen packed with groups of visiting schoolchildren, who, though not yet old enough to vote, take an active interest in the governance of the country.

In the process of drafting the new Constitution, a massive public awareness campaign was launched, not only informing people *of* the process, but soliciting contributions to the Constitution. By the end of the process, the Constitutional Assembly had received over two million different submissions from people around the country.

There need also to be mechanisms of regulating relations between different levels and branches of government. This refers not only to the separation of powers between the legislative, executive and judicial arms of the State, and the management of that separation, but it refers also to the regulation of relations between the different tiers of government, typically divided according to national, provincial and local responsibilities.

In a case like South Africa, where the country was divided spatially as much as it was racially, the question of regulating inter-regional relations is highly important. The creation of "bantustans" - nominally independent ethnic enclaves - saw the country fragmented into a number of little artificial fiefdoms, whose inhabitants were denied the resources and access to opportunities enjoyed by white South Africa.

The promotion of democracy in South Africa consequently requires an equitable distribution of national resources among regions with vastly differing levels of development and wealth. At the same time, it requires that genuine differences between the regions be acknowledged and accommodated.

In addressing both these imperatives, the South African Constitution has adopted an approach to inter-governmental relations known as Cooperative Governance. It is an approach, not uncommon in many other democracies, which outlines quite clearly the responsibility of any level of government to exercise its power in a manner which does not encroach on the geographical, functional or institutional integrity of government in another sphere.

In regulating the relationship between provincial and national government, the Constitution makes provision for the direct representation of provincial legislatures in the second House of Parliament in a manner which requires these provinces to co-operate on matters relating to their interests while discouraging competition and conflict between and among them.

Government is only one of the areas where power is located in society. Power is, importantly, also located in the economy, and it is perhaps at this level that popular access proves most difficult to achieve. For one thing, most economies are comprised of a combination of private and state-owned enterprises, the relative proportions of which vary from society to society. By and large, however, the private sector of the economy tends to dominate in most parts of the world.

This has certain implications for popular access to economic power. For one thing, it reduces the capacity of instruments like the Constitution or the government to provide access to economic power to all the people in country. For another, it tends to encourage unequal levels of economic power. In a country like South Africa - indeed in much of the developing world - there are extreme inequalities in the distribution of economic power.

Democracy requires therefore that measures be taken towards the achievement of economic equity. Given the nature of modern economies, and the apparent dominance of the private sector as a generator of wealth and growth, the instruments available to societies to achieve such equity are limited. They are nevertheless important.

At a basic level, governments need to be compelled to meet the most basic economic needs of their citizens - specifically the provision of employment, health care, education and basic services.

The South African Constitution, for example, in its Bill of Rights requires that the State "take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation" of the right of all citizens to adequate housing, health care services, sufficient food and water, social security and basic and further education.

This places an onus on government to shape its interventions into the economy in such a way that maximises the benefit to the most needy sections of

society. In South Africa, this responsibility is monitored by the country's Human Rights Commission, which is constitutionally required to demand an annual report from relevant government organs on the measures they have taken towards the realisation of these socioeconomic rights,

Government also has responsibility to pursue economic policies which maximise economic growth and employment creation. This responsibility is difficult to prescribe constitutionally because of the variety of mechanisms which might be required according to the conditions of the moment. Proposals in some countries, for example, to constitutionally prohibit a government deficit, while perhaps desirable, holds the danger of limiting the options open to government when trying to deal with a particular economic problem.

The power of the State as a source of investment should not be underrated. Through the strategic investment of its resources, government can serve as a catalyst for growth and development in particular areas. It can also act as a source of finance for sectors of the economy, such as small and medium-sized businesses, which require special encouragement.

The achievement of popular access to economic power is by definition a process, rather than a single event, and quite a long process, at that. Because it is subject to the fluctuations of the market, it is not an even process, nor is it immune *to* setbacks.

Nevertheless, the progressive achievement for all citizens of economic power is vital to any democracy, and needs to be pursued with vigour as part of any democratisation process.

Guarantees for the citizen

It is not sufficient, however, for citizens merely to have access to centres of power. Accompanying mechanisms to mediate between potentially conflicting social interests, need to be guarantees which secure the position in society of each and every citizen. It should not be possible, for example, for a majority of society to decide to deprive any individual or group of individuals of certain inalienable rights.

Many of these rights - such as the right to equality before the law, to life, to free political activity, to freedom of movement, to freedom of expression - are recognised throughout the world, and many are contained in the Universal Declaration of Human Rights.

In addition to the guarantee of such rights, there need to be clear guidelines which stipulate the conditions under which these rights can be limited, and the extent to which they can be limited, if at all. No government should have the capacity to simply suspend people's basic human rights without going through a democratic process and without demonstrating due cause. This is a particularly difficult area of government power to regulate, because it requires the achievement of a delicate balance between the interests of the nation and the rights of the individual. Too often one is abused for the sake, supposedly, of the

other. Needless to say, the limitation of basic rights needs to be accompanied by several different levels of checks and balances.

The judiciary is one level at which checks and balances need to be located, not merely on issues relating to the limitation of rights. The judiciary must play a central role in ensuring that all rights contained in the Constitution are respected, that all provisions of the Constitution are upheld and that all legislation is impartially and fairly applied.

Key to performing this function is the independence of the judiciary. In practical terms, this independence means that the judiciary must exercise its duties free from interference by any single section or sections of society. The processes for the appointment and operation of the judiciary should be very deliberately designed to prevent such interference or undue influence.

The guarantee of basic rights and democratic process is not limited to the Constitution or the judiciary. There are other mechanisms that can serve to guarantee certain rights. In the South African Constitution there is provision for a Public Protector to investigate and take remedial action in the event of allegations of misconduct or impropriety in any area of public administration. There is also a Human Rights Commission, mentioned earlier, which has the responsibility of investigating any allegations of human rights violations, and seeking redress where such violations are found.

A Commission for Gender Equality is also required by the Constitution, highlighting the specific need to safeguard the rights of women. Much more than being a watchdog, though, the Commission is tasked with the responsibility of promoting - and campaigning for - the achievement of gender equality in society.

These institutions are intended not only to provide means of redress for people whose rights have been violated, but are also supposed to play a proactive role in encouraging a culture in society of respect for human rights and tolerance.

The promotion of democracy

In doing so, the Constitution is viewing democracy not as an absolute state. Rather, it is seen as a continuum which stretches from the protection of basic rights and holding regular elections, through to the effective participation of all people at all levels of society, exercising control over all matters that affect their lives.

In striving for democracy, one seeks to move society along that continuum, progressively and increasingly empowering all citizens through the process.

Democracy therefore does not merely consist of the achievement of popular access to all important centres of power, and the complementary guarantee of certain fundamental rights. It consists also of social mechanisms, institutions and forces which reinforce and deepen the formal processes of democracy.

The mass media is one such mechanism, or at least should be, for deepening democracy. For it to play a constructive role, it needs to be free from any legal or political constraints. It should be protected by freedoms of speech, association and publication. It needs to be protected from censorship or banning. It needs, in short, to be free to say what it likes.

It needs to be independent from government control, and needs the institutional capacity to represent a broad diversity of perspectives and views. Achieving the latter is easier said than done. To an increasing extent in many countries of the world, the mass media is being owned and controlled by fewer and fewer people. Media empires are being created and expanded at the expense of diversity, and ultimately at the expense of greater democracy.

Reversing this trend is fraught with a number of problems, not least of all the demands of the market. Media diversity needs to be financially sustainable within a competitive media environment. Interventions by government to promote diversity need to avoid being perceived as - or becoming - attempts to undermine the independence of that media.

The role of other sections of civil society are equally important. The existence of a large, vocal, independent and varied sector of non-governmental organisations can play a profound role in anchoring any democracy.

In South Africa, NGOs played a central role in bringing about the end of apartheid, and creating a democratic culture among the country's people. With the creation of the democratic state, these NGOs have been hampered by a lack of resources and dwindling capacity. It is a matter of concern to the South African Government that the NGO sector is facing such problems at this time, as it relies on this section of civil society to broaden and enrich the process of empowering ordinary citizens.

Conclusion

In choosing the South African example to highlight some of the main elements of democracy, I have not wanted to hold up the South African Constitution as a blueprint for the ideal democratic state.

Far from it, in fact, I choose this particular example because it illustrates, I think, the difficulty of defining democracy without reference to a specific context.

It is one thing to come up with a dictionary definition of democracy. It is quite another to find a working definition which can do precisely what democracy claims to do: empower ordinary people.

South Africa has tried to achieve the latter. It is a quest which continues, though our Constitution has been completed. It is a quest which will probably continue as long as society exists. We have established a basis from which to proceed, but it will take years of experience, learning and fine-tuning before we can be comfortable with the system we have built. And even then, there will be more that has to be learned.

Democracy-Building in Southeast Asia

PROFESSOR JUWONO SUDARSONO*

The best and fairest way to frame any debate on democracy building anywhere and at anytime is to place it within the context of the Universal Declaration of Human Rights. The Declaration clearly and forcefully made clear that all five dimensions of human rights - civil, political, economic, social and cultural - should be inter-related, indivisible and balanced.

For too long the popular as well as academic debates on democracy building have overemphasised the importance of civil and political rights, the holding of periodic general elections, the need for a civil society, the imperative for a free press and other related issues.

In most industrialised countries, academics, government officials, newspaper columnists and non-governmental activists assume that the social underpinnings, the economic context and the cultural environment are given. But it is these givens that are invariably the preconditions of whether political democracy building can be launched with any degree of success. Hence the given assumptions of the democracy debate in advanced industrialised countries narrowly focus on civil and political liberties issues and are prone to denigrate the importance of those very factors that are crucial to democracy building, namely the social, economic and cultural conditions surrounding any particular trajectory of democratisation.

Understandably but mistakenly, advocates of democratisation in advanced industrialised countries maintain that the demise of communism and state socialism in Eastern Europe and the former Soviet Union provide clear vindication for a global democratic wave based on the precepts of Western forms of government.

Unfortunately, this mistaken view of the triumph of Western liberal democracy - whether of the North American or the West European variety - colours the contemporary debate between countries of the North and developing nations of the South.

Whether the issue is good governance, human rights or protection of the environment, advanced industrialised countries (notwithstanding failure to

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address campaign financing in the United States, government by timidity in Western Europe and large-scale corruption in Japan) have repeatedly pressed and demanded of governments in Southeast Asia to adhere to specific standards of governance that they themselves often fall short of fulfilling.

Rather than rehearse and repeat arcane debates or descend into mutual re-priminations about the merits or demerits or governmental performance in both the advanced industrialised and the developing world, a review of a few salient issues are in order when discussing questions pertaining to democratisation and democracy building.

Foremost in reviewing government and the parliamentary process is the historical context. Within this broad category are the crucial elements of cultural values, particularly within nation-states that do not possess a sufficient sense of unity as a nation or, even more crucially, as states.

Nevertheless, it is crucially important to understand that in many of the Southeast Asian nations today, the all-important processes of nation and state-building continue to be legitimate areas of practical concern. Whether that nation is the city-state of Singapore or the vast agglomeration that makes up the archipelagic states of the Philippines and Indonesia, the urge and instinct to remain as a unified nation-state remain constant imperatives. Whatever the ideology and irrespective of the cultural framework, the question of maintaining political cohesion continues to be of fundamental concern.

Whereas in industrialised countries children from grade school learn at first hand the rudimentary forms of elective government, in most Southeast Asian nations decisions are reached in consensus largely through elders who are not necessarily elected but aged into their positions. Consensual decisions at the village, provincial as well as national levels are achieved in a more subtle manner than the parliamentary process normally provides. Deliberative decision-making is usually more acceptable than those in advanced industrialised countries would have thought proper. Even in the more politically open states like the Philippines and Thailand, defeat can be that much more difficult to accept precisely because it is a deeply disillusioning experience and underlines dangerous divisions that are often fatal to the unity and cohesion of the community.

Consequently, most Southeast Asians are not overawed by political discourse in advanced industrialised countries on the necessity to limit or restrict state authority in a democratic context. Southeast Asians are generally more concerned with the ability of the state to secure the survival of the country as a multi-cultural, multi-ethnic and multi-religious society. No precepts of liberal democracy should stand in the way of the state performing those essential tasks of state action, control and, indeed, of regulation.

The problem of coming to terms with understanding Southeast Asia's historical predicament becomes even more acute if one appreciates that political democracy has to operate in a general environment of massive poverty, widespread illiteracy and, in extreme cases, severe deprivation.

All of these factors tend to heighten sensitivities and lead to atmospheres of distrust and insecurity, making societies that much more ungovernable. People have weak inclinations to abide by rules, little stake in the progress of the community or in their political system. Fear and prejudice are easily exploited by irresponsible and opportunistic demagogues. Racial, religious and ethnic exclusiveness is easily directed against political scapegoats. With varying degrees of frequency and intensity, the ASEAN countries have experienced a wide variety of these difficult changes.

It is vital to understand that for many Southeast Asian governments, the problem is not so much limiting the power of the state in order to safeguard the civil and political liberties of individuals or organisations. Rather, the most pressing issues have always been the fundamental lack of state power to maintain unity and cohesion; the weakness of state authorities in harnessing forces of conciliation among disparate ethnic, religious as well as provincial interests; and the inability of state power to perform the rudimentary task of providing security and well-being for its citizens: food, clothing, shelter, minimal health care, public safety. These are the very social, economic and cultural environment that must be factored in the debates about the sequences and stages of advocating civil and political rights.

Many Southeast Asian governments tend to encourage predictability, order and stability not because they are necessarily averse to individuality or virtuoso performances by their more creative citizens. Rather, most of Southeast Asia's recent past has shown how dangerous and futile unfettered openness and freedom can be in societies and cultures where "agreement on fundamentals" is tenuous at best.

Another important dimension in advancing political democracy in Southeast Asia is the international context. Advanced industrialised countries of today pursued their respective political developments in an international sphere virtually devoid of scrutiny by outsiders. Local and national governments in North America and Western Europe in the 18th and 19th centuries proceeded without undue interference from the constant glare of today's modern media of communications, particularly of satellite television.

Additionally, economic growth within North America and Europe did not have to deal with today's intense business and trade environment. The commerce and agriculture departments and ministries of the United States and Western Europe unabashedly provided protection for their domestic markets without having to face the barrage of the language or present day's "free and fair trade" rulings of the World Trade Organisation to their particular disadvantage.

Political leaders were able to provide groundwork which decades later resulted in the formation of civic government. The American founding fathers may have debated to end barriers at state borders, but the Constitutional Convention at least planned for a federal system and went way beyond that to create a sovereign national government. Crucially, and in contrast to

today's governments in the developing world, that national government exercised sovereignty in foreign affairs.

Even the nation-states of Western Europe in the mid 1950s did not have to bother much with foreign scrutiny over treatment of their citizens (not to speak of foreign guest workers) within their borders. Britain, France, Spain, the Netherlands were, after all, colonial powers as they signed the United Nation's Charter and the Universal Declaration of Human Rights.

Today's competitive political, economic and security system throughout the world works to the distinct disadvantage of Southeast Asian nations. In this era of global sourcing, global production and global marketing, the nations of Southeast Asia not only have to compete for market access, trade expansion and investment inflows. They are at the same time under relentless pressure from powerful business interests, unions and lobbies in the legislatures of the developed North to a wide range of accusations ranging from undemocratic government, violation of human rights, infringement of intellectual property conventions and assorted environmental issues.

In all fairness, the question has to be asked: Is it realistic and just to demand of Southeast Asian countries to adhere to standards of civil and political rights when the basic ingredients of nation formation and national cohesion have still to be set firmly in place?

It has also to be asked pointedly: In this myriad world of international competition for markets, investments and trade, can it be purely coincidental that the attention of governments, parliaments, the press and non-governmental organisations as well as other self-styled concerned citizens of the industrialised world, be focused on those governments and economies that are increasingly becoming more competitive in international trade and business?

Indonesians do not harbour any particular conspiracy theory on the machinations of the industrialised North. At the same time, we are justifiably concerned that the recent spate of the international "blame game" more often than not works in favour of the advanced industrialised countries.

At times, irrespective of the historical context or the particular strategic location of any single country, a nation needs to renew its reference points in order to better understand the formidable changes taking place. Sometimes that task is entrusted to a particularly strong and dominant figure. At other stages, that task must be borne by a resourceful, committed and organised political party, bureaucracy or the military. Whether it is Lee Kuan Yew in Singapore, Mahathir Mohamad in Malaysia, Suharto in Indonesia, or Fidel Ramos in the Philippines, a political leader's imprint can have as much bearing to the sort of institution he builds as to the course of his nation's future progress.

In Indonesia, the decision to plant firmly a single state identity to decide once and for all the basis of the Indonesian state owe in no small part to the vision of Indonesia's army leaders in 1966 in devising the social and political framework of the Indonesian nation.

The transition from a dominant political figure to one that establishes firm rules of parliamentary procedure, compromise and institutionalised government is never an easy one. Yet the nations and cultures of Southeast Asia cannot avoid the turbulent aspects of accelerated twists and turns that are inherent in the process of political change and economic development.

In some instances, just as reform and change for the better seem to be on the way, some nations may temporarily revert to that maddening polarisation between radical and reactionary temperaments to which any nation is prone. Questions of political prudence, of public accountability and, above all, of procedural rules that are the hallmarks of functioning legislative bodies are constantly tested, tried and debated.

Contractual relationships between rulers and ruled, often taken for granted in the industrialised countries, have to be continuously nurtured in Southeast Asia. The cumulative meshing of tradition and modernity have to be accumulated, honoured and defended. For many of us, a generation is only the beginning.

This plea for understanding of the difficulties that the Southeast Asian nations face is one that critics across the world must take into account and appreciate. No amount of foreign assistance, of investment inflow or *of* private sector loans can make up for decades of torpor, inertia and poverty. The worst thing that outsiders can do is to be insistently patronising.

Each Southeast Asian nation must have the resolution and wisdom to prove that sound civic and political democracy building will in the end prevail. But the manner of each nation's particular trajectory will depend on how each national leadership addresses the enduring problem of balancing civil and political rights with social, economic and cultural progress.

Democracy: Its Necessary Conditions, Its Enemies and Its Opportunities

PROFESSOR ALAIN TOURAINE*

I. It is not certain that the idea of democracy will survive the celebration of what are called its victories. The collapse of the Soviet system and Latin American dictatorships have proved to be more favourable to the triumph of market economy than that of democracy and all those who have grouped market economy, political democracy and cultural tolerance under the general heading of modernity have destroyed the main foundation of the idea of democracy which was the affirmation of an order of freedom, voluntarily created, above and beyond any economic and social order which is by nature non-egalitarian. We have in effect so much suffered from political voluntarism which gave rise to all sorts of totalitarian and authoritarian regimes that we are very tempted to apply the term democratic to a society which restricts State interventions and ideological mobilisation to the benefit of the free interplay of diverse interests and which are more in need of a *laissez-faire* atmosphere than of principles and rules. Throughout the world, people mistrust politics. Those who speak with such emotion about the victories of democracy are in general only celebrating the unfettering of trade, the relaxation of political resolve and the triumph of economic power, which is in fact very reasonable since our XXth century, above all one of politics, has taught us that the unrestrained capitalism of the Victorian era produced fewer victims than the absolute powers hailed as the liberators of a class or a nation. But what was acceptable during a period of transition, in the few years following the fall of the Berlin Wall, is no longer so when people are starting to reflect on the conditions for political freedom and the struggle against inequality and exclusion - and above all the authoritarianism which so easily goes hand in hand with economic liberalism. Let us not take the opposite path to the official optimism, but let us ask ourselves some worrying questions about the real chances of democracy.

To do so, we must first of all agree on a definition. Democracy, as the word itself indicates, is the power of the people, that is to say, the link established between a social reality, the people, and a political reality, power. This is what we mean when we talk of both representation and participation, whether we

dream of direct democracy as seen by Rousseau or whether we stress the central role of parties as in the English tradition. Whether we agree with Lincoln that democracy is government of the people, for the people and by the people, or whether we insist on a procedural form of democracy which ensures the representation of interests and the defence of pluralism, we are right to define the central principle of democracy as the ability of political institutions to articulate the diversity of interests or opinions with the unity of the law and of the government. Democracy is the political regime which makes it possible for individuals holding different interests and beliefs to live under the same laws; it therefore enables us to live together with our differences, in the words of the young "*beurs*" (French people of Algerian origin) in their 1983 march for equality.

II. This elementary formula, beyond which no democracy is possible, implies at least three conditions for the existence of democracy. The first is restriction of the power of the State since an absolute power does not have to take account of the multiplicity of interests and opinions and merely invents the image of a people which is nothing other than the image of the State itself which the latter contemplates with satisfaction while making believe it is the image of society. The principle of majority and procedural democracy as a whole are indispensable instruments in restricting State power. The second is the existence of representable social actors, having some awareness of their common interests. The third is the awareness of citizenship which leads to recognition of polity and its representative institutions which are strictly political, that is to say, they are not identical with the expression of social or economic interests. Restriction of the power of the State, autonomy of social actors and awareness of citizens, these are the three conditions for the existence of democracy, or more precisely the three principal manifestations of the existence of democracy. They cannot be added to one another, they are all three elements of the democratic process itself, i.e., of mediation between social interests and political decision-making. If we do not accept such a definition of democracy, if we believe that there are different kinds of democracy in the same way that there are different kinds of cooking, we destroy the very idea of democracy since it is based on a universal principle: the link of representativity which unites the social and the political; this link may take on widely differing forms but it excludes both a purely institutional definition and a purely social definition of democracy. We cannot call a system democratic simply because it is a competitive political marketplace, or more exactly an oligopolistic marketplace. It is not enough for the citizens to choose between two or five candidates or lists for a system to be called democratic. This situation satisfied the English Whigs, the founders of the American Republic or the French liberals such as Guizot in the early XIXth century, but it is unacceptable to all nowadays when universal suffrage is the minimum condition for democracy. Conversely, a political regime cannot be called democratic because it has raised the standard of living and improved the education and health of the population. On that standard, the Nazi regime of the 1930s or the Stalinist regime during the period of post-war reconstruction

should be considered as democratic - which is absurd and even outrageous. Popular democracy has no meaning if there is no effective freedom of political choice; nor has liberal democracy any meaning if powerful economic interests have a decisive influence on the choice of the electorate.

The above definition and analysis are elementary in the strict sense of the word, i.e., they seek to extract the fundamental elements of democracy without going into institutional or social terms which correspond only to specific cases, even if such cases are very important.

On the other hand, one theme must be added to the general definition and the formulation of the three elements of democracy given above, but this proposition is more complex to set out than the previous ones. Modern theories of democracy all have recourse to a principle which is not social but can be called moral, in order both to restrict the forms of social power, to lay down the idea of citizenship and to recognise the legitimacy of a plurality of interests and opinions. Whether we share Tocqueville's concept of equality, that of the American and French Declarations of fundamental human rights or even that of Hobbes and Rousseau who saw the political act as the foundation of society, or what we have come to call the social contract as defined by Rousseau, we only speak of democracy because we are asserting the superiority of a principle of equality which is a principle of the law, over social reality which is always full of inequalities. Whereas a spontaneous reaction to, and even a swift reading of, the above-mentioned authors could give rise to a unanimist or collective concept of democracy, more careful thought leads to the recognition - for some in the political system itself and for others in social life as a whole - of a non-social principle of the organisation of the life of society which must be acknowledged, protected and nurtured by democratic institutions. It is not possible to base democracy on a purely positive notion of law. This idea has been further developed by Hans Kelsen, the leading figure of the philosophy of law in the first half of our century, which led the legislative power to be subjected to the control of the constitutionality of laws.

This reflection may seem to be distancing itself some way from the earlier ideas. Is it not contradictory to stress the social representativity of political actors and at the same time to stress the non-social, or moral, nature of a principle of the limitation of power, and does this contradiction not mask another, much more concrete and better known, which could be called that of liberal democracy *versus* participatory democracy, or of "freedom from" *versus* "freedom to" as the English say, or negative freedom *versus* positive freedom?

The central point of any democratic theory can therefore be described as the search for a link not just of compatibility but rather of necessary complementarity between the two principles. This is what marked the limit of the classical opposition established by Benjamin Constant in 1819, between the freedom of the Ancients and the freedom of the Moderns. According to him, the first was the freedom of the city and thus of the citizens who identify themselves with the city; the second was that of the individual who asserts his rights against the

forces, traditions and interests which govern the organisation of collective life. Indeed, there can be no free individual in an enslaved society, nor can there be a free society where citizens do not ensure respect for their rights against the State itself.

What unites the two principles - representativity and a non-social principle of the organisation of the life of society - is the fact that the logic of social utility, that of the functions and duties of each person in the service of society, a logic that sets unity above plurality and duties above rights, can only be checked by an inverse principle which restricts the pressure of the whole on its various parts, not in the name of higher values but in that of individualism which is at the same time universalism, which has taken on the most diverse forms but which is opposed to all variants, be they inspired by the concept of community or social functionalism. Each time a society has allied itself to the higher interest of the city it was linked to powerful principles of social exclusion. The equality of citizens has always been linked to inequality between citizens and non-citizens, active citizens and passive citizens in the words of the French revolution, or, in a more general and enduring way, between men and women. Social order is based on a central principle, on the fact that all belong to a whole, on the fact that all possess a common characteristic, be it blood, reason or language. On the other hand, if all are to enjoy the same rights, the only way not to reduce the management of public affairs to that of economic interests is to go beyond the laws of market economy and to recognise the rule of law, a principle of equality higher than social distinctions which nevertheless continue to exist. The distinguishing feature of democracy is that it recognises in each individual, regardless of biological, economic or social characteristics, the presence of a right to equality. In other terms, if there can be no democracy without a link between the social and the political, neither can there be democracy without a separation between the two orders and this separation can only be introduced and maintained by radical individualism which gave rise in particular to the idea of natural law, hence a principle of standards distinct from social utility and the civic spirit which leads to Sparta rather than to Athens.

This makes up the entire package of the constituent elements of democracy. This package contains only a few elements which should ensure that it has a vast field of application if one takes the trouble to distinguish these fundamental principles from a large number of important but not universally applicable attributes of democratic regimes. Let us recall these elements: the limitation of all forms of power by the law, the social representativity of social actors, awareness of the citizens and, above these three principles, one which is even more central and which binds them together, a universal concept of the human person which blends both the limitation of power, the idea of citizenship and the defence of the plurality of interests and opinions.

III. There is nothing to show that economic growth, an increasingly complex division of labour or even a higher standard of living can of themselves create

conditions favourable to the growth of democracy. It is imperative to reject outright all concepts which make modernisation out to be the determining factor of democratisation as if only the rich countries had access to democracy while the poor countries are imprisoned in arbitrariness and violence. More specifically still, the confusion between democracy and the rule of law must be thrown out. The modern European States, from the XVth century onwards, were countries where the rule of law held sway, where what Max Weber called the legal rational authority or bureaucracy prevailed, but this political modernity had nothing to do with democracy. This is recalled by historians who spoke of absolute monarchies to describe the structure of most modern States. The majority of these did not evolve towards democracy, at least not for a long period, and democratisation first took root in England and in Holland and not in France or Spain. Not only is modernisation often associated with the authoritarian mobilisation of resources, but there have been instances of totalitarian regimes coming to power in strongly modernised countries and, lastly, it is artificial to apply the term democratic to those countries where the State intervenes the least in the market economy. There are many examples of political regimes where the State, the main agent of the international liberalisation of the economy and rapid growth, if it intervenes repressively against those who attack this model, respects the freedom of the press or even political pluralism without it being possible to speak of democracy precisely because of the absence of the principles which I have described as fundamental and which are all conditions for the existence of a representational link between the elements of society and political decisions.

In the face of all forms of evolutionism which in fact void the idea of democracy of any interest by reducing it to a sub-product, a mere natural outcome of economic growth, it is important to enquire into the characteristics of our kind of society which nurture democracy and those which undermine it.

What is most evident and constitutes the principal danger to democracy is a growing separation between social interests and the management of political affairs. The latter is increasingly becoming a question of economic management and the adaptation of a national or local society to the growing liberalisation of the world economy and the rapidly accelerating development of the new technologies which leads to a weakening of the political order and social institutions and, conversely, to the strengthening of what has been called "identity politics", i.e. replacing citizenship by affiliation to cultural, ethnic, national or even religious groups. Caught between globalisation of the economy and fragmented cultural identities, the political and social order is collapsing, decaying and stagnating. This saps the content of democracy. Economic domination seems to have escaped any social and political control and those who wield this domination dream of a self-regulated market beyond the reach of any non-utilitarian intervention. Social actors are no longer worthy of the name since they are tending to become cultural actors who are calling for recognition of their identity rather than for rights of universal scope. In such

cases, the autonomy of the political system disappears as completely as the universalist individualism which gave it legitimacy. Such a situation may be propitious for economic *laissez-faire* and even for cultural tolerance but not for democracy as the power of the people and self-determination.

Our central question must therefore be put in these extreme terms: are we not witnessing a continual weakening of institutions and political processes, a growing separation between the world of instruments and that of values, desocialisation and a creeping depoliticisation? On the contrary, was it not at the start of modern times that the role of political institutions was the greatest, that the most intense battle was waged for political rights and thus for political freedom, whereas social rights and social justice later took pride of place in public life, in a way that was as often non-democratic as it was democratic, before, more recently, the main focus turned to the affirmation of the defence of a cultural identity, as has been noted by all who have for long spoken of the crisis of participation and even of political legitimacy? Have we in fact entered a post-democratic age because it is post-political?

This anxiety and this interrogation cannot be answered either with unduly facile responses about the increase in the number of countries where free elections are held or with a sham optimism; they require an analysis which takes into account the transformations our societies have undergone. One century ago, in the first industrial countries, social democracy was set up against political democracy; should one speak of cultural democracy as opposed to the social democracy of yesterday and even more the political democracy of earlier times? Such a hypothesis clearly cannot be countenanced. The response to the anxiety it causes is that the individualistic moral principle, without which democracy is groundless, has metamorphosed from one kind of society to another. It first took the form of an appeal to a nature common to all human beings, defined as God's creatures, then as citizens, later as workers, and in our society this individualist moral principle has been reduced or extended by becoming the defence of the right of each person to create his individual life - the right to individuality. The more society was ordered, the more people appealed against that order to a higher order: against the king, people appealed to God, and against capitalism, to the king, i.e. the State. Now that we are dominated by change rather than by an order, we can no longer appeal to a higher order; on the contrary, we must appeal against a partial change and be subjected to a more thorough and voluntary change, to inventing the history of a personal life. The only universal principle we can oppose to the economic or cultural forces which dominate us is our subjective right, our right to follow the paths which give us meaning.

Democracy as we conceive and practise it today is not the image of an ideal society, the end of the prehistory of mankind or the society where each would receive according to his needs; on the contrary, it is a package of the institutional guarantees of the freedom of each to live as a Subject and thus to create an individual life. It is also a society where the Other is recognised by the

institutions but also by myself as a Subject, i.e., as someone whose personal life history combines technical action and collective memory or individual personality. The more change affects all compartments of our life, and particularly our private life, which is fitting in a society where cultural belongings have become more central than material belongings, the more democracy, rather than being the collective construction of an order or the expression of a general will, becomes the protector of personal goals and memories, thus of diversity. While democracy showed us what we shared in common above our differences, our common citizenship, our civic rights which are the same for all, it is today the guarantee of our right not to differ but to combine our differences with our common participation in the open and changing universe of markets and technologies.

IV. What are the chances and what are the adversaries of democracy in our world? The adversaries have already been named. The most important is the split between the technological world and cultural worlds since such a separation leads to the disappearance of the space required for politics, and thus the very possibility of democracy. The others are the absolute domination either of the logic of markets or of community integration. Under opposite but equally destructive forms, these two dominations leave no autonomy for political life and thus for democracy.

It is because the links joining the world of objectivity to that of subjectivity have almost completely broken, because markets triumph on one side and "identity politics*" is becoming the rule of the other, that I have asserted from the outset of this reflection that democracy is endangered and we have cause to worry at its apparently feeble ability to resist the movement of disassociation which is destroying the ground from which it drew strength.

It is however possible to put forward the optimistic hypothesis that, following a period during which the setbacks of democracy have been much more real than its advances, which in general were nothing more than the downfall - and for other reasons - of authoritarian regimes, we are today witnessing the formation of democratic actors and movements as if, on the side of globalised economy and that of community movements and powers alike, reactions were setting in and bringing closer what is tending to move further apart. The progress of democracy can only be based on the formation of democratic movements and an awareness of the need for democracy. Such movements are springing up.

In the area of *identity politics*, are there not signs of the emergence of a national democratic conscience that is opposed to anti-democratic nationalism? The most encouraging example is the revolt of the Serb people, and particularly the Belgrade students. And we must not forget that for some years now the black majority of the population in South Africa has, thanks to Nelson Mandela, chosen to set up a democracy rather than a black republic in which the white overlords would be excluded. Lastly, after the failure of the guerrillas in Latin America, is it not encouraging to see that movements for the defence of

the Indians, in Chappas in Mexico but also in Guatemala, in Ecuador and above all in Bolivia, are simultaneously striving to be active instruments for the democratisation of their countries?

In the same way, we can see the appearance of movements which are fighting against the flexibility of labour imposed on workers in the name of the requirements of the world economy. The German trade unions won a notable victory in 1996, but it was the Korean workers' strike which caught the attention of the entire world.

On both sides, economic strategies and cultural requirements are coming closer. The fate of democracy depends on whether they become articulated or stay separate.

It is now up to the political actors themselves to become the agents of their own renaissance. This implies that political life will be reorganised around new choices. There cannot be any other conclusion to this reflection on democracy than this: its future is above all in the hands of political actors and parties. But this directly political reconstruction will not be possible unless we become clearly aware of the conditions needed for the existence of democracy and unless we do away with the false opposition between the requirements of world economy and those of social justice. Where social objectives and economic constraints appear contradictory, there is no room for democracy. Conversely, only democracy can enable them to blend together and to create for all of us a space of freedom.

Which Democracy?

PROFESSOR LUIS VILLORO*

The two meanings of "democracy"

The term "democracy" is used in various senses. At the very least, a distinction should be made between democracy as an ideal of political association and democracy as a system of government. The former is an objective of collective action and is a value in itself. The latter is a means of achieving certain common objectives and its value lies in the extent to which it contributes to their achievement.

In the first sense, "democracy" is the "power of the people", where the "people" is the totality of the members of an association. "Democracy" denotes an association in which all the members control collective decisions and their execution, only having to obey themselves. In this form of community, there is no form of domination by a few persons over others. If everybody holds power, nobody is subject to anybody else. Democracy is the achievement of the freedom of everyone. It is a guiding concept, under the influence of which politics can progressively bring society closer to the ideal, although it can never be claimed that the ideal has been achieved in its entirety.

In its second meaning, "democracy" denotes a series of rules and institutions which support a system of power. These include the equality of citizens before the law, civil rights, citizens' election of their leaders, the principle of needing a majority to take decisions, and the separation of powers. It is not an ideal, but a form of government that conforms to certain procedures and which can be achieved in various ways, according to the circumstances. It is not an associative project conforming to specific values, but rather a way of living together under a specific power system.

Indeed, based on how it operates in many countries, "democracy" can easily be reduced to this second meaning, if the ideal of democracy is abandoned as being Utopian. In other terms, democracy can be considered as a system whereby various individuals or groups agree upon a means of coexistence in association together without destroying each other. In this case, there is no reason to seek the moral justification of democracy, and it can simply be accepted or refuted for reasons of convenience.

If, however, the justification of democracy is examined, democratic rules and institutions become a means of coming closer to a society in which power

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is actually in the hands of the people freed from domination. Their value is then measured in terms of their effectiveness in achieving this objective. In this case, the question arises as to the extent to which current democratic practices contribute to the achievement of real power by the people. This is the question that will be raised in this paper.

A reduced democracy

In theory, democracy is government by the people for the people. However, in practice, it has taken a different route. Democratic procedures were conceived to achieve that objective, but deviated towards a different political system. Some of the causes of this deviation have their roots in specific historical circumstances and situations which offered resistance to democratization, while, in other cases, they have been due to the intrinsic characteristics of the very rules and institutions through which it was intended to assure government by the people. Only these latter are of interest to us here.

The emergence of democracy was closely related to the establishment of modern nation-states in the North American war of independence, the French Revolution and the birth of independent States in other parts of the world. Indeed, the nation-state is conceived as a homogenous unity established by decision of a totality of individuals who are equal among themselves. It ignores or destroys the multiplicity of groups, communities, peoples and ways of life that make up real societies in order to establish a uniform legal and political order and an administrative system over them. The "people" on which it deposits sovereignty is the totality of "citizens". But the citizen is not an actual person conditioned by his or her social situation, belonging to specific groups or communities, who differs from others by reason of her or his particular characteristics. Rather, he or she is a mere subject of civil and political rights that are the same for all. As citizens, all individuals are treated the same, with no consideration of their differences. The people is perceived as being made up of citizens who form a uniform entity composed of undifferentiated units. It holds sway over all the diversities which go to make up the real people. Current democratic institutions are based on this substitution of the real people by a nation of citizens. And it is at this stage that social realities betray the people since, once established, democratic institutions lead to a new form of domination of the people in the name of the people. The end of the 20th century provides clear indications of this deviation of democracy towards a new system of domination, which can be described under three principal headings.

1. Representation

Only in small communities, where everyone can meet and talk, can the people decide directly on collective matters. In a nation, the people has to delegate its power. Representation is inevitable. However, so is the tendency for the will of those who are represented to be replaced by that of their representatives. The

deputies elected by the people have no imperative mandate. They are not simply transmitters of the will of their electors, but rather interpreters of their general will. The power of the elector is reduced to voting for specific representatives. Once elected, these individuals take over all decision-making power. Rather than a procedure through which the people expresses its power, democratic elections are a means by which the people establishes power over itself.

In a modern democracy, parties are professional political organizations. They have their own internal rules, selection procedures and training for their leaders, their own hierarchies and clients, as well as their methods of financing. They resemble enterprises devoted almost exclusively to conquering and maintaining power.

If there are many parties, none of them can govern alone. In such cases, the composition of the government is the result of agreements between the leaders of the parties who negotiate the programmes to be pursued among themselves. They may forget their constituents' preferences: the compromises reached are often a result of their power structures, not the opinions of their followers.

If, however, the system only offers possibilities of victory to two or three parties, there is an inevitable alteration of their programmes. In order to achieve an electoral majority, they have to eliminate from their proposals anything which might render consensus difficult to achieve, empty their programmes of radical policies and gain the centre ground of the electorate which, in general, seeks to prevent change. Opposing policies are diluted and the parties converge towards the same centre ground. Political alternatives are reduced in this way. Opposition parties end up presenting proposals on fundamental matters which only differ in small respects. The options for electors are reduced in practice to appointing the team which will implement a consensual policy. This is what is happening in the majority of Western democracies.

Moreover, in order to be successful in modern societies, electoral campaigns require considerable publicity and financial resources. Victory depends to an increasingly small extent on enlightened decisions by voters and the groups which finance campaigns. In electoral battles, the importance of rational arguments on fundamental matters is being reduced to a minimum, faced with the need to present an attractive image in the media and give assurances to groups which provide resources. In the developing countries, the situation is compounded by the ignorance and poverty of much of the population, who are easy prey to the purchase of votes and subject to the manipulation of demagogues and admen.

In conclusion, the party system is ambivalent. It is the only realistic means offered by democratic institutions to represent the will of the various sectors of the population. At the same time, it is a power which obeys its own rules and to a large extent escapes, and indeed supplants public control.

2. *Bureaucracy*

The power of the bureaucracy is added to that of party leaders, who are in turn partially mixed up with the bureaucracy.

The bureaucracy carries out an indispensable function in any nation-state, and is of particular importance in democratic States. A homogenous State requires an effective centralized administration and the welfare state, which is the product of universal suffrage, leads to an extension of public services. Both of these necessities have given rise to an enormous bureaucratic machine, a powerful monster in modern societies.

By its very nature, bureaucratic action works in the opposite direction to democracy. In a bureaucracy, decisions are taken at the top and carried out at the bottom, whereas in a democracy, it is the citizens who decide and the leaders who execute their decisions. The bureaucratic machine requires hierarchies, authoritarian command lines and discipline among its officials, whereas democracy promotes equality, autonomy and the absence of subjection among citizens. The task of bureaucracy is to maintain the system from above, while that of democracy is to question it from below.

3. *Technocracy*

In modern societies, the development of administrative machinery is compounded by technological progress. The development of our societies is marked by technological advances, which are the underlying factors behind industrial and agricultural production, progress in communications and urban expansion. However, technology is beginning to impinge upon fields that have previously been the reserve of social scientists and politicians. Public administration is increasingly based on planning and distribution techniques and cost-benefit analyses. The economy is becoming a subject for experts, in their fascination with formal models, monetary variables and the behaviour of financial markets. All these technicians base their proposals on considerations relating to output and effectiveness, which are far from being social values.

During the current process of globalization, the decisions made by experts depend increasingly on factors that are external to the nation, including the situation of the international market, economic policies agreed upon by the International Monetary Fund and the World Bank, foreign investment flows and fluctuations in capital movements. Global technological advances also impose fundamental decisions on the industrial development of a nation. Very often, technocrats have to heed external rather than internal pressures.

Modern societies are therefore giving rise to an increasing number of problems which require solutions that are outside the competence of the citizen. Only experts are in a position to propose these solutions. The fact that society is becoming more technological has considerably narrowed the range of decisions that can be taken by the man or woman in the street.

The ideal of democracy is to give each member of society the capacity to decide freely on all the matters affecting her life or his. In contrast, technology is making it necessary to abide by the decisions of specialists in increasingly extensive fields. As a result, the role of citizens is being confined to that of obedient consumers of ideas and products, who are incapable of deciding for themselves on the majority of matters of common interest.

Party leaders, bureaucrats and technicians are a dominant professional status responsible for decisions on collective matters. Tensions and conflicts are frequent among them. Opposition between "politicians" and "technocrats" is common in government. Indeed, the interests of party members frequently conflict with the recommendations of technicians and bureaucrats, while the solutions proposed by technocrats may ignore political issues. However, these differences are of less significance than their mutual dependency and, in any event, occur within the body that holds the power of decision and which is now called upon to make decisions on questions that democracy had transferred to the men and women of the people.

If by democracy we mean the power of the real people, we are seeing a decisive reduction in democracy, which is being confiscated from the people with its consent, by an establishment that takes decisions in its stead and which in turn depends partially on outside decisions. This confiscation of the power of the people is not a result of forces that are opposed to democracy, nor of a coup d'etat or a popular revolution, but of the development of the institutions and practices which go to make up democracy itself.

Radical democracy

Democratic institutions were designed to achieve the ideal of the self-government of the people. Over the years, we have been able to judge the extent to which they have been able to achieve this ideal. However, the record is ambivalent. Real democracy has shown itself in practice to be an indispensable procedure to oppose arbitrary power. It is a necessary alternative to totalitarianism, dictatorship and disguised authoritarian regimes. It is a vital process in any liberation movement from oppressive systems. However, the same institutions that are designed to guarantee democracy have reached the point of restricting it, and even confiscating it from the people. It is not, nevertheless, a question of destroying these institutions, but rather of making them fulfil the functions for which they were conceived. Overcoming the restrictions inherent in democracy is a means of progressing towards radical democracy.

Radical democracy is that which returns to the people their capacity to participate actively in decision-making on all collective matters affecting their lives, with the result that the people only obeys its own soul. However, the real people is not the sum total of the undifferentiated individuals who are supposed to make up the homogenous nation-state. The real people is heterogeneous, made up of a multiplicity of inter-related communities, towns, social organizations, groups, regions, ethnic groups, nationalities, classes, professional

associations, confessions, sects and federations, which are all different, and sometimes opposed. A member of the people is an abstract citizen who is equal to all other individuals. He or she is a person who is a member of various social entities, belonging to different groups and cultures, with his or her own characteristics and distinct identity. He or she is a person in a specific situation, in contact with local systems. The exercise of personal independence means the taking of decisions which affect an individual's own life, in a specific context, and therefore participating in collective decisions to the extent that they affect that person's own situation. Radical democracy has its basis in the power of this real people. In this sense, it is an ideal. Its full achievement would probably be impossible. However, it is not possible to come any closer to it if we do not allow it to guide political practice.

The paths which can lead to this distant objective are various. The most important are discussed below.

1. The diffusion of power

Ideal democracy is the antithesis of centralized power imposed from above. It can be achieved through the abolition of any specific form of domination from the centre. Power must be where it can be exercised by the real people, and where they spend their lives. It therefore has to be devolved from the summit to the many places in which men and women work. In practice, the political-bureaucratic-technocratic establishment formed by democratic institutions takes hold of power and endeavours to impose it on the many local forces. In a real democracy, local authorities would place the central instruments of government at their own service.

The development of a modern State prevents local authorities from replacing the national authority, although by doing so they would not disturb its equilibrium. Without abolishing the central authority, the various local authorities could participate in its decisions, be informed of them where appropriate and retain partial control over them.

In countries which have not yet fully achieved modernity, there is a rich collective life in small communities and peoples. In Asia, Africa and Latin America, community life, which is a feature of non-Western cultures, maintains traditional values of individual service to the community. In many cases, collective forms of participation persist in decision-making and forms of direct control by the community over their leaders. Instead of blindly modernizing in accordance with Western models, it is still possible for these countries to preserve and strengthen forms of community life in support of real democracy.

Many States are composed of various ethnic groups and nationalities. They are frequently a product of colonialization and were established under the hegemony of a dominant nationality or ethnic group. The process of democratization should grant the maximum decision-making power that is compatible with the unity of the country to its various constituent peoples. Each people would have the right to determine all matters related to its lifestyle, culture,

institutions, customs and the use of its territory. Autonomy statutes, negotiated with the central authority, would establish the scope of their competence. The State would stop being a homogenous entity and would become a pluralistic association in which the various real communities would share power.

Even in countries where all vestiges of community life have disappeared, they can be renewed. In order to do so, greater decision-making power has to be given to the peoples, towns and regions on all matters which concern them. Even in major cities, local committees can represent the common will much better than any elected official.

Based on the multiplicity of local powers, regional structures could be established which should enjoy the maximum level of autonomy possible with respect to the central government, the functions of which would be confined to national affairs that are of concern to all. Regionalism and federalism all tend to promote the diffusion of unitary power into a multiplicity of power structures. Anything which gives greater recognition to the real people constitutes a means of decentralizing government, turning the pyramid upside down, maximizing power at the bottom and minimizing it at the top.

Admittedly, the radical decentralization of power poses substantial problems. There are no global formulas and each solution depends on the specific situation. In the first place, both types of power cannot coexist while the nation-state persists. The areas of competence of each type of power structure have to be clearly demarcated. Taken to its limit, a truly participative democracy would reduce the powers of central government to the following: international relations, defence, the planning of economic policy at the national level and the enactment of the constitutional laws of a many-layered State.

Decentralization would require the transfer of considerable resources to local and regional bodies. The collection and distribution of resources would follow the opposite direction to the one that currently prevails. The lowest levels would decide on how they would be used and the proportion that would be allocated to the higher authorities. In each case, it would be necessary to establish an equilibrium between local and national needs that could be adjusted according to circumstances.

Secondly, the transition to radically decentralized forms of government would have to be gradual and cautious until reliable guarantees were available that democratic practices had taken root at the local level. The transition would have to be carried out in such a way as to avoid two major pitfalls, namely handing power over to local despots under the guise of decentralizing functions, or feeding disputes between local political groups fighting over the new power and the allocation of resources. The function of the State during this transitional process would be to avoid these pitfalls by maintaining power so that it could be transferred as the conditions became favourable for democracy.

2. *Direct democracy*

The difficulties of direct democracy are well known. They will not be resumed here. When the people of a nation cannot meet to take decisions, direct forms of democracy are incapable of replacing representation. However, there are areas in which they can complement democracy. Each form of democracy offers different institutions. Practical options on limited matters at the community level can be put to local committees, works councils, schools and citizens' associations, where they can be discussed and submitted for collective decision. This is not possible with more complex and general matters. However, most constitutions envisage a procedure for the direct consultation of all citizens, namely the referendum. The practice of holding referenda on precise points should be used frequently and defined with precision. Referenda could be held at the local, regional and national levels.

Elected representatives cannot be held to an imperative mandate. Nevertheless, they can be subject to periodical control by the electorate. Such rules could include procedures for making observations and renewing or revoking their mandate.

These and similar measures can be developed to reconcile representative and direct democracy in certain fields.

3. *Extended democracy*

A political association is democratic in so far as civil society controls the State. It is through this control that the power of the real people is shown.

There are two concepts of "civil society". It can be understood to mean the forum in which specific interests are opposed and where groups and individuals engage in a permanent struggle, which government is responsible for resolving. The second meaning of civil society is that it includes all the associations and groups of any type which are organized and exercise their functions independently of the State. It is this second meaning that will be used. Civil society, in the second sense, is a power that is built up from below and can resist and control the vertical power of government. It presupposes the existence of many places in the social fabric in which individuals can take action autonomously without being totally subjected to the central authority. With radical democracy, civil society would control the political-bureaucratic-technocratic establishment. This would be a form of "extended democracy" as defined by Norberto Bobbio.¹

Extended democracy has various dimensions. In particular, it involves the development of associations of every type which are distinct from the State and in which real democracy prevails between their members, who are not subject

¹ El futuro de la democracia, Paza y Janés, Barcelona, 1985, pp. 69-71.

to authoritarian controls. Democracy is consolidated through the establishment of collective participation practices in decision-making in non-governmental organizations of all types, as well as companies, universities, trade unions, professional associations and churches.

Special importance in this process should be given to the extension of democracy in companies. "Works councils" were, during socialist revolutions, the channels for the self-management of production. However, the development and subsequent accommodation of "revolutionary" governments transferred their power to the State, which was controlled by the Party. Extended democracy would renew self-management councils, without placing them at the service of any State authority. The process of democratization would involve a progressive increase in the participation of workers in the decisions that affect them and in the profits, without interfering in the solution of technical problems. Democratic socialism does not consist of the expropriation of the means of production by the State. Rather, it is the final objective of a radical democracy, under which power is returned to the real people in the places in which they work.

Extended democracy also has another dimension, namely the control of the political apparatus by civil associations and their participation in government. A participatory democracy should ensure the possibility of political representation for civil associations, with candidates who are independent of the parties or in coalition with them. It also has to provide opportunities for the direct control of a number of State activities by independent civil associations, including the monitoring of electoral processes, the defence of human rights by independent bodies with executive powers, the active participation by sectors of production in the formulation of economic policies, as well as by the academic sector in scientific and educational policies, and the establishment of procedures for sounding out the public on important matters.

The role of civil society is particularly important in processes of transition to democracy from authoritarian regimes. Its decisive impact was illustrated in the civil revolutions which led to the downfall of the totalitarian regimes in Eastern Europe and it is still showing its growing strength in many developing countries, such as the Philippines, Mexico and South Korea.

Reference has been made to a number of possible ways of preventing the reduction of democracy and gradually coming closer to a radical democracy, as well as for the parallel transition from a homogenous nation-state to a heterogeneous State formed by the coordination of a multiplicity of power centres. The term "gradually" is used because such a transition cannot be rapid, but rather the continuation of a gradual process of bringing democratic practices and institutions closer to the ideal of the autonomous power of the people over itself.