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Abstract

This article offers a revision of democratic theory in light of the experience of recently democratized countries, as well as some older democracies, located outside of the Northwestern quadrant of the world. First, various definitions of democracy that claim to follow Schumpeter and are usually considered to be "minimalist" or "procesualist" are critically examined. Building upon but clarifying these conceptual efforts, a realistic and restricted, but not minimalist, definition of a democratic regime is proposed. Thereafter, this article argues that democracy should not be analyzed only at the level of the political regime and that it also must be studied in relation to the state--especially the state *qua* legal system--and to certain aspects of the overall social context. The main underlying theme that runs through this essay is the concept of agency, especially as it is expressed in the legal system of existing democracies. Though the article's aim is primarily conceptual, in several comparative excursions some important differences among cases and regions are identified. In addition, at various points in the article a number of propositions are presented; they offer the article's main conclusions and also constitute an invitation toward a theoretically disciplined broadening of the analytical and comparative scope of contemporary democratic theory.

¹ I presented previous versions of this paper and received very useful comments at seminars held in April and May 1999 at the University of North Carolina, Cornell University, Berlin's Wissenschaftszentrum, the annual meeting of the American Political Science Association, Atlanta, August 1999, and in September 1999 at the Kellogg Institute. I also appreciate the excellent comments and criticisms received from Michael Brie, Jorgen Elklit, Robert Fishman, Ernesto Garzón Valdés, Jonathan Hartlyn, Osvaldo Iazzetta, Gabriela Ippolito-O'Donnell, Iván Jaksia, Oscar Landi, Hans-Joachim Lauth, Steven Levitsky, Juan Linz, Scott Mainwaring, Juan M. Abal Medina, Martha Merritt, Peter Moody, Gerardo Munck, Luis Pásara, Adam Przeworski, Héctor Schamis, Sidney Tarrow, Charles Tilly, Ashutosh Varshney, and Ruth Zimmerling. Finally I would like to dedicate this article to my daughter Julia, for the metonymy--and much love

The recent emergence of countries that are or claim to be democratic has generated important challenges to the comparative study of political regimes and to democratic theory itself. These challenges were not noticed initially. Indeed, the literature on new democracies widely shared two basic assumptions: the existence of a sufficiently clear and consistent *corpus* of democratic theory, and the possibility of using this *corpus*, with only marginal modifications, as an adequate conceptual tool for the study of the emerging democracies. These are convenient assumptions, with which one can “travel” comparatively without much previous preparation or theoretical qualms. But, unfortunately, in that these assumptions suggested that scholars had a ready-made theory with which to study new democracies, these assumptions are unjustified. The first assumption--that there is a clear and consistent *corpus* of democratic theory--is wrong. By implication, the second assumption, that existing democratic theory travels well, is impracticable. Thus, an approach to the study of new democracies that relies on the uncritically “exportation” of existing democratic theory is seriously flawed.²

The problem with the first assumption is evident in the confusion over how to define democracy. The issue is not simply that scholars attached a remarkable number of qualifiers and adjectives to the term “democracy.” More important, the problem is that the logic of attaching qualifiers to democracy implies that this term is taken to have a clear and consistent meaning, which then is partially modified by the qualifiers, something that is not the case. Indeed, though the use of qualifiers to refer to new democracies responds to a legitimate concern, such efforts have failed to recognize that the core concept, which is modified in various ways, is not clear and that democratic

²Sartori (1995) has also criticized this procedure; however, our views about how to tackle the resulting problems differ.

theory is not the firm conceptual anchor it is usually presumed to be. The problem, then, as H. L. Hart (1961: 14) puts it, is that “a definition which tells us that something is a member of a family cannot help us if we have only a vague or confused idea as to the character of the family.”

The problem with the second assumption is that practically all definitions of democracy are a distillation of the historical trajectory and the present situation of the originating countries.³ However, the trajectories and situations of other countries that nowadays may be considered democratic differ considerably from the originating ones. Thus, efforts to analyze new democracies need to recognize how democracies vary across different historical/contextual settings. More broadly, a theory of general scope should acknowledge how the development of democracy in different settings may generate specific characteristics and that it may be useful to distinguish among subtypes within the universe of relevant cases.

The import of these issues should be noted. After all, classifying a given case as “democratic” or not is not only an academic exercise. It has moral implications, as there is agreement in most of the contemporary world that, whatever it means, democracy is a normatively preferable type of rule. This classification also has practical consequences, as nowadays the international system makes the availability of significant benefits contingent upon an assessment of a country’s democratic condition. Thus, this article offers a much-needed attempt to rethink democratic theory in light of the experience of new democracies.

³I use this term as a short hand for referring to the early democratizing countries located in the Northwestern quadrant of the world, plus Australia and New Zealand.

A core argument of this article is that democracy should not be analyzed only at the level of the political regime. In addition, it must be studied in relation to the state--especially the state *qua* legal system--and to certain aspects of the overall social context. To develop this argument, I first offer a definition of democracy as a political regime, which helps to delimit this aspect of democracy from the other aspects I discuss. This definition, succinctly put, builds upon the tradition that goes from Joseph Schumpeter to Robert Dahl, while clarifying some key issues left unresolved by these authors. In a second section, I introduce the concept of agency and discuss the concept of democracy in relation to the state. This aspect has been sorely neglected in most discussions about democracy. Yet, as I show, a theory of democracy *tout court* must go beyond the level of regime and include, very centrally, various aspects of legal theory, insofar as the legal system enacts and backs fundamental aspects of both agency and democracy. In a third section, I offer some ideas about how democracy should also be considered in relationship to the overall social context.

This article is primarily aimed at clearing conceptual ground. Consequently, in relation to several important topics, the discussion might be considered a preliminary effort. This first step, however, does provide some important conceptual instruments that can serve as the basis for a theory of democracy that overcomes some key limitations of existing democratic theory. Moreover, as I show in a series of comparative exercises, these conceptual instruments also provide the basis for studying democracies in a way that does not overlook the ways in which new democracies are different from the classic democracies in the originating countries. Finally, at various points in the article a number of propositions are presented. These propositions, which summarize the article's main

conclusions, also constitute an invitation toward a theoretically disciplined broadening of the analytical and comparative scope of contemporary democratic theory.

1. On the Components of a Democratic Regime

1.i. Some Definitions of Democracy: Reinterpreting Schumpeter

An examination of some influential definitions of democracy offers a useful entry point into the analysis of democracy as a regime and in this regard there is probably no better place to start than with the work of Schumpeter (1975). After stating that “Democracy is a political method ... a certain type of institutional arrangement for arriving at political--legislative and administrative--decisions,” Schumpeter offers his famous definition of the “democratic method”: “that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote” (Schumpeter 1975: 242). This is the paradigmatic “minimalist” (or “processualist”) definition of democracy. However, it is usually forgotten that Schumpeter does not stop here. First, he clarifies that “the kind of competition for leadership which is to define democracy [entails] free competition for a free vote” (Schumpeter 1975: 217, 285). In the same breath, he introduces a caveat when, after commenting that “the electoral method is practically the only one available for communities of any size,” he adds that this does not exclude other, less than competitive “ways of securing leadership... and we cannot exclude them because if we did we should be left with a completely unrealistic ideal” (Schumpeter 1975: 271; italics in the original).

Significantly, this sentence ends with a footnote that reads “As in the economic field, *some* restrictions are implicit in the legal and moral principles of the community” (Schumpeter 1975: 271, fn. 5). The meaning of these assertions, in contrast to the definition Schumpeter offered shortly before, is rather nebulous. The reason is, I surmise, that the author realized that he is close to opening a can of worms: if the “competition for leadership” has something to do with “the legal and moral principles of the community,” then his definition or, equivalently, his description of how “the democratic method” works, turns out not to be so minimalist as an isolated reading of the famous definition might indicate.

Furthermore, Schumpeter realizes that, in order for the “free competition for a free vote” to exist, some conditions, external to the electoral process itself, must be met. As he puts it: “If, on principle at least, everyone is free to compete for political leadership by presenting himself to the electorate, this will in most cases though not in all mean a considerable amount of freedom of discussion for *all*. In particular it will normally mean a considerable amount of freedom of the press” (Schumpeter 1975: 271-72; italics in the original). In other words, for the “democratic method” to exist, some basic freedoms, presumably related to “the legal and moral principles of the community,” must be effective, and in most cases, as Schumpeter italicizes, “for all.” Finally, when this author looks back at his definition and his cognate statement that “the primary function of the electorate [is] to produce a government,” he further clarifies that “I intended to include in this phrase the function of evicting [the government]” (Schumpeter 1975: 272, 269, 273). Albeit implicitly, Schumpeter makes clear that he is not talking about a one-shot event

but about a way of selecting and evicting governments over time; his definition slips from an event or, as it is often construed, a process--elections--to an enduring regime.

We should also notice that, in the pages that follow the passages I have quoted, Schumpeter states several “Conditions for the success of the Democratic Method.” These conditions are: 1. Appropriate leadership; 2. “The effective range of policy decision should not be extended too far;” 3. The existence of “a well-trained bureaucracy of good standing and tradition, endowed with a strong sense of duty and a no less strong *esprit de corps*;” 4. Political leaders should practice a good amount of “democratic self-control” and mutual respect; 5. There should also exist “a large measure of tolerance for difference of opinion,” for which, going back to his above-mentioned footnote, our author adds that a “national character and national habits of a certain type” are apposite; and 6. “All the interests that matter are practically unanimous not only in their allegiance to the country but also to the structural principles of the existing society” (Schumpeter 1975: 289-296).

Once again, these assertions are far from clear, either in themselves or in relation to the consequences foreseen by Schumpeter by the absence of the conditions he states. First, he does not tell us if each of these conditions is sufficient for the “success of the democratic method” or if, as it seems reasonable to interpret, the joint set of these conditions is needed. Second, he omits to tell us if “lack of success” means that the “democratic method” itself would be abolished, or that it would lead to some kind of diminished democracy (Collier and Levitsky 1997). If the proper answer to this question is the first, then we would have to add to Schumpeter’s definition the vast array of dimensions I have just transcribed, at least as necessary conditions of the object being

defined. This would make his definition anything but minimalist. If, on the other hand, the proper answer is that some kind of diminished democracy would exist, then Schumpeter, against his claim that he has fully characterized the “democratic method,” has failed to offer a typology that would differentiate full and diminished kinds of democracy.

These clarifications, caveats, postulations of necessary conditions, and allusions to a regime occur in the pages that immediately follow the famous definition. There is no doubt that Schumpeter’s view of democracy is elitist: “The voters outside of parliament must respect the division of labor between themselves and the politicians they have elected ... they must understand that, once they have elected an individual, political action is his business and not theirs” (Schumpeter 1975: 296). But an elitist definition of democracy is not necessarily minimalist. Indeed, the various qualifications Schumpeter introduces imply that his definition of democracy is not as minimalist, or narrowly centered on the “method,” or process, of elections, as its author and most of his commentators took it to be.

The ambiguity inherent in Schumpeter’s definition is quite widespread and runs through many prominent contemporary definitions that are deemed to be “Schumpeterian,” that is to say minimalist and/or “processualist.”⁴ Among these definitions, Adam Przeworski’s (1991: 10) stands out for its sharpness: “Democracy is a system in which parties lose elections. There are parties: divisions of interests, values, and opinions. There is competition organized by rules. And there are periodic winners

⁴By this term some authors refer to definitions that purport to focus exclusively on the “process” of elections. Since this meaning is equivalent to “minimalism,” from now on I will use only the latter term when referring to this kind of definition.

and losers.” More recently, Przeworski and collaborators have offered a similar definition, which they label “minimalist”: Democracy is “a regime in which governmental offices are filled as a consequence of contested elections. Only if the opposition is allowed to compete, win, and assume office is a regime democratic. To the extent to which it focuses on elections, this is obviously a minimalist definition... [this], in turn, entails three features, *ex ante* uncertainty,... *ex post* irreversibility..., and [repeatability]” (Przeworski, Alvarez, Cheibub, and Limongi 1996: 50-51). Notice that, in spite of its limitation to elections, the irreversibility and, especially, the repeatability of elections in which “the opposition has some chance of winning office as a consequence of elections” imply the existence of additional conditions, a la Schumpeter, for this kind of elections to be held at all (Przeworski, Alvarez, Cheibub, and Limongi 1996: 50).⁵ At the very least, if the opposition is to have such a chance, some basic freedoms must also exist.

Samuel Huntington (1991: 7), in turn, asserts that he is “following in the Schumpeterian tradition” and defines democracy “[as a political system that exists] to the extent that its most powerful collective decision makers are selected through fair, honest, and periodic elections in which candidates freely compete for votes and in which virtually all the adult population is eligible to vote.” But he adds, as Schumpeter explicitly and Przeworski implicitly do, that democracy “also implies the existence of those civil and political freedoms to speak, publish, assemble, and organize that are necessary to political debate and the conduct of electoral campaigns.” Similarly,

⁵More recently, Przeworski (1998) has offered another characterization of democracy in a text that, in spite of its title (“Minimalist Conception of Democracy. A Defense”), moves away from the professed minimalism of the ones I transcribe here.

Giuseppe Di Palma (1990: 16) tells us that democracy is “premised ... on free and fair suffrage in a context of civil liberties, on competitive parties, on the selection of alternative candidates for office, and on the presence of political institutions that regulate and guarantee the roles of government and opposition.”⁶ For his part, even though Giovanni Sartori (1987: 24, 98, 110) centers his attention more on “a system of majority rule limited by minority rights” than on elections, he adds that an “autonomous public opinion ... [and a] polycentric structuring of the media and their competitive interplay” are necessary for democracy to exist. Finally, even though they use a different theoretical perspective, Dietrich Rueschmeyer, Evelyne Huber Stephens, and John Stephens (1992: 43) concur: democracy “entails, first, regular, free, and fair elections of representatives with universal and equal suffrage, second, responsibility of the state apparatus to the elected parliament..., and third, the freedoms of expression and association as well as the protection of individual rights against arbitrary state action.”⁷

One final definition, which I prefer to others, is offered by Robert Dahl (1989: 120), who states that polyarchy consists of the following traits: “1 *Elected officials*. Control over government decisions about policy is constitutionally vested in elected officials.” 2. “*Free and fair elections*. 3. *Elected officials* are chosen [and peacefully removed (Dahl 1989: 233)] in frequent and fairly conducted elections in which coercion

⁶ Diamond, Linz, and Lipset (1990: 6-7; italics in the original) offer a more extended but similar definition: democracy is “a system of government that meets three essential conditions: meaningful and extensive *competition* among individuals and organized groups (especially political parties) for all effective positions of governmental power, at regular intervals and excluding the use of force; a ‘highly inclusive’ level of *political participation* in the selections of leaders and policies, at least through regular and fair elections, such that no major (adult) social group is excluded; and a level of *civil and political liberties* --freedom of expression, freedom of the press, freedom to form and join organizations--sufficient to ensure the integrity of political competition and participation.”

⁷With the second attribute these authors introduce a new element, which refers to the state, not just to a regime. But this need not occupy us at this moment.

is comparatively uncommon. 4. *Right to run for office* [for] practically all adults. 5. *Freedom of expression*. 6. *Alternative information*, [including that] alternative sources of information exist and are protected by law. 7. *Associational autonomy*. To achieve their various rights, including those listed above, citizens also have a right to form relatively independent associations or organizations, including independent political parties and interest groups.” This definition stipulates some attributes of elections (clauses 1 to 4) and lists certain freedoms deemed necessary for elections to be democratic that are dubbed as “primary political rights ... integral to the democratic process” (clauses 5 to 7) (Dahl 1989: 170).⁸ In this sense, Dahl’s definition has the virtue of being usefully detailed and suggesting the term “polyarchy,” which allows us to clearly distinguish political democracy from other kinds and sites of democracies. As with the other definitions provided above, it seems misplaced to call this definition minimalist. Nonetheless, it is important to recognize how efforts to define democracy from Schumpeter through Dahl provide an important basis for thinking about democracy as a political regime.

The contribution of these definitions is the following. On the one hand, these definitions have the important advantage of being realistic as opposed to prescriptive and thus offer a basis for characterizing really existing democracies.⁹ On the other hand, these definitions offer a fruitful way of defining democracy as a political regime. Indeed,

⁸Slightly rephrasing Dahl, I shall call these freedoms of expression, freedom of (access to alternative) information, and freedom of association.

⁹Other definitions also purport to be realistic, but they do not qualify as such because they identify characteristics that cannot be assessed empirically, that is, that cannot be found in any existing democracy, or propose excessively vague traits. Among the first I include definitions that remain tied to “etymological democracy” (Sartori 1987: 21) by positing that it is the *demos*, or the people, or a majority that somehow “rule.”

notwithstanding claims to be minimalist, *à la* Schumpeter, they are actually not so and begin to identify critical elements that should be included in a definition of a democratic regime. Specifically, though these definitions do not overlap completely, they all include two essential kind of elements. First, all these definitions center on *fair elections* for most constitutionally determined top governmental positions (i.e., high courts and eventually the armed forces and central banks excluded). Relatedly, these definitions refer, although often implicitly, to a regime that endures in time. That is, the elections to which they refer to are not supposed to be one-shot events. Second, they add, in most cases explicitly though not necessarily very precisely, some *surrounding conditions*, stated as *freedoms* or guarantees that are deemed necessary and/or sufficient for the existence of that kind of elections. To be sure, the usefulness of these definitions can be increased inasmuch as they are refined and made more precise. But it is equally important to recognize their value. Thus, in what follows, I offer my own definitions of a democratic regime that builds upon and further clarifies these definitions.¹⁰

1.ii. Fair and Institutionalized Elections

Concerning the electoral component, I stipulate that in a democratic regime elections are competitive, free, egalitarian, decisive, and inclusive, and those who vote are political citizens, that is, also have the right to be elected. If elections are competitive, individuals face at least six options: vote for party A; vote for party B; do not vote; vote in blank; cast an invalid vote; and adopt some random procedure that determines which

¹⁰As far as I can tell none of the realistic definitions make clear if the surrounding conditions they proffer are necessary, and/or jointly sufficient, or simply increase the likelihood of competitive elections. Thus, I seek to correct this source of vagueness and “precise” (Collier and Levitsky 1997) the realistic definitions of political democracy proposed by others by adding some elements that they leave implicit.

of the preceding options is to be followed. Furthermore, the (at least two) competing parties must have a reasonable chance to let their views known to all (potential and actual) voters. In order to be a real choice, the election must also be free, in that citizens are not coerced when making their voting decisions and when voting. In order for the election to be egalitarian, each vote should count equally, and be counted as such without fraud, irrespective of the social position, party affiliation, or other qualifications of each one.¹¹ Finally, elections must be decisive, in several senses. One, those who turn out to be the winners attain incumbency of the respective governmental roles. Two, elected officials, based on the authority assigned to these roles, can actually make the binding decisions that a democratic legal/constitutional framework normally authorizes. Three, elected officials end their mandates in the terms and/or under the conditions stipulated by this same framework.

Competitive, free, egalitarian, and decisive elections imply, as Przeworski (1991: 10) argues, that governments may lose elections and abide by the result. This kind of election is a specific characteristic of a *democratic regime*, or *polyarchy*, or *political democracy* --three terms that I shall use as equivalent throughout the present text. In other cases elections may be held (as in communist and other authoritarian countries, or for the selection of the Pope, or even in some military juntas), but only polyarchy has the kind of

¹¹Here I am simply asserting that, at the moment of vote counting, each vote should be computed as one (or, in the case of plural voting, in the same quantity as every other vote). In saying this I am glossing over the complicated problem--which I do not have the space nor the skills to solve here--resulting from rules of vote aggregation that make that votes cast in certain districts actually weigh more, and in some cases significantly more, than in other districts. Obviously, at some point overrepresentation may become so pronounced that any semblance of voting equality is eliminated. In relation to Latin America and the severe overrepresentation of some districts in some of these countries, see Mainwaring (1999) and Samuels and Snyder (forthcoming).

election that meets all the above mentioned criteria (Sartori 1987: 30; see also Riker 1982: 5).

Notice that the attributes already specified say nothing about the composition of the electorate. There have been oligarchic democracies, those with restricted suffrage that satisfied the attributes already spelled out. But as a consequence of the historical processes of democratization in the originating countries, and of their diffusion to other countries, democracy has acquired another characteristic, inclusiveness: the right to vote and to be elected is assigned, with few exceptions, to all adult members of a given country.¹² For brevity, from now on I will call fair elections those that have the joint condition of being competitive, free, egalitarian, decisive, and inclusive.¹³

In democracy, however, elections must not only be fair, but also institutionalized. Above I noted that an assumption of these definitions of democracy, often implicit, is that they do not refer to a one-shot event but to a series of elections that continue into an indefinite future. That is, for elections to be democratic, practically all actors, political and otherwise, must take for granted that competitive elections will continue being held in the indefinite future, at legally preestablished dates (in presidential systems) or

¹²Another stipulation needs to be made, although it is a structural precondition of competitive elections rather than an attribute of them. I refer to the existence of an uncontested territorial domain that univocally defines the electorate. Since recently several authors have conveniently discussed this matter (Linz and Stepan 1996: 16-37, Offe 1991, Przeworski, Alvarez, Cheibub, and Limongi 1996, and Schmitter 1994), I shall not deal in detail with it here.

¹³Notice that, as with markets, few elections if any are fully competitive; there may be, say, important factual restrictions due to differential access to economic resources by various parties, or high barriers to the formation of parties that otherwise would have expressed salient social cleavages. This caveat, however, points to the issue of different degrees of democratization of the regime, a topic with which I cannot deal in the present text. For useful discussion of this and related matters, see Elklit and Svensson (1997).

according to legally preestablished occasions (in parliamentary systems).¹⁴ In cases where these expectations are widely held, competitive elections are institutionalized and will be “the only game in town.”¹⁵ These cases are different, then, not only from authoritarian ones but also from those where, even if a given election has been competitive, it is not widely expected that similar elections will continue to occur in the future. Indeed, only when elections are institutionalized do relevant agents rationally adjust their strategies to the expectation that competitive elections will continue to be held rather than invest in resources other than elections as means to access the highest positions of the regime.¹⁶

1.iii. Comparative Excursus (1)

Since decisiveness does not appear in the existing definitions of democracy and democratic elections,¹⁷ we need an explication. In previous work I proposed adding this attribute, arguing that its omission is symptomatic of the degree to which current theories of democracy include unexamined assumptions that should be made explicit for such

¹⁴This entails that the actors also take for granted that the surrounding freedoms I discuss below will also continue to be effective.

¹⁵As stated by Przeworski (1991: 26) and Linz and Stepan (1996: 5). Actually, these authors refer not to elections but to democracy as the “only game in town,” but the nuance implied by this difference need not be discussed at this point.

¹⁶Even if agents anticipate that elections at t1 will be competitive, if they believe that there is a significant likelihood that elections at t2 will not be competitive, by a regression well explored in prisoner’s dilemmas with fixed numbers of iterations, agents will make this kind of extra-electoral investment already at t1.

¹⁷Exceptions are the discussion of the “*ex post* irreversibility” of democratic elections in Przeworski, Alvarez, Cheibub, and Limongi (1996: 51), and in Linz’s (1998) analysis of democracy as government *pro tempore*. However, these authors refer to only some aspects of what I call the decisiveness of such elections (see O’Donnell 1996 for a more extended discussion). In a personal communication, Przeworski (June 1999) has warned me that my usage of the term “decisive” might be confused with the meaning it has acquired in the social choice literature (i.e., a procedure that generates a unique decision out of the set of available alternatives). With the present footnote I hope to dispel this possible confusion.

theories to attain adequate comparative scope. Simply put, the literature reflects the experience of the originating democracies and assumes that once elections are held and winners are declared, they take office and govern with the authority and for the periods constitutionally prescribed.¹⁸ But it is not necessarily the case everywhere. In several countries there have been candidates who, after having won elections that partake of the attributes already mentioned, were prevented from taking office, often by means of a military coup. Also, during their mandates democratically elected executives, such as Boris Yeltsin and Alberto Fujimori, unconstitutionally dismissed congress and the top members of the judiciary. Finally, explicitly in cases such as contemporary Chile (and less formally but no less effectively in other Latin American, African, and Asian countries) some organizations insulated from the electoral process, usually the armed forces, retain veto powers or “reserved domains”¹⁹ that significantly constraint the authority of elected officials. In all these cases elections are not decisive: they do not generate, or they cease to generate, some of the basic consequences they are supposed to bring about.

1.iv. A First Look at Political Freedoms

It seems obvious that for the institutionalization of competitive elections, especially as it involves expectations of indefinite endurance, such elections cannot stand alone. Some freedoms or guarantees that surround the elections and--very importantly--

¹⁸Obviously, this possibility is not ignored in country and regional studies. The fact that it has barely found echo in democratic theory says a lot, in my view, about the tenacity with which implicit assumptions that have held (and, then, not always correctly) for the originating countries go unexamined even when they patently do not hold in general.

¹⁹On Chile, see Garretón (1987, 1989) and Valenzuela (1992).

continue holding between elections, must also exist. Otherwise, the government in turn could quite easily manipulate or even cancel future elections. Let us remember that for Dahl the relevant freedoms are those of expression, association, and access to information, and that other authors posit, more or less explicitly and in detail, similar freedoms. We first notice that the combined effect of the freedoms listed by Dahl and other authors cannot fully guarantee that elections will be competitive. For example, the government might prohibit that opposition candidates travel within the country or subject them to police harassment for reasons allegedly unrelated to their candidacy. In such a case, even if the freedoms listed by Dahl held, we would hardly conclude that these elections are fair. This means that the conditions proposed by Dahl and others are not sufficient for guaranteeing fair elections. Rather, these are necessary conditions that jointly support a probabilistic judgment: if they hold, then *ceteris paribus* there is a strong likelihood that elections will be competitive.

Let us remember that the attributes of fair elections are stipulated by definition. Instead, the surrounding “political”²⁰ freedoms are inductively derived. They are the result of a reasoned empirical assessment of the impact of various freedoms on the likelihood of competitiveness of elections. This judgment is controlled by the obvious intention of finding a core set of “political” freedoms, in the sense that its listing does not slip into a useless inventory of every freedom that might have some conceivable bearing on the fairness of elections. The problem is that, since the criteria of inclusion of some freedoms and of exclusion of others is an inductive judgment, there cannot exist a theory that establishes a firm and clear line between included (necessary and, ideally, jointly

²⁰The reason I am putting this term in quotation marks will be apparent below.

sufficient) conditions, on one hand, and excluded ones, on the other. This is one reason (but we shall see, not the only one) why there is not, and it is very unlikely that there will ever be, general agreement about which these “political” freedoms should be. I surmise that the implicit hope to avoid the conundrums of undecidability is the main reason for the persistent attraction of minimalist definitions of democracy--and the reason for their no less persistent failure of these definitions to stick just to elections. The can of worms that Schumpeter tried to, but could not, avoid is still with us.

Up to here I have discussed what may be called the external boundaries of the freedoms, or guarantees, that surround, and make highly likely, competitive elections; i.e., the issue of which freedoms to include and exclude from this set. But there is another problem, which reinforces the skeptical conclusion already reached. Let me call it the issue of the internal boundaries of each of these freedoms. All of them contain a “reasonability clause” that, once again, is usually left implicit in the theory of democracy, at least as proposed by most political scientists and sociologists.²¹ The freedom to form associations does not include creating organizations with terrorist aims; freedom of expression is limited, among others, by the law of libel; freedom of information does not require that ownership of the media is not oligopolized; etc. How do we determine if these freedoms are effective or not? Surely, cases that fall close to one or the other extreme are unproblematic. But there are cases that fall in a gray area between both poles. The answer to these cases again depends on inductive judgments about the degree to which the feeble, or partial, or intermittent effectiveness of certain freedoms still

²¹In contrast, this issue has generated an enormous literature among legal theorists. I will return to some aspects of this literature and its unfortunate split from most of political science and political sociology.

supports, or not, the likelihood of competitive elections.²² Once again, there is no theoretical basis for a firm and clear answer to this issue: the external and the internal boundaries of political freedoms are theoretically undecidable.

A further difficulty is that the internal boundaries of the freedoms listed by Dahl, and of other freedoms that also are potentially relevant to competitive elections, have undergone significant changes over time. Suffice to note that certain restrictions to freedom of expression and of association that in the originating countries were considered quite acceptable not long ago, nowadays would be deemed clearly undemocratic.²³ Having this in mind, how demanding should the criteria we apply to newly emerged democracies (and to older ones outside of the Northwestern quadrant of the world) be? Should we apply the criteria presently prevalent in the originating countries, or the criteria used in their past, or, once more, make in each case reasoned inductive assessments of these freedoms in terms of the likelihood of effectuation or prevention of competitive elections? It seems to me that the latter option is the more adequate, but it sends us back squarely to the issue of the undecidability of the respective freedoms, now even further complicated by their historical variability.

²²Event though they are rather gross operationalizations of the underlying concepts, rankings of countries in terms of attributes of the kind I have been discussing, such as the ones proposed by Freedom House, are widely used. Yet, these rankings do not escape the problems of external and internal boundaries I note in the text. Furthermore, other actors use different criteria. For example, the governments of the originating countries often use very lenient criteria (basically, the holding of national elections, without looking too closely at whether they have been fair) for certifying as “democratic” other countries, especially if the latter have friendly governments. Other actors, in contrast, demand effective and widespread respect of a series of human rights, irrespective of their influence on fair elections (see, for example, the chapters by Méndez and Pinheiro in Méndez, O’Donnell, and Pinheiro 1999).

²³For instance, Holmes and Sunstein (1999: 104) note that “What freedom of speech means for contemporary American jurisprudence is not what it meant fifty or one hundred years ago.” These authors add that “rights are continually expanding and contracting.” (*ibid.*)

I conclude that there is, and there will continue to be, disagreement in academia and, indeed, in practical politics, concerning where to trace the external and the internal boundaries of the freedoms that surround, and make likely, fair and institutionalized elections. This is not a flaw in the attempts to list these freedoms. These are very important freedoms. They are also crucial factors--necessary conditions for the existence of a regime centered on competitive elections--and as such they are worth listing. It is intuitively obvious, and it can be empirically established, that the lack of some of these freedoms (say, of expression, association, or movement) eliminates the likelihood of competitive elections. On the other hand, the inductive character of these listings, and the related problem of their external and internal boundaries, show their limitations as theoretical statements, *per se* and in their intersubjective persuasiveness. As I shall further substantiate, these limitations make this matter rigorously undecidable. Consequently, instead of ignoring such limitations, or artificially trying to fix the external and internal boundaries of these freedoms, a more fruitful avenue of inquiry consists of thematizing theoretically the reasons and implications of this conundrum.²⁴ Before delving further into the matter, however, I offer a recapitulation of the main propositions developed thus far.

1.v. Some Propositions

²⁴Albeit in a different context (concepts of equality), Sen (1993: 33-34) puts it well: "If an underlying idea has an essential ambiguity, a precise formulation of that idea must try to *capture* the ambiguity rather than hide or eliminate it" (*italics in the original*).

I. A realistic and restricted definition of a democratic regime (or polyarchy, or political democracy) consists of fair and institutionalized elections, jointly with some surrounding political freedoms.

II. Even “minimalist,” “procesualist,” or “Schumpeterian” definitions, those that limit themselves to mentioning fair and institutionalized elections as the sole characteristic of democracy, presuppose the existence of some basic freedoms, or guarantees, if such elections are to exist. Consequently, these definitions are not, nor could be, minimalist or procesualist as they claim to be. These definitions, however, are restricted in the sense that they do not include a highly detailed, and ultimately inexhaustible and analytically barren, listing of potentially relevant freedoms, and do not introduce prescriptive notions into the definition of a democratic regime.

III. The surrounding freedoms of fair and institutionalized elections can only be inductively derived, both in terms of the freedoms to be included and of the internal boundaries of each. As a consequence, widespread agreement, grounded on firm and clear theoretical criteria, is impossible in this matter.²⁵

IV. In spite of their undecidability, since some surrounding freedoms can be construed as generating a high likelihood of fair elections, it is convenient to spell them out, both for reasons of definitional adequacy and because it helps clarify the disagreements that are deemed to ensue on this matter.

²⁵I state one kind of reason, epistemic, for the undecidability of this matter. There are other, concurrent reasons that I cannot discuss at this moment.

V. A realistic and restricted definition of polyarchy, or political democracy, or a democratic regime can be used to distinguish this kind of regime from other types of political rule, a task with important normative, practical, and theoretical consequences.

2. From Democratic Regime to Democratic State

2.i. Agency

The conceptualization of democracy as a type of regime, the aim of the previous section, offers a critical baseline for thinking about democracy. The effort by political scientists to define democracy have thus rightly focused on this conception of democracy. However, as I argue in this section, existing efforts to theorize democracy overlook a fundamental point: that democraticness is not only an attribute of the regime but also of the state.

The need to shift the discussion from the regime to the state is based on the following reason. In a democratic regime, citizens have the right to vote and to be elected and are thus legally defined as *agents*. That is, they are attributed the capacity to make choices that are deemed sufficiently reasonable as to have significant consequences, in terms of the aggregation of votes and of the incumbency of governing roles, and are construed as capable of effectuating these rights and their correlated obligations (such as, say, abstaining from fraud or violence when voting, or acting within legally mandated

limits in governmental roles).²⁶ Moreover, this legal attribution of agency is the result of a universalistic and institutionalized wager. On the one hand, thus, the attribution of rights and obligations is assigned by the legal system to most adults in the territory of a state, with exceptions that are themselves legally defined. That is, this assignment is *universalistic*; it is attached, in an inclusive manner, to all adults irrespective of their social condition and of adscriptive characteristics other than age and nationality.²⁷ On the other hand, these rights are not the result of some consensus but rather of an *institutionalized* wager. That is, this wager does not depend on the preferences of the carriers of the attached rights, or on the aggregation of their preferences, or on some mythical social contract or deliberative process. Rather, the wager is a legally enacted and backed institution to which everyone is expected to acquiesce within the territory delimited by a state. In other words, the legal system assigns to every individual manifold rights and obligations. Individuals do not choose these rights and obligations; at their birth (and in several senses, before) they find themselves immersed in a web of rights and

²⁶The idea of agency involves complicated philosophical, moral, and psychological issues. For the purpose of the present text, however, it suffices to assert that an agent is conceived as somebody who is endowed with practical reason; i.e., she uses her cognitive and motivational capability to make choices that are reasonable in terms of her situation and of her goals, of which, barring conclusive proof to the contrary, she is deemed to be the best judge. This capacity makes the agent a moral one, in the sense that normally she will feel, and will be construed by relevant others as, responsible for her choices and for at least the direct consequences that ensue from these choices. I have found particularly useful some works that pay explicit attention to the linkages between the moral and philosophical issues entailed by agency, on one hand, and legal and political theory, on the other, such as Raz (1986, 1994), Waldron (1993), Gewirth (1978), and Dagger (1997).

²⁷This statement merits qualification in terms of civil and welfare legislation enacted having in view various kinds of disadvantaged sectors. I discuss this matter below.

obligations, enacted and backed by the legal system of the territorially based state in which they live.²⁸

This unique feature of democracies is frequently overlooked. Indeed, because this attribution of agency has become so commonplace in the originating countries, we tend to forget what an extraordinary and recent achievement it is. On the one hand, for a long time, many social categories in the originating countries were excluded from voting, let alone being elected: peasants, blue-collar workers, domestic workers (and, in general, non property owners and poorly educated individuals), blacks in the United States, indians in the latter country as well as in many others, and, indeed, women. Indeed, only during the twentieth century, and in several countries in relation to women as late as after World War II, did political rights become inclusive.²⁹ On the other hand, at various times, in some cases before the originating countries did it, countries in the South and the East adopted, often abruptly, inclusive suffrage. But the many variations of “tutelary” or “facade” democracies that there emerged, and of course openly authoritarian regimes, meant the denial of the democratic wager.

Everywhere, the history of democracy is the history of the reluctant acceptance of this universalistic and institutionalized wager. The history of the originating countries is

²⁸There is an obvious exception to the preceding, when democracies emerge. In these cases there is a moment of choice: rights and obligations are established that, insofar as they are sanctioned by fairly elected constitution-making bodies or are ratified by fair referenda, may be construed as expressing majoritarian--and hence sufficient-- agreement for the institutionalization of the democratic wager. After this moment, consecutive generations find themselves *ab initio* embraced and constituted in and by the legally defined relationships entailed by the democratic wager.

²⁹In spite of frequent assertions to the contrary, not even in terms of universal male suffrage is the United States an exception to this. The early existence of this suffrage at the federal level was made purely nominal by the severe restrictions imposed on blacks and indians, especially in the South. Due to this, some authors date the achievement in this country of inclusive political democracy to War World II or as late as the 1960s, in the aftermath of the civil rights movement; see Hill (1994), Bensel (1990), Griffin (1996), as well as the seminal book of Key (1949).

punctuated by the catastrophic predictions, and sometimes the violent resistance, of privileged sectors opposing the extension of their political rights to other, “undeserving” or “untrustworthy” sectors.³⁰ In other latitudes, by means often even more violent and comprehensively exclusionary, this same extension has been repeatedly resisted. What were the grounds for this refusal? Typically, lack of autonomy and lack of responsibility—in other words, denial of agency. Only some individuals (whether they were highly educated and/or property owners, or a political vanguard that had deciphered the direction of history, or a military Junta that understood the demands of national security, etc.) were supposed to have the moral and cognitive capabilities for participating in political life. Only they, too, were seen as sufficiently invested (in terms of education, property, revolutionary work, or patriotic designs) so as to have adequate motivation for responsibly making, or participating in the making of, collective decisions. Of course, revolutionary vanguards, military Juntas, and the like generated authoritarian regimes, while in the originating countries the privileged generated, in most cases, oligarchical, noninclusive democratic regimes for themselves and political exclusion for the rest.

Thus, it is crucial to recognize that democracy is the only regime that is the result of this universalistic and institutionalized wager. All other regimes, whether they include elections or not, place some kind of restriction on this wager or suppress it entirely. Moreover, it is necessary to acknowledge the implications of this feature for democratic theory. In this regard, this discussion opens up an entirely new line of inquiry, concerned

³⁰On these resistances, see Goldstein (1983), Hirschman (1991), Hermet (1983), and Rosanvallon (1992). As a British politician opposing the Reform Act of 1867 put it, “Because I am a liberal ... I regard as one of the greatest dangers a proposal ... to transfer power from the hands of property and intelligence, and to place it in the hands of men whose whole life is necessarily occupied in daily struggles for existence” (Robert Lowe, cited in Hirschman 1991: 94).

with the democraticness of at least some dimensions of the state itself. But these aspects of the state are also closely connected to the democratic regime and should be considered as constituting necessary conditions for a democratic regime. Thus, to the propositions introduced at the end of the previous section, we should add the following:

VI. The individual correlate of a democratic regime is political citizenship, which consists of the legal assignment of the rights entailed by a democratic regime, i.e., the rights of participation in fair elections, including voting and being elected, and the surrounding freedoms (such as of expression, association, information, and free movement, however undecidable).

VII. Political citizenship and hence a democratic regime (or political democracy, or polyarchy) presuppose: A. a state that within its territory delimits those who are considered political citizens and are thus the carriers of the rights and obligations of political citizenship;³¹ and B. a legal system of that same state that assigns political citizenship, as defined in the preceding proposition, on an universalistic and inclusive basis.

2.ii. The Legal, Prepolitical Construction of Agency

The attribution of agency, though connected to a democratic regime, as argued above, has not always developed in tandem with democratization of the regime. In this

³¹This in turn entails the existence of an uncontested territorial domain that univocally defines the electorate; as already noted, several authors have conveniently discussed this matter (Linz and Stepan 1996, 16-37, Offe 1991, Przeworski, Alvarez, Cheibub, and Limongi 1996, and Schmitter 1994).

regard, it is important to stress that the presumption of agency became the core of the legal system in originating countries well before democratic regimes were firmly established. Indeed, the recognition of an agent carrier of subjective rights took a long and convoluted process.

This process had its forerunners in some of the sophists, Cicero, and the stoics (Villey 1968). Later on it received crucial contributions from the painstaking work on legal theory done in the medieval Church and universities and from the nominalism of William of Ockam (Berman 1993, Villey 1968), and at the end of this period was given highly influential formulation, first by the sixteenth-century Spanish scholastics and, later on, by Grotius (1583-1645), Pufendorf (1632-94) and other natural rights theorists (Van Caenegem 1992, Gordley 1991, Berman 1993). At this time, what came to be called the “will (or consensus) theory of contract,” and the view of agency it entailed, reached mature elaboration; as James Gordley (1991: 7) puts it, “The late scholastics and the natural law lawyers had recognized as fundamental the principle that contracts are entered into by the will or consent of the parties ...[In contrast to Aristotelian/Thomist’s conceptions] making a contract was regarded simply as an act of will, not as exercise of a moral virtue. The parties were bound simply to what they willed, not to obligations that followed from the essence or nature of the contract” (see also Lieberman 1998).

At this time, the argument that included a highly elaborated theory of agency grounded in subjective rights, and transposed it to the political realm, was made by Hobbes. This same view of agency permeated the worldview of the Enlightenment and, after Hobbes, in spite of their differences on other matters, was pursued and reelaborated by Locke, Rousseau, J.S.Mill, Kant, and others. In addition, and importantly for the

present discussion, this view was inserted at the core of legal theory by jurists such as Jean Domat (1625-95) and Robert Pothier (1699-1772), whose work profoundly influenced Blackstone, Bentham, and other jurists in the common law tradition, as well as the French and German codifications of the first half of the nineteenth century (Gordley 1991, Lieberman 1998).

These views of individual agency and its corollary of the will theory of contract run counter to another conception of the law, which can be traced from Aristotle to Saint Thomas Aquinas and which, indeed, in its organicistic outline nowadays is highly influential in quite a few non-Northwestern countries. For this view the law is about the just ordering of the *polis*, within which every part is to be assigned its proper, proportional, place. The maxim *suum cuique jus tribuere* expresses this architectonic conception of justice, and of the law as its instrument: there are no properly individual rights but rights and duties that are assigned, for the sake of the just ordering of the whole, to each of the categories, or status, that compose an organically conceived society (citizens, foreigners, and slaves or, in other contexts, kings, lords, burgers, commoners, and the like).

The emergence of the idea of agency and its subjective rights meant a Copernican inversion: the law does not any longer conceive its mission as properly assigning the parts of the societal whole, nor consequently aims at effecting overall social justice. Instead, as the nominalism of Ockam and later on of Hobbes implied, the law refers to the only truly existing entities, individuals. The mission of the law is to enact and protect the *potestas* of individuals, their capacity to exercise their will in spheres that are not prohibited by those same laws. The individual, construed as a carrier of the subjective

rights that support his *potestas*, is the object and the purpose of the law--in this view, if eventually a good social order results, it is (as later on, congenially with this same view, would be asserted in relation to the market) a by-product of the aggregate consequences of the effectiveness of subjective rights.

Of course, what I have mentioned is a chapter in the history of liberalism. Many authors have observed that as a political doctrine liberalism distilled the cruel lessons of the religious wars of the sixteenth and seventeenth centuries. But we should add that a good part of the work of construction of the individual that Hobbes, Locke, Kant, and others portrayed had already been done by the philosophical and especially the legal theories I have mentioned. The agent carrier of subjective rights was already drawn in these theories, almost ready to be transposed, by those great liberal authors, from the legal to the political realm.

Even though the preceding reflections may look rather distant from a theory of contemporary democracy, this is not the case. To show this, there is nothing better than invoking Max Weber and the colossal effort he undertook to explain the emergence and unique characteristics of capitalism in the Northwest. We know that Weber did not assign privileged explanatory status to any of the dimensions he used. His view is particularly relevant in the present context because, in contrast to much of contemporary political science, he paid close attention to legal factors, seeing them as acting in a countrapuntal fashion with the emergence of states, capitalism, classes, and types of political authority. Weber made the important point that the emergence of what he called formal-rational law (a repository, I hasten to add, of subjective rights) cannot be mainly attributed to demands or interests of the bourgeoisie since, as Weber points out, a modern, fully capitalist

bourgeoisie barely existed at the onset of that process (Weber 1968: 847 and *passim*). Rather, this emergence must be accounted for by the centuries' work I have sketched, the corporate interests of the legal professionals who took up this work and, especially, the interests of the main employers of these professionals: rulers engaged in state-making and consequently interested in improving their credit and tax revenues, as well as in directly subjecting to their control the population of the territories they aimed to rule. For these purposes it was crucial to eliminate organically conceived status orders (especially feudal ones and autonomous cities, as well as the broad jurisdiction that canon law claimed), and with them Aristotelian/Thomist views of the law.³² These rulers found in the universalizing character of subjective rights an effective conduit for the assertion of their sovereignty over all individuals in their territory.

The process of legal construction of individual agency was anything but linear and peaceful, and unfolded in a mutually dynamizing relationship with another process. This was the emergence and development of capitalism. As Weber and Marx as well remind us, the mutual reinforcements of state-formation, development of capitalism, and expansion of formal-rational law had, among other consequences, the abolition of serfdom³³ and the availability of "free" labor. This freedom is the subjective right to enter into contracts whereby individuals dispossessed of means of production sell their labor force. The worker of capitalist social relations is an early legal person, carrier of the

³²As Weber (1968: 852) put it, "The political interest in the unification of the legal system played a dominant role [in the adoption and expansion of rational-formal law]." See also Bendix (1964), Dyson (1980), Poggi (1978), Spruyt (1994), and Tilly (1975, 1985, 1990).

³³But only in these countries and, even among them, with the important exception of slavery in the South of the United States. Later on, in other parts of the world, state-making and the expansion of capitalism were far from having these, by and large, beneficial characteristics and consequences.

rights (few, initially) and the obligations that he, as fits an individual legally construed as an agent, has “freely” agreed with the employer. This is also true of criminal responsibilities, which ceased to be collectively attributed to the clan, the family, or the village, and were transferred, as again fitted agency, to the respective individuals.³⁴

I want to emphasize that the early construction of subjective rights, especially in the law of property and of contract for the exchange of goods and services, is the legacy of capitalism and of state-making, not of liberalism or political democracy, both of which emerged after these constructions had become, in the originating countries, widely diffused and highly elaborated legal doctrines.³⁵ The same is true of the construction of property as individual, exclusive, and marketable. Looking at this story from a convergent angle, we should remember that states and capitalism generated territorially bound markets and by so doing they further added to a dense texture of subjective rights, including a network of courts, before liberalism and democracy came to the fore.

To be sure, as many have argued, the legal construction of an agent carrier of subjective rights, as it omitted the actual conditions of their exercise and as it excluded other rights, backed and helped to reproduce extremely unequal relationships between capitalists and workers. But this construction contained potentially explosive corollaries. First, if *ego* is attributed legally enacted agency in certain spheres of life that are, for him and in the aggregate for the whole of society, extremely important, a question that naturally follows is: why should this attribution be denied in other spheres and, at any event, who should have the authority to decide it? A second corollary proved no less

³⁴This is another important theme of the Enlightenment that was transposed to legislation by the influence of Bentham, Montesquieu, Voltaire and, especially, Beccaria.

³⁵See Habermas (1996), Rosanvallon (1992), Steinfeld (1991), Tilly (1990), and Tomlins (1993).

explosive, even if until today it is much less settled than the previous one: if agency entails choice, which actual options may be considered to be reasonably consistent with *ego*'s condition as an agent?

The answer to the first question is the history of the further expansion of subjective rights, including the right of suffrage up to its present inclusiveness. This history was written by manifold conflicts at the end of which, after having accepted massive death in war for their respective countries (Levi 1997, Skocpol 1992) and exchanging revolution for the welfare state,³⁶ the *classes dangereux* finally gained political citizenship.³⁷ While this happened, other processes continued in the originating countries. One was that the map of Western Europe and North America was quite firmly drawn, as a consequence of successful, and often cruel, state-making. Another was the further expansion of rights in the civil sphere, in the double sense that already recognized rights and duties were further specified and that new ones were added.³⁸

These processes meant that, when sometime in the nineteenth century most countries of the Northwest adopted noninclusive democracy, an overwhelming part of

³⁶This generalization ignores important country variations that are not central to my present discussion. From among the vast literature on this subject see Esping-Andersen (1985, 1990), Przeworski (1985), Przeworski and Sprague (1988), Rothstein (1998), and Rueschmeyer, Huber Stephens, and Stephens (1992).

³⁷Not without, in addition, launching vigorous educational efforts for making sure that these sectors would become "truly deserving citizens." This had in the long run important democratizing effects, but for an account of the initial defensiveness of these efforts in France (which to my knowledge were not different from the other originating countries), see Rosanvallon (1992). In this respect the close attention that Condorcet, Locke, Rousseau, Adam Smith, and other towering members of the Enlightenment paid to education as a crucial medium for enabling agency in the political realm is significant.

³⁸As Marshall (1964: 18, 10-11) noted "The story of civil rights in their formative period is one of the gradual addition of new rights to a status that already existed and was held to appertain to all adult members of the community." These were "The rights necessary for individual freedom--liberty of person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and right to justice."

their male population (and, albeit to a limited extent, females, too) had been already assigned a series of subjective rights that regulated numerous parts of their lives. These were not--not yet--the participatory rights of the democratic wager. They were civil rights, rights that pertained to “private” social and economic activities. These rights have been summed-up as “civil citizenship” by T.H. Marshall (1964) and, more recently, as “bourgeois rights,” by Habermas (1996). I have discussed this matter, including my reservations about the developmental typologies proposed by these authors, in previous work (O’Donnell 1999b). Here I want to stress that, when full political inclusion became an issue, in the originating countries there already existed a rich repertoire of legally enacted and elaborated criteria concerning the attribution of agency to a vast number of individuals. Truly, the scope of these rights belonging to the “private” sphere was, for our contemporary standards, limited. But it is also true that, by this process of expanding assignment of subjective rights, the ground was prepared for the extension of concepts, legislation, jurisprudence, and ideologies originating in civil citizenship to political citizenship.

At this point in time we can only artificially separate liberalism as a political doctrine from the legal history I have sketched. Many of the rights that from its inception liberalism seeks to protect are the same subjective rights that previously had detailed elaboration and extensive legal implantation. Of course, over time liberalism expanded these rights, but every time it did so, consistently with its own premises, it defined these rights as subjective ones. It was as advocates of this kind of rights, too, that liberals demanded and obtained constitutions--whatever else they do, constitutions protect

subjective rights. These were the constitutions that first institutionalized the wager, albeit on the basis of a restricted suffrage.

These developments meant that, in the originating countries, when the inclusive wager was finally accepted, many (but by no means all) could feel that this decision was not a jump in the void. By then governments were already constrained by highly elaborated and widely extended subjective rights, some of which were enshrined as constitutional rules (Gould 2000). These were, in addition, representative systems, the practice of which tempered the fear, raised by experiences that spanned from Athens to the French revolution, of direct democracy and mob rule. Also, other liberal safeguards that have roots in the past (although their history differs from the one I tell here) had been already adopted or gained wide currency, especially the imposition of time limits on elected officers and the division of powers within the regime (Manin 1995).

These institutional arrangements converged to shape the core principle of liberalism: government must be limited, because it refers to carriers of rights enacted and backed by the very legal system that the government itself must obey and from which it derives its authority. I insist that this foundational idea of agents as carriers of subjective rights that generate an individual's *potestas* that cannot be invaded or denied except by carefully considered and legally defined reasons, had highly developed roots in some legal theories. These theories first preceded and later on interacted counterpointally with capitalism, with state-making and, even later on, before the advent of inclusive political democracy, with liberalism. As a result of this long and complex historical trajectory, contemporary democracy is based on the idea of agency as legally enacted and backed.

The resulting government, regime, and state exist with reference to and for individuals who are carriers of subjective rights.

This is, in a nutshell, the legal and institutional architecture of the democratic state. The fact that in the originating countries this architecture was basically in place when the inclusive wager was adopted, mitigated the perceived risks of this decision. As Sartori (1987: 389) has noted, “It is certainly not fortuitous that democracy came back to life as a good polity (after millennia of condemnations) in the wake of liberalism;” in the same vein, John Dunn (1992: 248) has commented that by these processes democracy was made “friendly” to the state (and, I add, to capitalism). We see, then, that the democratic wager, in addition to being inclusive and universalistic, is a tempered wager: the entrenchment of subjective rights (including the constitutionalization of many of them), the time limitation of incumbency at the top of the regime, the division of powers, and the periodicity of fair elections diminish the stakes of every election.

2.iii. Comparative Excursus (2)

I have presented in an extremely compact way some historical processes in the originating countries, leading up to their adoption of the inclusive, universalistic, and tempered wager. As Weber never tired of insisting, these were historically unique circumstances that profoundly impressed the characteristics of these countries. On the other hand, in most other democracies, new and old, in the East and in the South, these processes occurred later, in different sequences, and with far less completeness and fewer homogenizing consequences than in the originating countries. These differences, abundantly attested by the respective historical records, have also profoundly impressed

the contemporary characteristics of the latter countries, including their states and regimes. Yet the ahistorical bent and the narrow focus on the formal aspects of the regime of many existing theories of democracy hinders the study of these factors. Insofar as they may be surmised as having strong influence on the characteristics of many contemporary democracies, this omission is a serious hindrance to the proper comparative scope of democratic theory.

Pending the research that will overcome this omission, here I offer some preliminary remarks, to which I return below, in another comparative excursus. In many new democracies, even if (by definition of such democratic regimes) elections are fair and both elections and the universalistic wager are institutionalized, there is little effective legal texturing of civil rights, both across their territory and their social classes and sectors. Furthermore, in these countries many of the liberal safeguards were not in place, and in some of them continued not being in place, when the inclusive wager was adopted. The privileged, consequently, saw the extension of the wager as extremely threatening, often unleashing a dynamic of repression and exclusion, counteracted by deep popular alienation and eventually radicalization that further eroded the extension of participatory, political, and civil rights. In the past and until quite recently, this dynamic fed the emergence of various forms of authoritarian rule in Latin America and elsewhere (O'Donnell 1973, 1988).

2.iv. Political Citizenship and Its Correlates

We saw that political citizenship is a legally defined status, assigned by a state in its territory, as part and consequence of the democratic wager, to individuals construed as

carriers of subjective rights referred to a regime consisting of fair and institutionalized elections and some surrounding freedoms. This status is a mix. It is adscriptive in that (excepting naturalization) it pertains to individuals by the sheer fact of their being born in a given territory (*ius solis*) or lineage (*ius sanguinis*). It is universalistic in that within the jurisdiction delimited by a state, it is assigned in the same terms to all adults who meet the nationality criterion. It is also a formal status, as it results from legal rules that in their content, enactment, and adjudication have to satisfy criteria that are specified, in turn, by other legal rules. Finally, political citizenship is public. By this I mean, first, that it is the result of laws that must satisfy carefully spelled out requisites of publicity and, second, that the rights and obligations it assigns to every *ego* imply, and legally demand, a system of mutual recognition among all individuals, irrespective of their social position, as carriers of such rights and obligations.

These characteristics of political citizenship are homologous to--more precisely, they are part of--the "private," or civil, subjective rights that I have discussed above. It is important to recognize this. In their origin, their conception of agency, and their legal definition, the political freedoms that we noted when examining various definitions of democracy, are part and parcel of civil rights; the historically originary and the most frequent sites of exercise of freedoms such expression, religious belief, association, and movement are in the daily transactions of society, not in the political realm. This means that civil and political citizenship have a historical, legal and conceptual connection that is much more intimate than recognized by many theories of democracy, realistic or otherwise.

I shall return to the preceding remarks in the context of a further discussion of the already noted undecidability of political freedoms. Now I just want to note that these remarks have empirical implications. Some democracies may be conceived as having a central set of political rights that are surrounded, supported and strengthened by a dense web of civil rights. Other democracies, in contrast, may exhibit (by definition of a democratic regime) these political rights, but the surrounding texture of civil rights may be tiny and/or unevenly distributed among different kinds of individuals, social categories, and regions. It seems to me that the differences that may be mapped along these dimensions across cases and time have a strong bearing on what we might call the depth, or the degree of civil and legal democratization, or the overall quality of democracy in each case or period.

We should also remember that another issue raised by the presumption of agency refers to the options available to each one, both in terms of the capabilities of each individual and of her actual range of choice.³⁹ In the originating countries, the answer to this issue branched out in two directions. One focused on private rights, especially but not exclusively, in the--broadly defined--area of contract. A series of legal and jurisprudential criteria were elaborated for voiding, redressing, or preventing situations in which there exists a “manifestly disproportionate”⁴⁰ relationship among the parts, and/or where one of the parts may not be reasonably construed--because of duress, fraud, mental incapacity, etc.--as having lent autonomous consent to the contract. These tutelary

³⁹From now on, when I refer to “options” I mean the subjective capability of actually making reasonably autonomous choices, and the range of choice that the individual actually confronts. In the present text, my discussion of this complex matter is rudimentary, but I hope sufficient for the piece of legal history I want to highlight; for apposite discussion of options and their connection to agency, see Raz (1986).

⁴⁰As stated in Section 138 of the German Civil Code.

measures rest on a basic criterion of fairness, which in turn is a corollary of the idea of agency: agents are supposed to relate to each other as such agents, i.e., without suffering degrees of inequality, or for whatever reason lack of capabilities, that cancel their autonomy and/or the availability of a reasonable range of choice. Through these legal constructions, the fairness requirement of creating a minimally level playing field among agents was textured into the legal systems of the originating countries. Consequently, to the prior--prior historically and analytically--legal imprinting of universalistic conceptions of agency, there were added numerous substantive legislative and jurisprudential considerations of fairness. These additions contradicted the earlier constructions of agency in that they introduced non universalistic criteria for the assignment and adjudication of rights in various kinds of cases. On the other hand, these additions were consistent with the earlier legal constructions in that they reflected the recognition that agency should not just be assumed but had to be examined in its effectiveness. This ambivalence--part contradiction with universalistic premises, part consistency with the underlying conception of agency--has greatly contributed to giving to the legal systems of the originating countries, and others inspired by the former, their enormous complexity.

The second direction in which the issue of agency and its relationship to options branched out is better known to political scientists and sociologists. I refer to the emergence and development of welfare legislation. Here again the value of fairness owed to agency stands out, albeit focused on various social categories, not so much on individuals as in private law. Through another long and convoluted process that I need not detail here, the newly accepted participants in the wager exchanged their acceptance

of political democracy--including the tempering of the wager by the safeguards I have noted--for a share in the benefits of the welfare state. These benefits were not only material; through collective representation and other devices, these actors diminished the sharp *de facto* inequality with respect to capitalists and the state that Marx and others had pointedly denounced behind the universalism of the existing legal systems. By means of welfare legislation, and with ups and downs in terms of the respective power relationships, some basic and quite widely shared views of fairness, building on earlier conceptions of individual agency and partially transforming them, were textured into the legal system. As in private law but usually referred to collectively defined classes of agents, welfare legislation expressed the view that, if agents are to be reasonably presumed to be such agents, then society, and especially the state and its legal system, should not be indifferent to the options everyone actually faces. Preventive and remedial actions were consequently mandated, ranging from supporting basic levels of material conditions to various mechanisms of collective representation for those who otherwise would be too weak to be presumed to have truly autonomous will and adequate choices. Although they have not been an unmixed blessing, these developments, imprinted in private and public law, were democratizing changes. They further densified the legal texture that enacts and backs the very same agency that is presupposed by democracy.

We see now the root reason of the boundary problems of political rights, and of their undecidability. Agency has direct, and concurrent, implications in the civil, the social and the political spheres because it is the legally enacted aspect of a moral conception of the human being as an autonomous, reasonable, and responsible individual--an agent. This view, or presumption, cannot be validly elided--logically, morally, or

legally--from the issue of the options available to each one, both in terms of capabilities and of range of choice. In turn, insofar as democracy entails agency (something that we also saw, from a different but convergent angle, when discussing the wager), there is no way to exorcise from the theory and practice of democracy the questions referring to the effectiveness of political citizenship. The can of worms turns out to be even bigger than Schumpeter feared, but still may be amenable to intellectually disciplined treatment.

At this point it may be useful to include some propositions, for which I continue the numbering begun in the preceding sections.

VIII. A democratic regime, or political democracy, or polyarchy is the result of a universalistic and inclusive, but (in some countries) tempered, wager.

IX. In the originating countries, political citizenship found direct roots, including well-developed and broadly diffused concepts, practices, and institutions, in the long preceding process of construction of agency, conceived as a legal person and his/her subjective civil rights. This conception of agency is the legally enacted aspect of a moral view of the individual as an autonomous, reasonable, and responsible being.

X. The rules that enact political citizenship are part and parcel of a legal system that is based on this conception of agency. In turn, this conception grounds and justifies the democratic wager.

XI. Some philosophies and moral theories dispute the validity or usefulness of this conception, while others that accept it disagree as to its foundations and implications. This is interesting and important. Yet we must not forget that, in the originating countries, this conception has been deeply and profusely impressed in their legal systems and, consequently, in their social structure.

XII. It was in and by these legal systems that, partially contradicting their universalistic orientation, the issue concerning the options (i.e., actual capability and range of choice) of each agent was recognized. As a consequence, manifold partially equalizing measures were undertaken in both civil law and welfare legislation. These measures, inspired on a view of fairness due to a proper consideration of agency, generated, albeit not without trade-offs, further overall democratization.

2.v. Comparative Excursus (3)

Some interesting comparative issues are raised by the preceding discussion. When non originating countries imported, recently or in the past, the institutional paraphernalia of a democratic regime (elections, constitutions, congress, and the like), they did more than this. These countries also imported legal systems that are premised, and enact in manifold rules, universalistic conceptions of individual agency and its consequent subjective rights. However, the overall social texture of the adopting societies may not include an extensive and elaborate implantation of these rights; rather, organic, or otherwise traditional or even *mafia*-like, conceptions of justice and law may prevail (O'Donnell 1993). When this is the case, the adoption of democracy and its surrounding

freedoms generates a severe disjunction between these rights and the general texture of society, including the ways in which rights and obligations, political and otherwise, are conceived and effectuated. In other words, political citizenship may be implanted in the midst of very little, or highly skewed, civil citizenship, to say nothing of social welfare rights.

These cases may still be polyarchies or political democracies as defined above, but the workings of this regime, as well as its relationships with state and society, are likely to be significantly different from those of the originating countries.⁴¹ At least, we may surmise that the extension and, so to speak, the vigor of political citizenship rights will be strongly influenced by the overall effectiveness of the legal system, including its civil and social rights. At the present stage of our knowledge, these are no more than hypotheses that remain to be empirically explored; but we can formulate them only if we take into consideration historical and legal aspects that often remain implicit in democratic theory. There is another issue that is closely related to the preceding one, insofar as it points to another serious gap in the functioning of the legal system. This issue refers to what I have termed the deficiency in “horizontal accountability” of many of these democracies, expressed in executives that try to sidestep, if not eliminate, many of the institutional safeguards I mentioned above. Since I have discussed this matter in a recently published text (O’Donnell 1999a), I will not dwell on it here.

2.vi. “Political” Freedoms?

⁴¹For arguments in this direction, see DaMatta (1987), Fox (1994a, 1994b), Neves (1994), Schaffer (1998), and O’Donnell (1993, 1996, 1999b).

We have not yet concluded the discussion of what until now I have called, rather loosely, political freedoms. We saw that there are some freedoms--more properly defined as rights--that pertain to the effectuation of competitive elections: the right to vote and to be elected as well as, generally, participating in actions related to the holding of fair elections. These are positive rights, protected by the surrounding freedoms that I have discussed and to which we must now return. Again taking up the freedoms proposed by Dahl, we note a difference among them. One, the availability of alternative--i.e., free and pluralistic--information, is a characteristic of the social context, independent of the decisions of single individuals. Instead, the other two freedoms, of expression and association, are subjective rights. They are part of *ego's potestas*, her right to undertake, or not, the actions of expressing herself or associating. Notice that these rights have two sides: one, they are obviously valuable *per se*; second, they have an instrumental relationship with respect to the above mentioned participatory rights--we saw that the rights of expression and of association, and the like, are necessary conditions for the effectiveness of the participatory rights enacted by a democratic regime and its wager.

Once again we find a boundary problem: it is undecidable which acts of expressing or associating are "political" or not. The reason, already noted, is that the rights of expression and of association, and others relevant to democracy, are part of the civil rights I discussed above. Obviously, the social sites in which the rights of expression and association are relevant, and legally protected, are much broader than the sphere of the political regime. In this sense, albeit without apparent awareness, the realistic definitions of democracy, as well as others, perform a double operation. One, they "adopt" some of these rights, in the sense that they take them into consideration as long

as they deem them to directly refer to a democratic regime. Second, these definitions “promote” the same rights to the rank of necessary conditions of such a regime. However, because of the problem of internal boundaries I have commented upon, this adoption and promotion is unavoidably arbitrary: it is hard to imagine that, say, the rights of expression and of association would be effective in the realm of politics while they are grossly denied in other spheres of social life. Political rights shade off into a broader set of civil rights because, as I have argued, they have most of their actual practice, their historical origin, and their primary legal formulation in the latter. Expressing and associating are typical civil freedoms; they became legally enacted rights long before they were also recognized as “political” rights relevant to a democratic regime. Consequently, there is no clear and firm dividing line between the civil and the political side of these rights--arriving from a different angle, we have reencountered the boundary problems noted in Section 1.iv.

2.vii. On the State and Its Legal Dimension

There is another conclusion that I want to draw at this point. This conclusion derives from the fact that in contemporary societies most rights--civil, political, and social--are enacted and backed by a legal system, both by statute and by jurisprudence. This legal system is a part, or an aspect, of the state. Normally, the state extends its rule, most of it effectuated in the grammar of law, throughout the territory it encompasses. The implication is that, since we have seen (proposition VII, above) that for a democratic regime to exist there must also exist a territorial delimitation and at least some legally sanctioned rights, we have shifted our discussion from a regime to a state. In other works

I argue that the state should not only be conceived as a set of bureaucracies (O'Donnell 1993, 1999b). The state also includes a legal dimension, the legal system that it enacts and normally backs with its supremacy of coercion over the territory that it delimits. It is this legal system that embraces and constitutes *qua* legal persons the individuals in the territory. It follows that, insofar as it upholds the democratic wager as well as a regime consisting of competitive elections and some surrounding rights, this legal system, and the state of which it is a part, is democratic. Democraticity is an attribute of the state, not only of the regime. This state is a Democratic *Rechtsstaat*, an *Estado Democrático de Derecho*, in that it enacts and backs the legal rules referred to the existence and persistence of a democratic regime.

I noted above a difference between the right to alternative information and rights such as those of expression and association. The latter are often considered negative rights, although this criterion has been persuasively criticized by several authors (Holmes and Sunstein 1999, Raz 1986, Skinner 1984, Taylor 1993). One way or the other, there is at least one right, implied by the former, that is clearly positive. I refer to the right of fair and expeditious access to courts. This right is positive, as it involves the expectation that some state agents will undertake, if legally appropriate, actions oriented to the effectuation of the above mentioned rights as well as others (Fabre 1998). The denial of this expectation would mean that these rights are purely nominal. With this assertion we have again run into the state *qua* legal system that enacts and backs rights that, in spite of differences among authors as to which to list specifically, are widely agreed to be basic components of democracy. The point at the present stage of my discussion is that, in addition to the legal rules already discussed, we have just identified some institutions of

the state, courts prominently. This allows me to complete the picture of a legal system: it is not just an aggregation of rules but properly a system, consisting of the interlacing of networks of legal rules and of legally regulated institutions. In turn, a species of this *genus*, a democratic legal system, is one that not only, as noted above, enacts and backs the rights attached to a democratic regime; it is a system also characterized by the fact that there is no power in the state nor in the regime (nor, for that matter, in society) that is *de legibus solutus*. In a democratic Rechtsstaat or Estado Democrático de Derecho--all powers are subject to the legal authority of other powers--this legal system “closes,” in the sense that nobody is supposed to be above or beyond its rules.

We have reached, thus, another conclusion. Before I noted that there are two specific characteristics of political democracy, not shared by any other regime: fair and institutionalized elections, and an inclusive and universalistic wager. Now we have just seen that there are two other specific characteristics: one, by implication of the definition of a democratic regime, a legal system that enacts and backs the rights attached to this regime; second, the rounding of the legal system so that no person, role, or institution is *de legibus solutus*.⁴² The difference is that the first two characteristics are located at the level of the regime, while the last two are located at the level of the legal system of the state--again we see that an exclusive focus on the regime is insufficient for an adequate characterization of democracy. These conclusions may be stated as a proposition:

⁴²In all other political types, there is always somebody (a dictator, a king, a vanguard party, a military *junta*, a theocracy, etc.) who may unilaterally void or suspend whatever legal rules exist, including those that regulate their roles.

XIII. Political democracy has four unique differentiating characteristics in relation to all other political types: 1. competitive and institutionalized elections; 2. an inclusive and universalistic wager; 3. a legal system that enacts and backs--at least--the rights and freedoms included in the definition of a democratic regime; and 4. a legal system that prevents anyone from being *de legibus solutus*. The first two characteristics pertain to the regime, the last two to the state and its legal system.

Another aspect of a legal system is its effectiveness (or, according to the terminology employed by some authors, its validity), i.e., the degree to which it actually orders social relations. The effectiveness of a legal system is a function of its interlacing. At one level, which we might call vertical, of, say, a judge dealing with a criminal case, her authority would be nil if it were not joined, at several stages of the process, by the police, prosecutors, defenders, etc., as well as by, eventually, higher courts and prisons (Méndez, O'Donnell, and Pinheiro 1999, Domingo 1999). Horizontally, I noted that, in terms of relations internal to the regime and the state, a democratic legal system entails that no public officer can escape from legal controls as to the lawfulness and appropriateness of his actions, as defined by agencies that are legally enabled to exercise these controls. In both dimensions, vertical and horizontal, the legal system presupposes what Linz and Stepan (1996: 37) call an "effective state;" in my own terms, it is not just a matter of legislation but also of a vast and complex network of state institutions that operate in the direction of ensuring the effectiveness of a legal system that is itself democratic, as above defined--as we shall see, the weakness of this kind of state is one of the most puzzling, and disturbing, characteristic of many new democracies.

3. On The Overall Social Context

Now we turn to freedom of information, the availability, as we saw Dahl (1989: 221) proposes, of “alternative sources of information [that] exist and are protected by law.” Enjoying this availability is a social given, independent of the will of any single individual. This is a public good, characterized as such by being indivisible, non-excludable, and nonrival (Raz 1986, 1994). The availability of alternative (and, I add, by implication reasonably free and pluralistic) information is the collective side of the coin of the effectiveness of the subjective rights of expression and association; one could hardly imagine one existing without the other.

The freedom of information of access to alternative information and its cognates, the rights of opinion and expression, as shown by the enormous attention paid to them in legal theory and practice, span over practically all social sites, well beyond the regime. To be effective, this freedom presupposes two conditions. One is a social context that is generally pluralistic and tolerant of the diversity of values, views, life-styles, and opinions entailed by the rights of expression and association. The other condition is a legal system that effectively backs these rights and, more generally, a reasonably plural and tolerant social context. Consequently, if we agree that the availability of alternative sources of information is one of the necessary conditions of a democratic regime we have, once again, gone beyond the regime and run not only--once more--into the state and its legal system. We have also run into some general features of the overall social context.

Here, surely not surprisingly at this stage of my discussion, we find another boundary problem: it is undecidable where and on the basis of what theoretical criteria we may trace a clear and firm dividing line between aspects of the freedom of alternative information that are relevant to political democracy and those that are not. For example, in a given case, quite open discussion might be allowed about political issues, but these issues may be narrowly defined. If, say, the public discussion of gender or sexual diversity rights were censored, or if groups promoting agrarian reform were prohibited from accessing the media, we would have serious doubts about considering this freedom sufficiently satisfied. On the other hand, in the not-distant past of the originating countries, these restrictions were not considered problematic. As we saw with the boundary problems of other freedoms, this one also presents a vexing comparative question: Would it be fair, theoretically and normatively, to apply to new democracies the criteria that nowadays the originating countries apply to themselves, or should we accept more restrictive criteria such as the ones applied by the latter decades ago--or is there another alternative? I cannot deal with this question in the present text. I just want to point out that by posing this kind of question we are referring to a certain degree, or quality, of democraticness of the overall social context, not just of the regime and the state. At least, it seems to me that it is appropriate to assert that countries where the ability to express opinions and access the information media has been gained by groups such as the ones I have exemplified are in an important sense more democratic than countries where this is not the case. If this judgment makes sense, then we should realize that it mainly characterizes the overall social context, not just the regime or the state. Thus, we can now we introduce some new propositions:

XIV. In the realistic definitions of democracy, the freedoms that surround fair elections are deemed to be “political” by means of an operation of adoption and promotion of what actually are classic civil rights. Although this operation is useful for characterizing a democratic regime, it further adds to the boundary problems, and the subsequent undecidability, of these freedoms.⁴³

XV. The freedoms listed by Dahl, and in more or less detail by other authors, turn out to be of different natures. Some are positive rights of participation in various ways in competitive elections. Other rights, such as freedom of expression and association, are commonly viewed as negative ones, although their effectiveness implies at least one positive right, fair and expeditious access to courts. Finally, freedom of access to alternative information and, by implication, a basically pluralist and tolerant social context, is neither a negative nor a positive freedom, but a public good that qualifies the overall social context and is itself backed by a (democratic) legal system.

3.i. Comparative Excursus (4)

I have discussed the freedoms, or rights, that many definitions of democracy list and noticed the boundary problems that these listings share. This requires further examination, which I begin by bringing in situations that nowadays are rare in the originating countries but are frequent, if not widespread, in many new democracies. In these, by definition, fair and institutionalized elections and certain political rights exist.

⁴³Remember, however, that I have argued that this fact does not detract from the usefulness of listing these political freedoms.

However, other important rights and guarantees are not effective, including some that are part of the classic repertoire of civil rights. I refer to situations where women and various minorities are severely discriminated against even if the text of the law prohibits it; workers or peasants are denied, *de jure* or *de facto*, rights of unionizing; various rights of the poor and of minorities are regularly violated by the police and various *mafia*-kind of groups; access to courts is extremely biased; and a long etc. (Méndez, O'Donnell, and Pinheiro 1999). These people may enjoy political rights of the kind already spelled out; however, many of their civil rights are curtailed, if not unavailable. They are political citizens, but they enjoy a truncated or intermittent civil citizenship. Simply, but importantly enough to be taken into account as something more than a non theorized observation, in many democracies, new and old, of the South and the East, the individuals who suffer truncated civil citizenship are a large proportion, if not a majority, of the respective populations.

This is a very important difference in relation to the originating countries, where in most cases, as we saw, the rights entailed by civil citizenship achieved extensive and elaborate implantation before the democratic wager was adopted and later on additional civil and social welfare rights were also enacted. This difference is closely related to another. I mentioned that in the originating countries the process of state-making and of emergence of capitalism had been successfully undertaken--by and large and with exceptions that pale in importance when compared to the history of many new democracies--before the inclusive democratic wager was made. In the originating countries, successful state-making and expansion of capitalism meant that a legal system based on conceptions of individual agency actually ruled across the territory of the state.

By contrast, in many democracies in the East and the South (let alone countries that do not qualify as such democracies), few of these homogenizing processes have taken place. Rather, the geography of these countries is marked by regions, some of them huge, where the legal system enacted by the state has little effective presence. This is not only a problem in the rural areas; it is also true of many cities, where in their peripheries (and everywhere for some discriminated against sectors) there is also little effective state legality.⁴⁴ Part of the problem is that during the past twenty years, in many cases already under democratic regimes, these “brown areas” have grown, not diminished. Another way of looking at this problem is in terms of the very uneven way in which capitalism has expanded in these countries. In them there exists a complex mix of capital/labor relations; in particular, huge, and growing, informal markets are a depository, not only of deep poverty but also of pre- and protocapitalist, even servile, social relations.⁴⁵

We must also take into consideration that many of these people live under such poverty that their overwhelming concern is sheer survival; they do not have opportunities, material resources, education, time, or even energy to do much beyond

⁴⁴I speak of effective state legality because these “brown areas” (as I call them in O’Donnell 1993) are territorially based systems of rule in which *mafia*-like legal systems complexly mix with state legality. Some of these areas, where state officials rarely even dare to enter, may be, as in Brazil, as large as 70,000 square kilometers (*Veja* 1997, reporting on an area in the state of Pernambuco which, significantly, is known as the “Marijuana Polygon.”).

⁴⁵It has been estimated that in 1995, 55.7 percent of the urban working-age population in Latin America were in the informal market; furthermore, this percentage has been growing consistently: it was 40.2 in 1980, 47.0 in 1985, and 52.1 in 1990 (Thorp 1998: 221). Referring to a previous period, 1950-1980, Portes (1994: 121) notes that “contrary to its course in the advanced countries, self-employment did not decline with industrialization but remained essentially constant during this thirty-year period.” On the informal market in Latin America, see Portes and Schaufli (1993), Portes, Castells, and Benton (1989), Rakowski (1994), and Tokman (1992, 1994).

this.⁴⁶ These privations mean that these individuals are materially poor, while the previously listed ones entail that they also are legally poor. Material and legal poverty is the actual condition of large parts and, in some countries, of the majority of the population of political democracies, new and old, in the East and in the South.

An important question is whether these facts should be taken as relevant to a theory of democracy, at least for one that purports to include cases afflicted by characteristics such as the ones I have sketched. Some observers, especially in the countries that suffer this kind of problem, argue that these problems demonstrate that “democracy” is just a fake for masking huge inequalities--this is one reason for the proliferation of adjectives and qualifiers registered by David Collier and Steven Levitsky (1997). For others, like myself, who believe that in spite of its limitations a democratic regime is a very valuable achievement, these views are worrisome. It is even more worrisome if we consider that in many countries democratically elected governments have been unable to ameliorate, and in some cases have worsened this--it has to be admitted--morally repugnant situation. On the other hand, the answer of other observers about the relevance of this situation is a curt “no:” they may regret it, but a theory of democracy is about a regime, and the regime is about behaviors and institutions that, unless grievous loss of parsimony is incurred, the analysis should isolate from legal, social and economic conditions--these conditions are better left to the respective professions, and to moralists and ideologues of various guises.

⁴⁶By the early 1990s, 46 percent of the Latin American population lived in poverty (a total of 195 million), and approximately half of these were indigents, defined as lacking means for minimally necessary food intake; by 1990 the number of poor in Latin America in relation to 1970 had increased by 76 million. Data from O'Donnell (1998); for further detail see Altimir (1998).

However, the intimate connection I have drawn between civil, social and political rights, and their common grounding on conceptions of agency and the fair treatment due to it, suggests that this position is untenable. I believe that from this perspective there are two issues that should be confronted head on. One, simply but tragically, is the millions of individuals who have their physical and intellectual development cruelly “stunted” (this is the graphic term used in the relevant literature) by malnutrition and diseases typical of extreme poverty.⁴⁷ The other issue is life under constant fear of violence, about which Judith Shklar (1989) has so eloquently written and which in these countries plagues the lives of many, especially those who inhabit brown areas and/or belong to groups that are discriminated against. Apart from truly exceptional individuals, both problems, destitution and constant fear, prevent basic aspects of agency, including the availability of a range of options minimally consistent with the latter; this “life of coerced choices” is intrinsically opposed to agency (Raz 1986: 123).

These issues are ignored by most theories of democracy. Yet, insofar as democracy entails agency and agency is meaningless without minimally reasonable capabilities and options, I can hardly see how these problems can be ignored; we saw that there are no logical, legal, or historical grounds for eliding political from civil and social agency. That, by and large, widespread and extreme poverty and constant fear are not problems that seriously affect the originating countries is not a good reason for overlooking them in new democracies. For these cases one crucial question to be

⁴⁷See the excellent discussion and data in Dasgupta (1993), who concludes that extreme poverty even affects the sheer capacity to work: “It is often said that even when a person owns no physical assets she owns one asset that is inalienable, namely *labour power*. [I have] revealed the important truth that this is false... Conversion of potential into actual labor power can be realized if the person finds the means for making the conversion, not otherwise. Nutrition and health-care are the necessary means to this” (italics in the original). On this matter, see also the influential works of Sen (1992, 1993). For data and discussion about Latin America, see Borón (1995).

researched--arguably the most important one raised from the perspective I have adopted-- is to what extent and under what conditions, poor sectors and disadvantaged groups may use the available political rights as a platform of protection and empowerment for struggles toward the extension of their civil and social rights.

4. Some Concluding Thoughts

I have dealt with various aspects contained or entailed in definitions of a democratic regime (or polyarchy or political democracy) especially realistic ones with which in general I agree although I have found necessary to “precise” them. In proposing a realistic and restricted definition of a democratic regime, I pursued the logical and some of the empirical implications of its attributes and components, and noted aspects that spill over, with undecidable boundaries, into broader issues. These issues I attached, first, to the regime, later to the state (especially the legal system that is part of it), and finally to some characteristics of the overall social context. Through these explorations we discovered a common underlying theme, agency.

In the present text these connections are just pointers to topics to be pursued in future texts. However, starting from the relatively firm terrain that I hope we have achieved by means of a realistic and restricted definition of a democratic regime, these pointers indicate paths through which a disciplined theory of democracy may be expanded. This expansion seems to me necessary, both for the sake of democratic theory *tout court* and because it would help guide the huge research agenda that the comparative study of democracy has pending. Moreover, as stressed repeatedly in this article, all the dimensions of democracy irresistibly spill over every aspect on which agency is at stake.

This may bother a geometric mind. I believe, however, that this is what gives democracy its peculiar dynamic and historical openness. The undecidability of political rights, the always possible extension or retraction of political, civil and social welfare rights, and--at bottom, encompassing them all--the issue of the options that enable agency are the very field on which, under democracy, political competition has been and forever will continue being played.⁴⁸

I close these reflections, thus, with a final set of propositions which I offer, once more, as an invitation toward a theoretically disciplined broadening of the analytical and comparative scope of contemporary democratic theory.

XVI. In agreement with common parlance, the existence of a democratic regime suffices to (metonymically) qualify a given country as “democratic,” even though it may exhibit serious deficiencies as to the effectiveness of civil and social rights.

XVII. The existence of such a regime implies a state that bounds territorially those who are political citizens, i.e., the carriers of the rights and obligations instituted by the

⁴⁸Though I have attempted to be comprehensive in my discussion, I am only able to leave a pointer on the matter of what options actually enable agency. As we saw concerning other topics and for equivalent reasons, the issue is undecidable. Where and on the basis of what criteria do we draw a line above which agency may be construed as enabled? We can--again, inductively--determine conditions of such deprivation that there can be little doubt concerning the denial of agency. Yet this determination is purely negative: establishing dimensions that, alone or concurrently, deny agency does not tell us at what point, or line, the options for agency may be deemed to be positively satisfied. Furthermore, and same as we saw with various kinds of rights and freedoms, the relevant criteria have greatly changed in the history of the originating countries (among which, in addition, nowadays there are important variations in this matter). It is an even harder question to establish criteria to be reasonably applied in countries that command far less resources than the former ones.

regime. It also implies a legal system that, whatever its deficiencies in other respects, guarantees the universalistic and inclusive effectiveness of the positive rights of voting and being elected, as well as of some basic “political” rights included in the definition of a democratic regime.

XVIII. However, the undecidability of these rights means that, even at the level of the regime, excepting cases clearly located at the opposite poles of high effectiveness and of negation of these rights, disputes are deemed to arise as to the democratic or nondemocratic character of the regime.

XIX. Still at the level of the regime, a high degree of effectiveness of these political rights, together with various measures enhancing the participation of citizens as well as the transparency and accountability of governments, may justify assessments as to the various degrees or types of political democratization of the countries that include such regimes.

XX. Beyond the regime, various characteristics of the state (especially its legal system) and of the overall social context, justify assessments as to the various degrees of civil and social democratization of each country.

XXI. The conception of human beings as agents insolubly links the preceding spheres and logically grounds their pertinence to democratic theory, particularly insofar as this

conception is textured by the legal system into manifold social sites, including the regime.

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