

## RESEARCH NOTES

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### **Beyond Democratic Constitutionalism: On the Twofold Meaning of Democracy and Democratisation**

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#### **A Persisting Dilemma**

For meaningful communication on theoretically relevant issues to become possible, common concepts are required. Democratic theory is far from such an ideal state of affairs.

One fundamental and persisting dilemma in democratic theory springs from the tension between, on the one hand, democracy conceptualised as a form of rule characterised by *universal suffrage, regular elections and basic civil rights* and, on the other hand, democracy conceptualised as *political equality in actual practice*. Modern political scientists push mostly in the former direction, while ordinary citizens all over the world, in thinking and talking about democracy, seem most often to favour the latter type of interpretation.

The persistence of this dilemma, in the face of all efforts exerted in order to prove the rightness of either position, raises the question whether the dilemma, or contradiction, cannot be overcome. There are in principle two ways of doing this. Either one relegates issues assumed by many to be essential to democracy, such as social justice and equality in society at large, to the realm of hypothetical empirical prerequisites or correlates, conceptually disconnected from democracy 'as such' (Tingsten, 1945; Huntington, 1991); or one holds that democracy can be meaningfully conceptualised only in the context of its own realisation in actual practice – including possibly also the counterfactual conceptualisation of partial or total non-democracy in the context of democracy's non-realisation (Sen, 1981; Bangura, 1992; Held, 1995). The former is the 'minimalist' position, predominant in modern political science. The latter position is contextual and thus by necessity broader. It is not absent in political science but tends naturally to be interdisciplinary. Dahl (1982, 1989) – a living classic in modern political science – wavers creatively between the two positions.

We shall return in the following to Sen's and Held's conceptualisations of democracy. At this initial stage of the presentation, however, I summarize the second position by quoting the political scientist Bangura's political-economy-inspired formulation intended to be of particular relevance to modern Africa (1992: 99-100):

While it (democracy) is an ideal to be cherished, democracy must make sense to the interests of the contending social groups. These interests do not have to be narrowly defined as economic; they can also be social and political. Linking democracy to the restructuring of the economy allows individuals and organizations to pose the question of democratic governance of public resources much more sharply.

My own striving is to conceptualise *constitutional issues* and *issues of popular or citizen sovereignty/autonomy* as *two distinct but linked dimensions of actually existing democracy and ongoing processes of democratisation*. By viewing democracy simultaneously as institutional norms and relations of power – culture as well as structure – I thus align myself with the second of the two indicated positions. This is done with reference to my own formulations in a recent essay on popular sovereignty and constitutionalism in democratisation (Rudebeck, as revised 1998) as well as in other works (Rudebeck, 1991 and 2001). The implicit or underlying empirical references are mainly African, although most of them could well have been to almost any place in the world.

### **Context of Discussion and Theoretical Issues**

The historical context is that of the democratisations occurring in various parts of the world during the 1980s and 1990s, with more specific empirical reference to Africa. The issue raised is that of the consolidation/sustainability or not of the newly introduced democratic systems. This is an analytical issue and, at the same time, a query about ongoing histories. As a significant starting point for the analysis, the following empirical generalisation is offered: In order for democracy as a form of rule to become sustainable, it appears that constitutionalism would have to be supplemented with a measure of popular sovereignty going beyond the mere introduction of universal suffrage. The notion of *constitutionalism*, or *rule of law*, underlying this formulation is quite conventional: *The institutionalisation of government, administration and judiciary, as well as of the freedoms of organisation, expression and property, into regular and predictable forms.*

This can obviously be either democratic or non-democratic, but it is difficult to see how a democratic version could be conceptualised without universal suffrage. Thus we get *democratic constitutionalism* – synonymous with the established political-science definition of democracy and formulated as follows: Rule based on universal suffrage, regular elections, legal guarantees for free discussion and opposition for everybody, the legally recognised right to associate and organise freely, and institutional safeguards against the arbitrary exercise of power.

*Popular sovereignty* is defined in a wider, more sociological, sense: Shared power defined in terms of social contents, with regard to actual and effective participation in the making of decisions on matters of common concern and significance. This concerns the larger political system as well as daily social life, economic production, places of living and work, and local decision-making.

Constitutionalism and popular sovereignty, as now defined, are two crucial aspects or dimensions to be distinguished in the historical processes leading up to existing democracy in today's world. Together they make up democracy in the making and in function – in the context of its own realisation.

In the European historical experience of democratisation, constitutionalism was generally the project of hitherto dominant social forces yielding to demands for political power-sharing raised by earlier excluded groups and classes. Conversely, popular sovereignty within politics was generally and naturally the project of the mounting social forces, manifesting themselves through a politically oriented civil society. In the process, constitutionalism was democratised – democratic constitutionalism gradually gaining legitimacy as a form of rule integrating at least a measure of popular sovereignty and the relative upholding of the rule of law. Thus 'actually existing democracy' was installed.

Turning our eyes to the countries of Asia, Africa, and Latin America – today's or yesterday's 'third world' – the claim for popular sovereignty was certainly important in earlier anti-colonial struggles, which were both conceived and perceived by the participants themselves as democratic struggles. In the first decades of independence, particularly in Africa, this element of popular sovereignty was, however, not generally underpinned with constitutionalist practice. It was therefore undermined and largely lost. Highly authoritarian single-party and military regimes came to predominate. Coupled with economic stagnation or decline, this paved the way in the nineteen-eighties and nineties, first for structural adjustment reforms under international pressure, and then also for new democratic demands and movements. The origin of the latter was both external, imposed 'democratic conditionality', and internal, rooted mainly in the middle and urbanised strata of society.

Such democratisations have been marked predominantly, although not exclusively, by the constitutional aspect of the process. Popular sovereignty, beyond democratic constitutionalism as such, has so far been weak or sometimes even absent. This means that the power games of hitherto ruling elites are now being played out in new and more democratic constitutional forms, while not necessarily (yet) involving the formerly excluded groups in any deeper sense. Consolidation, therefore, often seems far away.

### **Popular Sovereignty**

While the term *democratic constitutionalism*, as used above, is not likely to be controversial, the term *popular sovereignty* is, on the contrary, not self-evident for the conceptual purposes at hand. The first task is therefore to try to clarify a bit further the meaning of popular sovereignty. This includes questioning the terminology. The second task, which follows from the first one, is to raise the issue of an alternative term/concept. The third task is to discuss possible implications for the conceptualisation of democracy and democratisation.

The key meaning of popular sovereignty in the sense used here is *equalisation of power with regard to rule over matters of common concern and significance*. Democratic constitutionalism alone does not guarantee such equalisation. It can come about only if social and economic relations of power are also modified outside the constitutional system – in ‘civil society’ as it were. When this happens, citizens will be able to assume responsibility for the development of their own societies. This in turn is crucial to the legitimation and thus to the consolidation of constitutional democracy as a form of rule. An early original contribution to the civil-society debate of the last decade was by Bangura & Gibbon (1992). Others who have inspired my own thinking are Phillips (1995), Mamdani (1996), Leys (1997), Therborn (1997), Beckman (1998), Gibbon (1998), Mustapha (1998), and Törnquist (1999).

The use of the term ‘popular sovereignty’ made here may not evoke universal approval. The term is not unambiguous. Many political scientists, in particular, might want to reserve it for the constitutional realm, which would seem to run counter to the distinction emphasised. On the other hand, the two separate dimensions of democracy under consideration do reflect different and originally opposed traditions in democratic theory, as clearly brought out, for instance, by Held (1995: 38-47). The key characteristic of western or liberal democracy is in fact to have combined constitutionalism and popular sovereignty (Hermansson, 1986) – although, as we need to add, at the cost of limiting the latter notion to its constitutional expression in the form of universal suffrage. Another ambiguity might arise from the fact that the term ‘popular sovereignty’ has often been misused by communist ideologues. This is unfortunate but does not affect my own usage of the term.

Thus, my tentative conclusion is that the use of the term ‘popular sovereignty’ as in the present text can well be justified. Nevertheless, the question still remains whether any better alternative exists. In considering this question, we are greatly helped by the works of David Held and Amartya Sen.

### ***Autonomy as an Alternative to Sovereignty***

Only in the process of revising my first formulations on democratic constitutionalism and popular sovereignty did I become acquainted with David Held’s concept of ‘equal autonomy’ for citizens founded upon ‘the principle of autonomy’ (Held, 1995: 71, 145-156). The close affinity between this and my own combined notion of constitutional democracy plus popular sovereignty ought to be noted: ‘Contra state sovereignty it (*i.e.* “the principle of autonomy”) insists on “the people” determining the conditions of their own association, and contra popular sovereignty it signals the importance of recognizing limits on the power of the people through a regulatory structure that is both constraining and enabling.’ (Held 1995: 147). Thus ‘popular autonomy’ or ‘citizen autonomy’, drawing upon Held’s argument on the intrinsic quality of democracy of people’s equal autonomy in ‘the determination of the conditions of their own

lives' (1995: 147), might well be conceived of as analogous to 'popular sovereignty' in the context of the present argument.

There is furthermore a close link, explicitly noted by Held (1995: 155), between his 'principle of autonomy' and Amartya Sen's concept of 'entitlement' (Sen, 1981: 1-8, 45-47) – equal autonomy in Held's sense resting upon a set of 'entitlement capacities' designating 'the rules and resources people must be able to draw upon in order to enjoy the opportunity to act as citizens' (1981: 155). Granted that 'popular sovereignty' matched by democratic constitutionalism clearly signifies popular *entitlements* to legitimate power in society and thereby to basic resources, the conceptual link between Sen's 'entitlement approach' and my own argument on democratisation should also stand out.

'Entitlement' is another word for legitimate access to resources people need, if they are to be able to act as sovereign or autonomous citizens. Entitlements according to Sen (1981: 46) 'depend on the legal, political, economic and social characteristics of the society in question and the person's position in it'. This is another way of saying that entitlements depend both on constitutional rules and on social structure.

As pointed out, my first dimension, *democratic constitutionalism*, is synonymous with the established political-science definition of democracy. As such, it is reasonably clearcut. In the present exercise it has been taken as uncontroversial as long as it is contained in itself. It has not been accepted, however, as sufficient for a full conceptualisation of democracy and democratisation. This, I have argued, requires a second dimension to be combined with the first one.

So far our discussion indicates that any one of the following four terms may be used to denote the second dimension of actually existing democracy: namely *popular sovereignty*, *citizen sovereignty*, *popular autonomy* or *citizen autonomy*. No simple or clearcut criteria, allowing for a definite terminological choice between these four, have been found. At least provisionally, a certain indeterminacy will therefore have to be accepted.

### **Democratic Constitutionalism and Popular Sovereignty/Autonomy Conceptually Combined**

According to Held (1995: 159), 'an inquiry into the conditions of... realization' of political principles 'is an indispensable component' of their 'proper understanding'. Without such inquiry, 'the meaning of political principles remains poorly specified and endless abstract debates about them are encouraged'. Questions to be answered on the meaning of the principle of political autonomy include: 'What arrangements have to be made, what policies pursued, in order to render citizens free and equal in the determination of the conditions of their association? And how can these be decided upon?' (*ibid.*).

These are questions that need to be asked as well *about the 'principle' of democracy* and its realisation. What arrangements have to be made in order to

render citizens sovereign/autonomous in the exercise of their democratic rights? If such questions are not posed and answered, the meaning of the principle of democracy will remain poorly specified.

This is precisely what the two-dimensional conceptualisation of democracy in its context of realisation is about. The abstractions of democratic constitutionalism require popular or citizen sovereignty/autonomy for their concrete realisation. Citizens' self-determination requires constitutionalism to survive over time. Neither one of the two dimensions may be sustained on its own. Democratic legality will not be legitimate unless concretely realised. Democratic legitimacy will not be sustained unless bound by rules. Legality and legitimacy are interlocked but not identical (Rudebeck, 2001).

### **The Form of the State**

What form of state would facilitate democratic rule as now conceptualised, in for instance Africa today? Raising this question is a logical next step in our discussion, although it will only be hinted at here (cf. Olukoshi, 1998).

A democratically constitutional state where the citizens themselves decide, actually and effectively, on matters of common concern and significance would be characterised by far-reaching functional decentralisation: matters of concern to all citizens would be decided at the most general level, matters agreed to be of concern only to the individual would on the contrary be left to her or him, while the majority of issues would be autonomously worked out by large or small groups of citizens at various levels in between, in forms bound by democratically made law and adapted to the type of issue at stake and number of citizens involved as well as to the cultural context.

Under such a form of state, there would for instance be very limited space for the kind of arbitrary presidential rule so prevalent in Africa today, even under democratic constitutionalism. At the national level, parliamentary rule would generally, by opening up opportunities for public debate on national issues and informed consensus, most probably be more appropriate than presidentialism. The overriding point of such institutional arrangements would be to achieve legitimacy for the democratic form of state by democratically legal means, while securing legality through broadly based social, economic and cultural legitimacy.

### **Going Beyond the National Level**

In recent decades the issue of globalisation has begun to enter democratic theory in crucial ways (Held, 1995, i.a.). Democracy requires a people of citizens, a *demos* in the language of classical theory. But the nation-state no longer provides clear definitions – if it ever has – of the people assumed to hold rulers accountable for their acts. People are linked to various territories and often have criss-crossing identities and loyalties. Villagers living in distant areas

may be directly affected by decisions made in the metropolises of the world, by decision-makers far out of reach even for the national governments of the villagers in question.

The globalisation of decision-making affects people in all countries and all states of the world, although not equally. It is intimately linked to the issue of control over developmental resources. Democratisation, in many countries, implies in the first place equalisation of the power to control those developmental resources which can, at all, be controlled from within the given single country. This in itself is highly significant, as countries are usually full of manifold resources as well as people in need of utilising them.

Still, many resources of crucial developmental importance cannot be controlled from within particular countries, as they are in the hands of outside forces, including donors of development assistance. Even if the countries in question were to be perfectly democratised internally, their citizens would still in several ways be in the hands of decision-makers they could not control. This problem obviously affects debt-ridden, poverty-ridden, economically undeveloped and dependent countries, such as many African countries, worse than it affects better-off countries. Sustainable democratisation, thus, cannot be limited to the local/national level. Theoretically, the problem now indicated can only be fully resolved by regional and, in the end, global democratisation.

The foregoing analysis has only touched indirectly upon the issue of globalisation in relation to democratisation. One underlying assumption is, nevertheless, that democratisation within the various countries of the world might, in the long run, also facilitate the growth of democratic relations beyond the national level.

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