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PARTICIPATION, DEMOCRACY AND HUMAN RIGHTS
An approach based on the dilemmas facing Latin America

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This paper will analyze the relationship between democracy and human rights, with an emphasis on the many faces of political participation. It will then take a look at recent conditions in Latin America in these areas in order to frame a modern-day approach to the implications of the complex nature of human rights and their potential as a tool to assess quality and strength of democracy.

The connection between democracy and human rights

Many attempts have been made to identify the ways in which respect for human rights is associated with a healthy democracy.¹ Nevertheless, relationships that have been described between the two concepts and their applicability tend to be based mostly on assumption, without focusing on concrete cases taken from recent history.

The relationship between the two concepts – human rights and democracy – can be seen from various perspectives. For the purposes of this paper, we maintain that the use of

¹In this regard, see IIHR, *Estudios básicos de derechos humanos I*, San Jose, 1994; CAMARGO, Pedro Pablo, *Derechos humanos y democracia en América Latina: análisis comparativo*, Bogota, 1996; INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *Derechos humanos y democracia representativa*, Washington, 1965.

one perspective over another in fact predetermines whether the resulting relationship between the two can serve as a useful tool for evaluating the strength, integrity and legitimacy of a democratic regime.

It should be understood that both institutions, democracy² and human rights, have evolved alongside the development of Western culture itself. Their common roots can be found in the splendor of Greek civilization, and both were built on the same foundations.

Greek democracy aspired to become a system of government that would provide an effective, legitimate means of making decisions for the entire citizenry.³ By contrast, human rights doctrine revolves around certain central issues such as equity (Aristotle) and equality (the Stoic school) that arose from debates about justice as a value. The two schools find a common meeting ground in discussions of social justice.⁴

This relationship between the democratic form of government and the fundamental rights of the individual was later taken up with greater precision by the Classical School of Natural Law (Locke, Rousseau and the movement of the Enlightenment). Thomas Jefferson drew inspiration from this school of thought and took it to new heights in his individual writings and in the Declaration of Independence of the United States, with the radical declaration that “[A]ll men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness...”

²It would greatly exceed the scope of this essay to begin considering the abundant literature on the concept of democracy. As a start, see IIHR/CAPEL, *Diccionario electoral*, 2nd ed, vol. I, San Jose, 2001, under the entry “democracy,” pp 346 ff.

³For more on the restrictive Greek concept of citizenry, see notes to www.lafacu.com/apuntes/politica/la_democ/; this is not necessarily comparable to the sense of universality apparent in discussions of the rights of the human being – with the possible exception of Plato’s views on justice in the city, founded on differentiation and separation with harmony.

⁴Notwithstanding disquisitions in the play *Antigone* on a law that overrides human law.

According to this view, which was distilled through many centuries and fertilized by many talents, the relationship between the fundamental rights of the human being and the valid exercise of power entails, or should entail, far more than just the means of electing rulers, and indeed should address their very legitimacy.

The position taken in this paper is that at present, there is a need for a formal frame of reference to govern the relationships between democracy and human rights, having the status of a full-fledged convention that would take its place in the constellation of international instruments already adopted to establish and protect human rights. Together, existing instruments reflect a consensus on how to define precisely the rights considered fundamental, and what implications they hold. This paper will focus particularly on the provisions given in the American Convention on Human Rights (ACHR) and its Protocols.⁵

The texts of international human rights provisions uphold the existence of a working democratic regime as a requirement under the terms of the “political rights.” Article 23 of the ACHR states,

1. Every citizen shall enjoy the following rights and opportunities:
 - a. to take part in the conduct of public affairs, directly or through freely chosen representatives;
 - b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
 - c. to have access, under general conditions of equality, to the public service of his

⁵This choice was made not only because Latin America is the target of the essay, but also, as will be seen, because this Convention is the most explicit in associating democracy with human rights. Its text and emphasis can be compared with universal instruments such as the International Covenant on Civil and Political Rights and the Universal Declaration. Reference will also be made to instruments adopted under the International Labour Organisation.

country.

d. ...

Clearly, essential characteristics of democracy as we know it today are fully embodied in this article: representation through the right to elect and be elected; universal, equal suffrage; equal opportunity to perform public service. None can claim therefore that human rights obligations have been respected in an atmosphere where the democratic system is not furthered and maintained.

“Political rights” are also classified as human rights related to freedom, and this holds implications for the application of guarantees in this area.⁶

The relationship does not stop there. Fundamental institutions of the democratic system are essential to ensure that human rights are respected, behaviors that violate these rights are punished, and the consequences of such violations are eventually redressed

Clearly, the first institution involved is Justice.⁷ It is the judge who is ideally positioned to receive complaints of human rights violations, investigate them, and if necessary, order corrective action or redress.⁸ This means that without impartial, effective justice, there can be no real possibility for human rights to thrive.

The purpose of democracy is more than the simple exercise of a system of government, but also strives for citizen welfare. Human rights in their broadest sense provide

⁶Debates flourished for a long time concerning the categories of human rights and how choice of category would affect applicability; the emphasis for civil and political rights, the so-called “freedoms,” was on obligations for non-interference in the affairs of a State. See CANCADO TRINDADE, Antonio, *El derecho internacional de los derechos humanos en el siglo XXI*, Editorial Jurídica de Chile, 2000, pp 59 ff.

⁷The term as used here encompasses a number of expressions: “administration of justice,” “judicial branch,” and “State justice system;” at this point we will not linger over a discussion of the traits by which the various terms differ from one another.

⁸The relationship between justice and human rights has been examined in a number of writings, including THOMPSON, José, *Acceso a la justicia y equidad. Estudio en siete países de América Latina*, Inter-American Development Bank / Inter-American Institute of Human Rights, San Jose, Costa Rica, 2000, pp 416 ff.

a means to measure the quality of democracy with the use of universal parameters to which the countries themselves have agreed.⁹

We therefore maintain that human rights law exceeds the realm of provisions essential for the existence of democracy; and that democracy is the regime in which human rights can best flourish. Indeed, the yardstick of the health and quality of a given democracy can be found in the framework that human rights, broadly considered, can offer.

This useful relationship is revealed most clearly when applied to the area of political participation, a full range of activities which cannot be conducted without an effective human rights system. In the absence of such an environment, the activities that comprise political participation lose their true meaning, becoming a simple litany of rituals that could serve any cause, whether democratic or not.

The elements of political participation

Political participation has been defined in many ways. This paper will use the definition that the Inter-American Institute of Human Right (IIHR) has adopted in its research and education activities. It is an approach that sees political participation as a complex notion best expressed in “...all activities by members of a community that derive from their right to decide on their system of government, elect political representatives, be elected and hold positions of representation, participate in setting and preparing public rules and policies, and monitor the exercise of public duties entrusted to their representatives.”

This concept embodies a number of elements that can be examined separately to facilitate understanding of the overall idea.

First of all, it is important to clarify that the term “community” is used advisedly and

⁹The spread of the term “quality of democracy” in Latin America can be seen in *Diccionario electoral*, pp 109-121.

is intended to encompass multiple dimensions of a whole country or people. This means that participation in a broadly democratic society is exercised, not only in political processes at the national level, but also in similar fashion at regional or local levels. The term also allows for the great diversity of our world, recognizing that participation includes different ways of making political or shared decisions in indigenous, tribal or autonomous communities, even if their practices bear a strictly local stamp and cannot be extended to the national level.¹⁰

Within the broad concept of political participation, it is necessary to specify what is meant, first of all, by determination of a system of government. We acknowledge that democracy is the form of government required in the framework of human rights law, and we have stated that democracy is the only regime that can be considered legitimate in this context. The logical question is whether such a postulate indeed leaves any margin to exercise choice about a system of government. This question sparks debate about unity or diversity of concepts of democracy.

No longer is debate swirling around the question of whether socialist or “popular” systems were just as democratic as the Western or “representative” systems, as many claimed. This does not mean, however, that there are no “types” of democracy from which to choose. The range is broad, from the republican monarchy to the American-style presidential system. All communities are rightfully entitled to shape the characteristics of their own system of government, and by this very process, they enrich the growth of increasingly democratic solutions.

Recent discussions about the content and meaning of democracy in the Americas reveal that controversy continues to rage concerning the characteristics that need to exist in

¹⁰On these and related subjects, see inter alia STAVENHAGEN, Rodolfo, et al., *Entre la ley y la costumbre: el derecho consuetudinario indígena en América Latina*, Mexico, 1990.

order to speak of true democracy. At one point, these discussions attempted to contrast the characteristics of “representative” from those of “participatory” democracy, as if the two could be separated.¹¹

In today’s world, it would appear surprising that anyone could question whether democracy is determined by its “representative” character. Not only is representation the defining quality of democracy, but even the framework established by human rights stipulates that electing and being elected, that is to say, the very practice of representation, are an essential component of political rights.

It would also appear, in view of conditions found today in Latin America, that representation alone is not enough to ensure democracy. Many citizens seek out new forms of direct participation in response to the aloofness of distant representatives who all too often prefer to act like “delegates.” Thus, participation substantially enhances true democracy, but in no way contradicts “representation,” understood correctly.

Many studies by the IIHR have added a third characteristic of democracy to broaden our understanding of this system of government as a rudder and an engine rather than a mere description of reality. This element is “inclusiveness,” that is, the ability to recognize the full diversity of subjects, peoples, origins and context, and reflect the variety and richness of ethnic groups, languages, perspectives and cultures that comprise the mosaic we call the Americas.

This emphasis on “inclusiveness” finds expression in the movement to promote local government. In Latin America, the concentration of power in a central government has been,

¹¹For example, an extensive debate that took place the Organization of American States (OAS) in 2001 focused on the characteristics of democracy today. The purpose was to adopt the Inter-American Democratic Charter, the text of which can be consulted through the General Assembly of the Organization of American States (31st meeting, June 2001, San Jose). *Inter-American Democratic Charter*, <http://www.oas.org>.

far and away, the dominant practice.¹² Large cities have become centers of development, with rural areas left behind. A comparison between numbers of inhabitants per local government in this part of the world and figures from France, the United States or Switzerland very clearly illustrates the critical role of this factor in transforming government into something alien and distant.

A second element of political participation is the right to elect. Quite clearly, this right cannot be exercised fully unless a broad range of pre-existing conditions and systems is in place. There is still no clear consensus on what conditions can be considered optimal to guarantee a secure vote, as an act of expressing citizen will. Nevertheless, a simple reading of the Convention text cited above clearly reveals that the right to elect cannot exist in the absence of a well-organized electoral process replete with guarantees.

The vote derives its very meaning from the presence of guarantees that elections are truly legitimate and the right to vote is universal, unhindered by considerations of gender or literacy.

In order for suffrage to become a truly universal right, at least the following conditions must exist: a reliable civil registry, up-to-date voter rolls, an identity document that confers the right to vote, an efficient electoral organization on voting day, and conditions that guarantee transparent and expeditious reporting of results.

A major concern today has been the problem of abstention. Should it be interpreted as a valid decision not to exercise the right to vote? Or instead is it a voluntary but dangerous move to elude the responsibilities of citizenship? Worse yet, it can be seen as a sign of

¹²See BREWER-CARIAS, Allen, *La opción entre democracia y autoritarismo*, inaugural lecture for the Fifteenth Conference of the Association of Electoral Bodies of Central America and the Caribbean, 2001, pp 13-14: "Venezuela, with nearly one million square kilometers of land and some 24 million inhabitants, has only 338 municipalities. France, with half the size and only 59 million people, has 36,559 municipalities, that is, one hundred times as many..."

mistrust in the democratic system itself and doubts over its very legitimacy.¹³ The debate over the implications of this phenomenon is gaining strength and intensity. It is enough to look at percentages of electoral abstention in recent elections in Latin America.¹⁴

A third element in this useful concept of political participation is the right to be elected, closely associated with the right to elect. The derivations of this right and the conditions for exercising it could fill entire libraries, particularly when discussion touches on the sovereignty of the people and the nature of representation.

The right to be elected is affected by a longer list of restrictions than the right to suffrage;¹⁵ moreover, it is exercised by means of an activity that depends on clear guarantees, and which in Latin America is subject to control by a variety of mechanisms. This part of the world has tended to understand the exercise of the right to be elected, not as an activity of representation, but as what some have called “delegation.” The result is a type of despotism installed ritually every four, five or six years when the population goes to the polls.¹⁶ This view of government ruler as one who clutches the reins of power instead one who leads as a representative or proxy has been reinforced by the spread of the presidential system of government.

At the other end of the spectrum of issues associated with the right to be elected and

¹³Some of the countries with the best established democratic systems have the highest levels of abstention, as exemplified by the United States, where less than 50 percent of qualified voters cast a ballot. See STEPHENSON, D. Grier, *The principles of democratic elections*, US Department of State, Democracy Papers, p 5.

¹⁴Presidential elections: Colombia (1998) first round 49 %, second round 41%; El Salvador (1999) 61%; Guatemala (1999) first round 46.6%, second round 59.6%; Venezuela (2000) 43.69%.

¹⁵Diverse causal factors enter into consideration, including age, ability and place of residence, that vary from one system to another.

¹⁶O'Donnell, Guillermo, *Polyarchies and the (un)rule of law in Latin America*, University of Notre Dame, 1999.

serve as a representative is the whole matter of governance. This refers to a representative's real capacity to make decisions when the centers of power are so fragmented that the effective practice of government becomes elusive.

The ideal exercise of the right to be elected must be found in the broad space that lies in between two undesirable extremes: ungovernability and despotism.

A fourth quality of political participation as posited here is the possibility of influencing decisions on public rules and policies. It is a quality that gives life to the adjective that this paper attaches to democracy: participatory. It means that the citizenry can be consulted informally even outside the framework of regular elections, or mechanisms can be created whereby organizations of civil society or individuals, without the intermediation of political parties, can express their opinions, demand action or propose initiatives.

This factor is important not only in preventing the tendency to exercise "delegated power," but also to strengthen opportunities for negotiation and for protection of minorities, contributing to the development of a democracy in action. The degree to which the mechanisms of direct or participatory democracy are universally exercised depends, clearly, on each country's choices; but as they become widespread, life is more democratic at every level—local, community and citizen.

A final element of democracy is control over the exercise of public duties, as embodied in the notion of accountability. This means not only that mechanisms exist to fight corruption and encourage transparency, but also and more fundamentally, that those in public service are always willing to answer for their actions in the jobs entrusted to them. It also refers to the real capacity of society, whether through organizations or through individual actions by each member, to oversee the performance of duties, the use of public resources

and the fulfillment of commitments made during political campaigns or when representatives are elected.

The impact of human rights on the exercise of political participation

This paper has stated and demonstrated that the relationship between democracy and human rights is revealed with special force through political participation. This is true not just because the essential rights that give life to participation are protected in human rights instruments, but because participation would be impossible or meaningless in the absence of other human rights. It is worthwhile to stop here and, for purposes of explanation, apply this view to situations before, during and after the moment when political participation is most visibly expressed: elections.

In the first place, certain conditions are necessary for the healthy exercise of political participation. These conditions must exist before elections occur and synthesize the existence of respect for human rights, or lack thereof.

Without broad respect for freedom of expression,¹⁷ the electorate has only limited capacity to hear and evaluate election promises and even to recognize the meaning of the

¹⁷The ACHR states:

Article 13. Freedom of Thought and Expression

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

- a. respect for the rights or reputations of others; or
- b. the protection of national security, public order, or public health or morals.

(...)

electoral process and understand the impact of their own involvement in it.¹⁸ This applies fully to freedom of the press, or the ability of the media to act freely and express opinions openly; but it is equally true in the realm upheld by European doctrines that place the right to information in a context much broader than simple expression of thoughts.¹⁹

The same can be said of rights such as freedom of association²⁰ and right of assembly;²¹ if the latter were not respected, the possibility of translating party organization into a mechanism of direct communication with the population would be severely curtailed.²²

The very act of holding an election depends on whether certain human rights do exist, including suffrage and the ability to aspire to an elected position. Although both can be analyzed in different ways, they do imply the existence and practice of many other rights.

Indeed, it is the principle of non-discrimination contained in human rights instruments²³ that gives meaning to a country's entire electoral system. Application of this principle results in elections that are universal and equality-based, which in turn lends them validity. Any restriction of the right to elect and be elected may be justified only with

¹⁸A unprecedented case occurred in Venezuela when, on 25 May 2000, the Constitutional Chamber of the Supreme Court, responding to a petition filed by an organization of civil society, ordered suspension of elections scheduled to take place just a few days later (28 May 2000). Part of the reasoning was based on the inability of the electorate to be properly informed of the implications of the electoral process.

¹⁹See REBOLLO VARGAS, R., *Aproximación a la jurisprudencia constitucional: libertad de expresión e información y sus límites penales*, Barcelona, 1992, and relevant provisions of the Spanish constitution (Article 20).

²⁰See ACHR Article 16.

²¹See ACHR Article 15.

²²We subscribe to the notion that democracy as we now know it is fundamentally, although not exclusively, party democracy.

²³According to Article 1.1 of the ACHR: "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

parameters that are non- discriminatory.

Similarly, the existence of courts of electoral justice²⁴ is a response to the demands of human rights to establish institutional mechanisms for resolution of conflict.²⁵ The creation of such a jurisdiction needs to recognize applicable principles of due process that also appear in human rights instruments.

The exercise of political participation during the time following elections is also conditioned by or at least related to respect for specific human rights.

An understanding of the concept of a culture of accountability clearly reveals why it is so important to respect at least some margin for petition and access to public information. These are the tools that enable citizens and organizations to exercise effective supervision even under government leaders not characterized by transparency. If discovery of corruption does not culminate in effective action by the judicial system, an infraction of international human rights obligations has taken place.

These relationships are so obvious that they require little explanation. Even so, the simple fact of articulating their interconnections suggests much about the ways in which institutions of political participation should be applied and interpreted. Human rights doctrine, at its current stage of evolution, now covers more fields and entails more consequences for political participation.

Human dignity, a central concept in current trends of human rights thinking, calls for

²⁴Various permutations of such systems can be found: some fit into the courts of the regular justice system, while others have a specialized, non-appealable jurisdiction; see the work of OROZCO, Jesús, under the definition of the term “Justicia Electoral,” *Diccionario electoral*, vol. II, pp 752 ff.

²⁵ACHR Article 8: “Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”

the effective exercise of a broad range of rights encompassing economic, social and cultural conditions.

The 1993 Vienna Declaration that emerged from the World Conference on Human Rights was an attempt to close the gap between application of civil and political rights, on one hand, and economic, social and cultural rights on the other. It proclaimed that all human rights are integral and interdependent.

Many experts continue to have reservations as to whether economic, social and cultural rights can be classicized as human rights, a field they have customarily limited to “civil liberties.” The truth is that a number of international instruments clearly enumerate the State’s obligations concerning education, health, social security, employment and working conditions. These include the International Covenant on Economic, Social and Cultural Rights, which applies both universally and regionally; the European Social Charter; and the San Salvador Protocol to the ACHR adopted by the countries of the Americas.

Economic, social and cultural conditions can all be included as relevant considerations for evaluating the health of a political system and the extent of good government. The implications of including these factors may be massive, depending of course on the particular qualities of each one and how they are interpreted in any given society; but in all cases, they add new elements of analysis to the context of political participation.²⁶ The need to broaden the traditional view is most clearly visible when considering the many ways in which a State’s investment in education has determined the population’s ability to interpret electoral choices. The full spectrum of human rights provides

²⁶For an analysis of the implications of these rights, which derive primarily from the famous principle of freedom from want assumed by President Roosevelt in 1941, see STEINER, Henry and ALSTON, Philip, *International human rights in context*, Oxford, 2000, pp 237 ff.

an effective channel for such a study.²⁷

The horizon for examining the development of political participation also widens if it includes collective rights such as those protected by Convention 169 of the International Labour Organisation, which targets indigenous populations. This approach considerably expands the universe of applicable rights and redefines the potential for political participation.²⁸ It also introduces such dilemmas as compatibility between community government systems and representation of indigenous leaders in national bodies.

To this can be added the broad interpretation that non-discrimination must begin by recognizing differences and translating them into an effective weapon against de facto inequalities. Some systems have addressed this issue by adopting quotas or numerical criteria.²⁹

In such a context, the links between human rights and democracy take on a whole new profile. The concept of effective exercise of human rights assumes far greater dimensions when it is used as a tool to evaluate political participation in the framework of a

²⁷The connection between certain economic rights and the full exercise of citizenship is nothing new, as recalled in EIDE, Asbjorn: "In 1950, T.H. Marshall focused on the historical development in the West of those attributes which were vital to effective 'citizenship.' He distinguished three stages in this evolution...Civil rights...the great achievement of the eighteenth century...political rights were the principal achievement of the nineteenth century...social rights were the contribution of the twentieth century, making it possible for all members of society to enjoy satisfactory conditions of life." In *Economic, social and cultural rights*, Marinus Nijhoff Publishers, 2001, p13. See also IIHR, *Los derechos económicos, sociales y culturales: un desafío impostergable*, San Jose, 1999.

²⁸Although available literature is very limited, those interested should consult: OLIART, Francisco, "Campesinado indígena y derecho electoral en América Latina," in *Cuadernos de CAPEL* 6, San Jose, 1986; *Nueva sociedad* 153: *Pueblos indígenas y democracia*, Caracas 1998, and GUERRERO, Andrés, "Poblaciones indígenas, ciudadanía y representación," in *Nueva Sociedad* 150, Caracas 1997.

²⁹For example, Argentine law dictates that party ballots should list women as candidates for at least 30 percent of all positions up for election, in proportions large enough to offer a realistic likelihood of being elected. No party ballots become official unless they fulfill these requirements. Specific quotas for women candidates have also been adopted in Paraguay, Bolivia, Costa Rica, Ecuador, Brazil and the Dominican Republic. In Colombia, the constitution creates two special districts in the Senate for indigenous communities (Article 171) and grants legal facilities to create five special districts in the House of Representatives for ethnic groups (1), blacks (2), political minorities (1) and Colombians abroad (1) (Article 176).

system of government that seeks to transcend merely electoral democratic practice.

Naturally, an in-depth analysis of these issues would exceed the purpose and scope of this essay; the task at hand is to explore the extent to which this approach contributes to a better interpretation of current conditions in Latin America.

Achievements and dangers for democracy in Latin America

For the first time in history, representative democracy has completely taken over Latin America, with the obvious and persistent exception of Cuba. Democratically elected regimes regularly yield power to similarly-chosen successors, albeit with certain up and downs. The armed forces, which still held so much political power only a few years ago, have returned to the barracks. Electoral structures and institutions have achieved great credibility.

The process is relatively recent. In the late 1970s and into the early 1980s, democracy was still an exception in this part of the world.³⁰ Only after 1985 did the wave of democracy begin to sweep away authoritarianism, usually consisting of autocratic military rule, and it quickly attained dimensions unimagined even by the greatest optimists. In only eight years, from 1992 to 2000, nearly 80 elections place.

Significantly, very complex exercises such as the peace process in Central America explicitly seek agreements whereby countries commit to hold elections as means to gain the type of credibility so needed by most of the region's regimes.³¹

Democratic institutional structures as we understand them have been spreading steadily, with a few noteworthy exceptions; some fizzled, such as the attempted "self-coup" of President

³⁰In 1980, only Colombia, Costa Rica and Venezuela were governed by explicitly recognized democracies.

³¹This was the process that earned then-president Oscar Arias of Costa Rica the 1987 Nobel Peace Prize.

Serrano in Guatemala in 1993, and several that succeeded, such as the move by Peru's President Fujimori to dissolve Congress in 1992.³² Fast-spreading reforms include separation of powers, checks and balances, and greater development of judicial and electoral institutions.

Specifically related to the central concern of this paper, channels for political participation expanded in the 1990s, and elections became a more intense, shared activity. The IIHR created its Center for Electoral Assistance and Promotion in 1983, and its activities began in 1984. By the end of 1985, the world's first association of electoral organizations had been created.³³ A rapidly-developing umbrella of associations is generating technical assistance projects based on the philosophy of horizontal south-south cooperation. The flaws and gaps in electoral mechanics and laws are rapidly being corrected in the countries of Latin America.³⁴

The process of restoring democracy in Latin America has advanced parallel to the fight against human rights abuses. Authoritarian regimes thought they could gain legitimacy by claiming to defend national security from the onslaught of the communist threat.³⁵ The

³²In a climate of very timid international response, Fujimori was able to establish a formally democratic regime that was increasingly corrupt and authoritarian until its stunning collapse in 2000.

³³Known as the "Tikal Protocol," its members were electoral institutions from Central America and the Caribbean. CAPEL still serves as Executive Secretariat for three different associations of electoral bodies in the Americas, including the United States and Canada.

³⁴To date, CAPEL has conducted nearly 60 such projects, whose impact was felt in 14 countries of Latin America. It has sent nearly 150 teams of elections observers, most of whose members have been representatives of electoral bodies from friendly countries; the intended purpose has usually been to provide an opportunity for exchange and cooperation in this area, rather than to evaluate the relative correctness of elections for consumption by local or international public opinion. Naturally, to have a more accurate idea of the true magnitude of work in this field, it would be important to consider the many similar institutions conducting activities of the same nature, including the International Foundation for Electoral Systems and the Unit for the Promotion of Democracy of the Organization of American States.

³⁵The classic text on the theory of "national security" and its impact on human rights is MONTEALEGRE, Hernán, *La seguridad del Estado y los derechos humanos*, Academia de Humanismo Cristiano, Chile, 1979;

resulting dirty war was unleashed this part of the world in the 1970s and much of the 1980s, with its wave of extra-judicial executions, disappearances, and trampling on fundamental rights and citizen freedoms. In both cases, success clearly depended on organization and action by the nongovernmental movement, which at its climax attained remarkable dimensions and acquired international presence and influence.³⁶

To begin with, the nongovernmental movement smashed the silence that had shrouded the vicious violations of human rights, especially in countries of the Southern Cone. It reached out to international and intergovernmental institutions and civil society, denouncing over and over again, undermining the image being cultivated by authoritarianism and its methods. It learned from its research and by joining forces with others, and it created systems and networks so that its revelations would be more effective and so it could speak with greater force of the need to demand an end to the dirty war and replace the governing regimes.

Increasingly, the nongovernmental movement turned its energy to the fight to restore democracy, fanning demands for authoritarian regimes to depart. In its clamor to hasten the holding of legitimate, authentic elections, the movement joined forces with ever-broader and

other sources include HINKELAMMERT, Franz J., *Democracia y totalitarismo*, San Jose, DEI, 1990, 273 p.; AMERICAS WATCH, *With friends like these: the Americas Watch report on human rights US policy in Latin America*, New York, AW, 1985, 281 p.; BARRIENTOS, Lucrecia Elinor, *La seguridad del Estado y los derechos humanos*, Guatemala, Universidad de San Carlos de Guatemala, 1992. 100 p.

³⁶ It would greatly exceed the space available and the conceptual framework of this document to attempt an in-depth analysis of the nongovernmental movement in Latin America. For this fascinating subject, see FRULING, Hugo, ed., *Derechos humanos y democracia: la contribución de las organizaciones no gubernamentales*, Santiago, IIDH, 1991; STEINER, Henry J. et al., *Non-governmental organizations in the human rights movement*, United States, Harvard University, 1991; ZALAQUETTE, José, *The human rights issue and the human rights movement: characterization, evaluation, proposition*, Geneva, WCC, 1981, 65 p.; KOOJIMANS, P.H., et al., *The role of non-governmental organizations in the promotion and protection of human rights*, Leiden (Holland), Nederlands Juristen Comité voor de Mensenrechten, 1990. The Madres de la Plaza de Mayo and the Centro de Estudios Legales en Argentina, the Vicaría de la Solidaridad in Chile, the Servicio Paz y Justicia en Uruguay, Tutela Legal y Socorro Jurídico in El Salvador, to name only a few, clearly demonstrated with their struggles and their work the superhuman effort that was needed to bring down authoritarianism in Latin America.

more diverse groups. As this fight began to gain ground, nongovernmental organizations were forced to take a new look at their agenda and reformulate their very mandate, faced with the disappearance of authoritarian regimes replaced by democratically elected governments.³⁷ Some nongovernmental organizations closed their doors, while others saw their field of action drastically narrowed. A few focused on demanding a reckoning from those responsible for the systematic human rights violations of the past. Others emerged with a focus on the recent democratization of Latin America.

This new group of NGOs has specialized in issues of democracy, ranging from electoral affairs to education for citizen participation. They have developed techniques, specialized know-how and critical skills that they are now sharing with their peers in Latin America or with emerging experiences in other latitudes, seizing hold of communication networks or forms of horizontal cooperation.³⁸

Elections observation, an activity which flourished under the tide of emerging democracy,³⁹ has acquired a new dimension as entities of civil society develop and perfect techniques for observation in their own countries. One area of enormous complexity that NGOs have penetrated successfully is that of parallel or expeditious vote counts, especially

³⁷On this process, which sparked what the Inter-American Institute of Human Rights called the “dilemmas and challenges” of nongovernmental organizations, see OSSA HENAO, Carmela, “Reflexiones sobre los desafíos de la protección de los derechos humanos desde la perspectiva de las organizaciones no gubernamentales” in *Estudios básicos de derechos humanos V*, Costa Rica, 1996; CANÇADO TRINDADE, Antônio Augusto, “Desafíos de la protección internacional de los derechos humanos al final del siglo XX,” in *Memoria, seminario sobre derechos humanos*, San Jose, IIHR, 1997, pp. 97-124; BASOMBRÍO IGLESIAS, Carlos, ed., *¿Y ahora qué?: desafíos para el trabajo por los derechos humanos en América Latina*, Lima, Acción Ecueménica Sueca, 1996.

³⁸On these subjects, see IIDH/CAPEL *Boletín Electoral Latinoamericano*, number XVII, San Jose, Costa Rica, 1997.

³⁹Observation of elections took on a range of international variables, such as the policy exemplified by the Carter Center in the private field and the Organization of American State in the intergovernmental sector, or electoral techniques practiced by elections agencies themselves in missions organized by CAPEL within the Inter-American Institute of Human Rights.

valuable when doubts begin to swirl around the official process.⁴⁰ Other elements that stand out on the agenda of NGOs active in this field are the creation of new openings for discussion of political issues, and campaigns to encourage greater participation in critical stages of an electoral process.⁴¹ Supervision of political campaigns, especially with respect to the use of the media, is a new field of action by civil society, together with the fight for transparency in the handling of public affairs.

Because of the work of NGOs and civil society in Latin America, the panorama today has changed substantially, regarding both democracy and the effective practice of human rights.

Of all the world's regions, it is Latin America that has most willingly submitted to international instruments for human rights protection. The ACHR has now been ratified by most of the countries and today has 25 member states. The Inter-American Court of Human Rights has jurisdiction over 22 countries around the Continent.⁴² On Sept. 11, 2001, a date now tragically remembered for other reasons, the Inter-American Democratic Charter was adopted, a milestone demonstrating the region's willingness to accede to international instruments. The Charter explicitly and irrefutably posits representative democracy as a condition for membership in the Organization of American States and the institutions for hemispheric integration, including the upcoming Free Trade Area of the Americas.

⁴⁰Particularly notable has been the work of the Peruvian organization Transparencia; see VEGA, Rudecindo and RONCAGLIOLO, Rafael, *Participación ciudadana y observación electoral*, Lima, 2000; ASOCIACIÓN CIVIL TRANSPARENCIA, *Una historia que no debe repetirse: Perú, elecciones generales 2000: Informe de observación electoral*, Lima, Peru, 2001.

⁴¹Because of its historical importance for the restoration of democracy in Chile, the civil association *Civitas* merits special mention. This group made contributions of overriding importance for the holding of the 1988 referendum which marked the downfall of the Pinochet regime. The organization's successor, *Participa*, is also one of Latin America's most active groups in electoral policy issues.

⁴²Up-to-date figures can be found at www.corteidh.or.cr

But this encouraging picture takes on dramatic nuances under close observation of the imperfections, inadequacy and cracks in Latin American democracy.

In the first place, growing disillusionment with democracy is increasingly in evidence. Public opinion polls consistently find lowest ratings for legislative bodies and political parties, without exception, and reveal a dangerous yearning for the easy solutions of authoritarian days.⁴³ The crisis of political parties has reached such an extreme in Venezuela, a country that was once home to an apparently healthy bipartisan culture, that it has catapulted into power a leader openly opposed to political parties, Hugo Chávez.

The current disillusionment with democracy feeds on two basic shortcomings of the system: its inability to respond to today's pressing, serious problems, and its failure to embrace all the diversity present in Latin America.

In the former case, the current structure has failed to provide answers in three critical problem areas: a shaky economic system, corruption, and lack of citizen security.

Argentina exemplifies dramatically the impact that economic problems can have on the health of democracy. Worse yet, one of the triggering factors for the crisis in that country was the application of measures recommended by international multilateral agencies.⁴⁴ In general, Latin America, which has the worst income distribution in the world,⁴⁵ has failed to inspire even moderate optimism for a more sound economic future, of the kind that should normally result from democracy and a legitimate climate of participation by the population.

⁴³See IIHR/CAPEL, RIAL, Juan, et al. comp., *Urnas y desencanto político: elecciones y democracia en América Latina 1992-1996*, San Jose, Costa Rica, 1998; CERDAS, Rodolfo, *El desencanto democrático: crisis de partidos y transición democrática en Centro América y Panamá*, San Jose, 1993.

⁴⁴Four presidents in one month is a record difficult to beat, matched only by the external debt of nearly \$132 billion.

⁴⁵See Inter-American Development Bank, *2000 Annual Report*. Washington D.C., IADB, 2000. At: <http://www.iadb.org>.

A second problem, corruption, is striking a serious blow to the entire region, especially the political class, and discrediting the whole system. Part and parcel of the corruption problem is the sense of the impunity that arises when investigations and judicial processes rarely hold defendants accountable for problems that proceed from the upper reaches of political and economic spheres.

The third problem area is citizen insecurity in the face of spreading crime, international criminal activity, and ineffective security and judicial structures. This area is particularly vulnerable to extreme solutions that wrest legitimacy from Latin America's democratic regimes. Indeed, the population is crying out for quick fixes in the face of a spreading misperception that due process is responsible for the lack of effective actions to enhance security.

The second major factor in eroding Latin American democracy is the exclusion of broad sectors of the population. Indigenous peoples and Afro-Latin Americans increasingly lack a sense of belonging, and women are faced with a patently unjust level of political representation.⁴⁶ A quick look at the membership of elected political bodies or the content of political or government agendas easily demonstrates that the lack of inclusion is echoed at every level. In these and so many other ways, the very idea of sovereignty of the people and for the people clearly comes into question.

As was found in the discussion of political participation, it is apparent here, too, that the dark side of Latin American democracy directly affects the exercise of human rights. Many issues are being addressed ineffectively, particularly those that entail economic, social and cultural rights. These, along with demands for an independent, effective system of

⁴⁶Levels of social exclusion in Latin America have inspired the new expression "development cum social exclusion." See CHALMERS et al., *The new politics of inequality in Latin America*, Oxford, 1997, p21.

justice, in fact should hold top priority in government programs throughout the region, and all of them are associated with issues of corruption and insecurity. Exclusion itself clearly violates the derivative the principles of equality and non-discrimination, well-established in the region and widely developed through individual instruments.⁴⁷

If this relationship between the effective exercise of human rights and the health of democracy is real, it is time to ask how such an understanding can be useful in the political arena of our time, along with other expressions of political participation. It should also be asked whether these issues have any connection with what Thomas Jefferson left us, so long ago, as a philosophy and an aspiration.

Human rights as a guide for good government and a seedbed of political participation

The central thesis of this essay is that the effective exercise of human rights, the existence of a solid democracy, and a climate of healthy political participation are all intimately and inextricably bound together. This position has been clearly illustrated in the above sections, with special emphasis on the problems and dilemmas of Latin America.

In this text, we have expounded on the ethical duty of political practice to seek the welfare of all citizens, as was emphasized by Jefferson in his day and later by Locke and Rousseau; we have also seen that the explosion of theoretical development in the field of human rights has not been echoed by a parallel development of theories and proposals on dealing with the problems and challenges of our time.

Of course, it is one thing to describe the general process by which human rights have been formalized in legal documents. It is quite another to translate these formal theories into

⁴⁷The United Nations has produced a considerable body of normative provisions on this subject, perhaps broader than those of any other field of human rights. See the International Convention on the Elimination of All Forms of Racial Discrimination (1965) or the Convention on the Elimination of All Forms of Discrimination against Women (1979).

tools for political action, mechanisms for evaluating the health of democracy, or a yardstick to gauge the real possibility for exercising political participation.

The discussion does remind us, however, of the complexity of longstanding beliefs, the convictions of the great men of modern political thought, and others whose ideas laid the very foundations of democracy in all its forms. These great thinkers did not measure the legitimacy of government merely in terms of fair elections or clear separation among the branches of public power. Such factors, while important, are never sufficient. In the views of all these people, and in the United States Declaration of Independence, good government is a government that respects the rights of the population; it holds up these rights as the polestar of all its plans and actions, even going to the extreme belief that citizen obedience is no longer obligatory if these rights, natural and inalienable, are trampled upon by the powers of the day.

Today we have a more elaborate and precise corpus of human rights. We have a considerable body of international doctrine and jurisprudence with which to mark out our fields of action and catch a glimpse of what life would be like if these rights were fully respected. Still lacking, however, is a sincere effort to transform them into tools for the exercise of power in all the different settings where they should be applied.

In today's Latin America, this awareness should carry at least seven lessons for democracy:

1. Freedom is only one facet of the complex field of human rights; indeed, a democracy which fails to tackle problems of poverty and lack of economic opportunity is not fulfilling its promises.
2. Human beings are created equal; exclusions and discriminations, whether de facto or

de jure, are contrary to human rights and delegitimize any democracy that tolerates them.

3. Citizen security is a top priority for the development of a society and a pressing demand of human rights; however, the fight against crime and violence must never resort to the very kinds of violations it seeks to combat.
4. Transparency and a culture of accountability are essential features of democracy and political participation. A climate of respect for human rights demands that all lawbreakers be brought to justice. Exceptions for the powerful only serve to undermine the solid foundations of democracy in the eyes of the people.
5. Participation is the lifeblood of true democracy. Society needs to take a stand by providing conditions for participation to be exercised through respect for fundamental human rights such as freedom of expression, association and assembly, at least a minimum of economic and social conditions, and encouragement for decentralization of power through local governments.
6. The vote, the electoral system and strong institutions are indispensable for democracy; but they alone are not enough to ensure either political participation or the existence of a good government that never loses sight of its ultimate purpose: seeking the general welfare of those under its authority.
7. In today's world, the consolidation of a healthy, sound democracy and the effective exercise of human rights are matters that increasingly affect the entire world. The human face of globalization can be seen when people from every latitude take an interest and actively strive to support these causes.

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