

**“THIS IS WHAT DEMOCRACY LOOKS LIKE!”**

**DEMOCRACY IN ACTION: COMMUNICATIVE ACTION**

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## **DEDICATION**

To all those who have or who will take up the struggle to establish democratic governance, especially those whose involvement has and/or will cost them dearly.

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## GLOSSARY OF TERMS

*Allmende* – an ancient Teutonic practice of public lands held in common, as undivided land surrounding a settlement, and typically including meadow, pasture and forest, as well as either swamp, lake, river or mountains.

*Archon* – The highest public official in Classical Athens, whose duties shifted over time. Originally *archons* held an executive function. The term “anarchy” (no-*archon*) comes from those who sought to eliminate the role of the *archon* entirely in favour of greater democratic functioning.

*Areopagus (Council of Areopagus)* - Athenian governing body before democracy, in which, since the time of Solon, all those who had served as *archon* would be members. Subsequently replaced by the more democratic body of the *boule*, drawn by lot.

*Boule* – Council of Five Hundred in Athens; prepared issues for discussion by the assembly. Handled some state functions between assemblies. It’s members were selected by sortition. The *boule* met some 275 days each year.

*Bundestag* – The national assembly of the Rhaetian Freestate.

Communicative action – When unrestrained discussion occurs that does not limit itself to merely implementing decisions based on existing norms, but includes the discussion of what norms will be followed.

*Demes* – the most local level of governance in Classical Attica; there were 139 such *demes* in Athens.

*Dikasteria* – Jury courts; assumed to have come into existence in Athens shortly after 600 BC.

Euthynai (or euthunai) – A trial at the end of the term of a public official aimed at ensuring accountability of that official’s actions while in office.

*Fahnlilupf* – Institutionalized insurrection in the democratic Rhaetian Freestate. Literally it is a “banner-raising.” A mass direct action aimed at further democratizing the Rhaetian Freestate’s governance. It served as a spontaneous *de facto* national assembly to draft new legislation aimed at ending corruption.

*Graphe* – Public prosecution in Athens that could be brought against any citizen for inappropriate conduct as a citizen in the fulfillment of citizen duties. There were more than fifty types of *graphe*. *Graphe paranomon* referred to making an “illegal proposals” to the assembly.

*Isegoria* – right of Athenian citizens to address the assembly.

*Isonomia* – equal right of Athenian citizens to exercise political rights.

*Landgemeinde* - open-air legislative and judiciary assemblies in early Swiss and Germanic societies which were employed to administer the *Allmende* or commons.

Normative action – the implementation of social action derived from discussion based on pre-existing norms.

Ostracism – banishment from the community by the Athenian assembly for allegedly concentrating too much personal power in one's hands. Even Aristotle considered it necessary to guarantee a democratic form of governance and diminish the possibilities of demagogues and tyrants.

*Per diem* – Daily compensation paid to citizens in Athens for performing citizen duties (jury duty; attending assembly; being a member of the *Boule*, etc.).

*Prytany* – a division of the year (one-tenth) in Athens under which responsibilities and functions of the assemblies were structured and varied. Each *prytany* was the organizational responsibility for one of the “ten tribes” established by Cleistenes.

Sortition – drawing of lots. An ancient democratic practice. Highly developed in Classical Greece through multiple draws to determine who held what office.

Strafgericht – A penal courts with around fifty judges fro throughout the nation, established by a *fahnlilupf*.

*Thetes* – initially the largest and poorest group of citizens in Classical Athens; the last of the four groups to be fully incorporated and extended all the rights of citizenship.

*Trireme* – a privately owned vessel of which the bulk of the Athenian Navy consisted.

## **PART ONE: INTRODUCTION**

# CHAPTER 1

## INTRODUCTION AND METHODOLOGY

### A. INTRODUCTION

This dissertation addresses the challenges and possibilities of establishing democratic governance in today's world. It presents the foundational status of democracy as an ontological category and explores the necessary conditions for its realization. For the first time there is the possibility of vast numbers of independent efforts resulting in the establishment of democratic governance around the globe. While this is proclaimed by a multitude of voices and interests, not all understand the issue in the same light. The forces opposing democracy are today as powerful as any time in the past.

This work is written from the perspective of a participant observer engaged in and reflecting upon recent struggles for democratic governance. Struggles to preserve and expand forms of democratic governance in the last five years of the twentieth century required a clarification of what constitutes democracy. When I encountered members of civil society in the first few years of the twenty-first century, militantly chanting "This is what democracy looks like!" in the streets of Seattle, Ottawa, Vancouver and Quebec City, then again at a public meeting called by the regional government of Greater Vancouver, for me it brought to the fore the contradiction among different meanings of the term "democracy." Long before the non-violent direct action in the streets of Seattle, I embarked on this journey to explore what exactly makes a democracy a democracy and not some other form of governance. I began with a working assumption that democracy

could be placed along a graduated continuum; but I have since concluded that while there definitely exists a continuum of greater or lesser degrees of democracy, at the same time there is much that masquerades as democracy that has little or nothing to do with it. Some specific elements can be identified which are integral to democratic practice and the establishment of a democratic society.

As a dissertation written from the perspective of a democratic activist, this work attempts to understand how modern industrial societies ever came to be considered “democratic” and what are the critical elements for establishing democratic relations today. To achieve this I first seek to offer examples of democratic societies from the past. First, in Part Two I examine the most widely cited, best documented and one of the most evolved democratic societies: Classical Athens. Next, I seek to trace back in time, as best possible, the foundations and specific practices identified as elements of a democratic society. Thirdly, Part Two identifies and examines the longest surviving example of democratic governance at a national level, beyond the level of a city-state of a couple hundred thousand citizens. In these examples I seek to highlight democratic practices, institutions and elements that seem central to democracy.

Part Three examines democratic theory, or more precisely, two critical aspects of democratic theory. For one, it identifies the earliest surviving democratic theorist. How can we discuss democracy, if we cannot even identify who among the theorists known to us was the earliest democrat? Why is he not a figure more widely known to us? Secondly, Part Three seeks to explain how it was that contemporary societies have come



to be known as “democratic” societies? In addressing this question, I seek the explanations offered by the best of the classical political theorists from the self-described period of the Enlightenment, who advance either of the two major contending definitions of democracy, direct or “representative.” The former is anchored in historical examples; the latter is grounded in theory. So that theory needs to be scrutinized at its points of greatest differentiation.

Part Four addresses concerns and efforts to establish democratic governance today. It begins by laying out the nature of the current phase of capitalism, neoliberalism, and its impact on struggles to create a democratic society today. It identifies communicative action as a central element of democracy, a critical element that arises from democratic experience and in turn sparks a drive to create democratic relations evermore widely. It then presents a series of contemporary examples of communicative action arising from first-hand experience. Finally it presents Habermas’s understanding of the democratic nature of communicative action at any level, claiming the eventual inevitability of democratic relations.

Either of the two central questions posed in Part Three would potentially be a contribution to democratic theory on its own, although it would no longer be a dissertation in communication. Who is the earliest known democratic theorist? How did our current form of government come to be known as “democratic”? But this dissertation seeks to address much more than that. It identifies reoccurring democratic mechanisms, institutions and practices and describes the evolution of democratic relations. It outlines

experiences from establishing federated nations. It reveals the workings of the major entrenched master narrative of patriarchy and posits a post-patriarchal society as the only democratic option possible. Further, it seeks to provide a theoretical framework within which to understand efforts to build democracy today. Most centrally it identifies a form of social action, communicative action, as an experience that sparks democracy-building, offering examples of contemporary expressions of communicative action. Finally, it looks at the feasibility of building democratic relations in the future.

Such a project is both ambitious yet specific in its areas of study. The breadth of the study is considerable, at times overwhelming. I have tried to be as exhaustive and thorough as possible in the areas examined. As such, I hope it is understood that I necessarily was obliged to focus on some aspects of history to the exclusion of others. I could only be rigorous in my research by limiting my object of research. This I did. I therefore did not address: the rise and fall of the Roman Empire/ Republic, the rise and fall of feudalism or the emergence of capitalism. Likewise I did not explore the unsuccessful attempts at introducing democratic elements to the United States nor the complex history of both the concept and existence of republics. This dissertation discusses “political democracy,” it does not deal with “economic democracy,” a theme that deserves a work of its own.

This work understands democracy to be fundamentally a discursive practice. Democracy requires a set of very specific conditions to ensure that discursively determined actions reflect, minimally, a majority of those within a given polity who are

able and have chosen to participate or, optimally, a consensual agreement among all those participants. Publicly debated and publicly determined decisions of the state constitute the critical elements that form the core of democratic governance. This is clearly true for both legislative and judicial functions and arguably for executive functions as well. The terms and conditions that were necessary for such a discursive practice to develop and flourish in the past are explored in this work, suggesting some elements that may be worth reviewing, if not endorsing, when considering democratic governance in future societies. If certain elements were common to past experiences of democracy, yet not even considered for democratic governance today, then what other mechanisms are to be introduced to fulfill the same functions these discarded mechanisms fulfilled in the past?

As the mechanisms of democratic governance were the same in societies that evolved within a context of slave relations, feudalism or capitalism, this work will not be concerned with the numerous debates that have raged over the mode of production within which different democratic societies have evolved. That the very same democratic mechanisms and practices have consistently emerged over the millennia, no matter the mode of production, suggests that this factor, for purposes of this dissertation, is not of great significance. I therefore did not privilege the exploration of the different socio-economic conditions since I do not identify nor advocate any democratic mechanism that historically could only emerge or exist within one specific mode of production.

The central focus of this work is a contention over two millennia old regarding the meaning of the term "democracy." The first approach will be to review essential attributes of a set of democratic societies as they existed historically. From this review will be drawn the terms and conditions that seem most integral to democratic practice in that historical context. The usage and understanding of the term over recent centuries will be explored to reveal how it came to assume a different meaning and practice.

To address the severe disjuncture between two widely different forms of governance, both claiming to be "democratic," the term of "direct" or "participatory democracy" is typically employed to identify the early democratic forms that revolved around mass assemblies, while "representative democracy" is applied to contemporary societies, which claim to be democratic because they have elected governments under one regime or another.

It is most curious that we do not have a clear body of democratic theory. What happened over the centuries with respect to the evolution of democratic theory? Has there been no democratic theory until recently? Only when these questions are answered does it make sense to attempt to discuss efforts to establish democracy in today's world from the perspective of either theory or practice.

This work focuses on the possibility of democratic governance, together with the conditions necessary for its existence. It explores historical forms of governance, identifies the earliest surviving democratic theory and constructs a theoretical framework

within which to view the possibility of building a democratic society today. The communicative aspects of such a perspective make this a dissertation in communication, not political science, sociology nor archeology, although it draws, at times heavily, upon those and other disciplines.

This work investigates the presupposition that democratic theory rose out of democratic practice and that democratic practice arose from a drive by common people to be ever more active in their own governance. Thus democratic practice will be reviewed before democratic theory. Democratic theory will be assessed in terms of how faithfully it reflects past democratic practice.

This dissertation explores what democracy actually is. It also addresses why some earlier democratic societies were not gender inclusive and why that is important. As well as describing early, sophisticated democratic practices, Part Two also examines examples in recent centuries that extended democracy over entire nations.

Part Three reviews two aspects of democratic theory. On the one hand, it identifies the earliest surviving expressions of democratic theory. On the other, it explores how the term "democracy" came to be so polysemic and how contemporary electoral societies came to usurp the mantle of "democratic" for themselves. Part Four looks at contemporary conditions and elements for the building of democratic governance in the twenty-first century and recent efforts to reclaim democracy. It offers contemporary examples of communicative action and examines the likelihood of

eventually establishing democratic societies. As well, it determines the limitations to the democratic theory offered by Habermas. Overall the work seeks to paint with very broad and bold strokes, an historical vision of democratic societies, with an eye to empowering contemporary efforts to establish such democratic relations in today's world. In doing so, at times, the work occasionally refuses to accept the dominant frameworks imposed by differing disciplines in order to examine the issue with a fresh vision.

## **B. METHODOLOGY**

The over-arching method employed for arguments presented in this work is an historical approach. This is the dominant method employed in both Parts Two and Three, i.e., chapters 3 through 8, with chapter 4 relying on a range of other approaches as well. The last part, Part Four, is based predominantly on participant-observation. The historical accounts of events in Classical Greece have been complemented by numerous other forms of research, which are also widely used in Chapter 4: excavations, etymology, and studies of mythology among them.

The archeological evidence is from excavations of both settlements and graves. Some of these excavations have produced artifacts with inscriptions that have been deciphered. While civilizations since the time of recorded history in Sumer are documented through their writings, those earlier yet need to be explored in a different manner. For all of Europe, except those parts documented by ancient Greeks, our earliest

literary information comes from ancient Roman accounts of their early relations with other Europeans. That is only two and a half millennia ago at most. To extend our understanding of civilization before that time, at least for Europe, requires the use of other methods to explore the pre-literary societies, as will be discussed below.

## **1. HISTORICAL ACCOUNTS**

Numerous historians have been cited to substantiate various claims or hypotheses. In most cases, these were the most authoritative accounts available, either in their respective field or at least among the literature that addressed the specific point under discussion. Thus, for example, for Classical Greece, the dissertation cites Moses I. Finley of Cambridge University, being one of the most widely acknowledged scholars in English on democratic theory in Hellenic Athens in recent decades. His writings were supplemented by many, including Josiah Ober, Jennifer Roberts and Arlene W. Saxonhouse. Historical accounts such as those from Aristotle, Thucydides or Plutarch are only cited if their claims have not been successfully questioned and placed in doubt by subsequent evidence. This includes the uncertainty over whether the *Athenian Constitution*, widely attributed to Aristotle, was in fact his work.

## **2. ARCHAEOLOGICAL EVIDENCE**

The most authoritative archaeologists and English-speaking authors on Mesopotamia in the 20th century include M.E.L. Mallowan, whose excavations date back

to the 1920s but who wrote until the 1960s; Thorkild Jacobsen, who excavated and translated during the 1940s; and Samuel Noah Kramer. Kramer was a ground-breaking archaeologist, whose excavations in Mesopotamia and writings regarding that region began in the 1930s and continued over the next five decades. He contributed fundamentally to contemporary understanding of Sumerian civilization. Both Jacobsen and Kramer provided numerous translations for over half a century, including those fragments of epic poems that inform us of the popular Sumerian assemblies.

James Mellaart, the archaeologist who led the excavations of the Catal Huyuk and the Hacilar ruins in Anatolia, is widely cited on his findings regarding these early sites. Archaeologist Giovanni Pettinato was part of a team of Italian researchers who in 1975 discovered a library of 15,000 clay tablets in the city of Ebla on the Syrian plains (Pettinato, 1991, 6, 39). He subsequently returned to explore these ruins further. To date, the most authoritative accounts of Ebla in English are both his works (1981, 1991).

### **3. EVIDENCE OF PREHISTORIC CIVILIZATIONS**

In attempting to reach back to envision human practices beyond the historical past, we are forced to grapple with epistemological questions and a range of research methods beyond archeology, whose conclusions limit our degree of uncertainty of what actually existed. During that portion of our past where writing has existed and practices have been documented, we often have access to some form of records or written descriptions of such activities. In earlier societies, these include seals for goods,



engravings on offerings, records of debts or economic transactions and even fragments of codified law, as in Sumer. Further into the literate period, such as in democratic Athens, there are records of laws, results of court decisions and, of course, literature.

In pre-literate society, however, we are required to rely on other sources of information and different means of analyzing that information. Fortunately, there are alternate ways of knowing besides documented accounts of events. These other forms of research have also been employed to corroborate and clarify the findings of literary accounts. Entire disciplines have evolved dedicated to precisely such other forms of analysis. For pre-literate societies, these methods are our most important sources of information. These approaches are widely used in the second half of Chapter 4, which attempts to trace the origins of democracy back through Old Europe. Inevitably the certainty of claims arising from such information cannot be of the same nature as documented and verified information of more recent periods. But such information does at least open intriguing possibilities that are potentially highly relevant to contemporary and future struggles to establish democracy.

In the forefront among scholars investigating these Old European cultures was the late archaeologist of European prehistory, Marija Gimbutas. By 1982, Gimbutas noted, barely fifty sites had been extensively excavated of more than one thousand known significant archeological sites in Europe that date between 7000 - 5500 BC (1982, 22). A number of these fifty were excavated by Gimbutas herself, including some of the oldest ones in Greece and the Balkans, such as: Sitagroi in northwest Greece, 5500-2500 BC;

Obre I in Starcevo, Bosnia, 6000-5100 BC; and Obre II in Butmir, Bosnia, 5000-4500 BC; Anza in Greek Macedonia, 6300-5900 BC; Achilleion near Thessaly, Greece, 6500-5500 BC; as well as the Scaloria cave sanctuary near Manfredonia in southeast Italy, 5600-5300 BC (Gimbutas 1991, 418-27; Marler 1997, 15).

Having been raised in Lithuania, Gimbutas recognized complementary cultural dimensions among other Slavic cultures, such as the mythological narratives or etymological connections that link words from either Indo-European or pre-Indo-European languages. She did the first scholarly study to isolate the distinct elements of both Old European and Indo-European origins within Baltic mythology (Marler, 212).

The scope of the discussion of this period in this dissertation is limited to tracing the origins and evolution of the idea and practice of democracy. Old Europe was privileged because it extends back further than any other seemingly egalitarian society. But this is not to deny the existence of societies in other parts of the world, which also developed democratic practices, even more democratic, as was seemingly the case in some parts of the Americas before European colonization and early in the Indus Valley. The latter is not known to have extended further back than five millennia. The extent of the former is simply unknown.

#### 4. PARTICIPANT OBSERVATION

Participant-observation was the dominant form of research for Chiapas (1996), Spain (1997), Seattle (1999), Vancouver (1997-9), Quebec City (2001) and Ottawa (2001). This was supplemented and reinforced by written and audio-visual documentation of the same or similar events I experienced; however, the information presented in the thesis derives from personal accounts, with the following exceptions.

At the First *Encuentro* in Chiapas, my firsthand experience was limited to events at Oventic; however, through discussion with others I also could determine the degree to which events I experienced were generalized at the other four *Aguas Calientes* that hosted parts of the historic event. In Spain for the Second *Encuentro*, I had firsthand discursive experience for the gathering only in Barcelona, at the cultural group discussing mass mediated communication and the movement. Knowledge of the activities of other groups at the Second *Encuentro* is limited primarily to discussion with other participants in the three other groups discussing other topics who were also situated in Barcelona.

This dissertation in all consists of four parts. These are: I. the introduction, including a theoretical framework; II. previous democratic experience; III. democratic theory; and IV. a review of possibilities for democratic governance today.

## **CHAPTER 2**

### **THE PUBLIC SPHERE OF CIVIL SOCIETY**

This chapter will provide a theoretical framework for understanding the context necessary for democratic governance in today's world. This framework involves the public sphere of civil society. Given the centrality of these concepts, both "public sphere" and "civil society" will be explored in detail in this chapter.

#### **A. THE PUBLIC SPHERE**

As will become clear after the review of early democratic forms in Part Two, to attempt to replace forms of direct democracy with ones of a representative nature and to maintain that the result is still a "democracy" is a complex maneuver. Prior to capitalist societies appropriation of the term "democracy," the essence of democratic practices had been the direct participation of citizens gathered together in one place, exchanging opinions, and through dialogue seeking and ultimately resolving a common course of action. The process was necessarily sensitive to different concerns and required being handled in a manner that contributed to community-building. In order for advocates of representative democracy to maintain with some degree of meaningfulness that the form of government they promoted was democratic, they needed to present, among other things, a model that would seemingly fulfill the basic communicative functions that under participatory democracy had been provided by an assembly of all citizens. In today's

understanding of representative democracy, the communicative functions that extend beyond the "representatives" has for the most part been assigned, albeit implicitly, to the mass media.

The various models of representative government that have been advanced over the centuries include a range of options, from parliamentary to congressional models, with single or bicameral bodies and specifying varying relationships among the different branches of government. The differences among these models is not of great concern for the purposes of this dissertation. Rather the concern is with what all of them share or claim to share, juxtaposed against direct democracy: that all employ forms of governance that are supposedly "representative" and that all call themselves "democratic," typically employing some form of electoral process and having some minimal liberal democratic norms specified in their constitution and/or legislation.

All of the models of representative democracy share a single unifying assumption, yet if the advocates of any of these models had ever mentioned this, it was only partially, in passing and without naming it. All of these models presupposed the constitution of a discursive realm that Jurgen Habermas identified as the **public sphere**, complete with forms of mass media that would connect the communicative elements involved in the process of forming "public opinion." Discussion that occurs in numerous dispersed pockets could be linked through its publication and circulation to attempt to approximate the interchange that resulted from the direct debate that occurred historically in the Greek assemblies.

As John Stuart Mill presents it:

The newspapers...tell every person what all other persons are feeling, and in what manner they are ready to act: it is by these that the people learn, it may truly be said, their own wishes, and through these that they declare them. The newspapers and the railroads are solving the problem of bringing the democracy of England to vote, like that of Athens, simultaneously in one *agora*. (J.S. Mill 1962, 226)

Alexis de Tocqueville says that although newspapers produce "evil," it is "less than that which they cure" since "if there were no newspapers there would be no common activity" (II [1840] 1980, 111). But do they actually solve the problem of geographic dispersion, as Mill wrote, yet retain a form of democratic governance? Do they even cause more good than evil as de Toqueville believed they did in his day?

The notion of the centrality of the concept of the public sphere in bourgeois democratic political theory was introduced by Jurgen Habermas. Habermas's 1959 dissertation, *The Structural Transformation of the Public Sphere*,<sup>1</sup> has been a pivotal work in political democratic theory in Europe since it was published in German two years later, although it was not until thirty years after it was defended that it first appeared in English (1989). The public sphere is the central concept that enables representative governance to claim to be democratic. In *The Structural Transformation*, Habermas traces the emergence of, the constraints against and finally the colonization of whatever may exist as a bourgeois public sphere. Some readers responded by calling for its reconstitution. Habermas explains "By the public sphere we mean first of all a realm of

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<sup>1</sup> Henceforth referred to only as *The Structural Transformation*.

our social life in which something approaching public opinion can be formed" (1979, 199). This public sphere consists of two vital elements: 1) public spaces within which discussion arises regarding elements of governance and 2) forms of media capable both of communicating that discussion beyond the immediate confines of the geographical locations in which it occurred and of publishing further contributions to the discussion. From this discussion public opinion takes shape. Habermas's work maps out how this process unfolded historically.

The first forms of media employed for this purpose were newspapers or journals. With the emergence of mercantile capitalism and the increased flow of commodities came also the flow of news (Habermas 1989, 15-6). The forerunners of today's daily newspapers were published in Europe as early as the middle of the seventeenth century, although the first periodical news-sheets in history seem to have been in eighth century China (Keane 1991, 8). With the publishing of the earliest news-sheets in Europe, we find the news that accompanied trade already becoming commodified (Habermas, 1989, 21-2). Thus the media had from the beginning a dual quality. It was a commercial enterprise embodying capitalist relations (Beetham 1997, 82) that commodified news and sold probable audiences (Smythe, 27). It was also the espoused vehicle for political discourse to serve the public interest and contribute to an informed public (Beetham 1997, 82).

From the resulting readership of early newspapers comes the emergence of a reading public, which was both a counterpart to public authority and the nucleus around

which was created a new "public sphere of civil society" (Habermas 1989, 23). This bourgeois public sphere, as distinct from the public sphere of Classical Greece, was bound together by the media, initially newspapers and journals, but eventually all forms of mass media: magazines, radio, television (Habermas 1979, 198) and even the internet.

Habermas's work traces the evolution and transformation of this public sphere over time: from discussion in coffee houses, where supposedly the social status of those who frequented their premises was disregarded (Habermas 1989, 32-6) and in salons, where family "living rooms" became a space in which "private people gather to form a public" (Habermas 1989, 45). The line delineating the private from the public sphere ran, for Habermas, right through the home itself. Of course, he could only have been discussing the homes of the extremely wealthy, either aristocratic or bourgeois families, for the working class homes, of course, never had parlours and salons.

It was thus in the homes of the bourgeoisie and in the coffee-houses downtown that Habermas locates the birth of the public sphere: "the public sphere of a rational-critical debate in the world of letters" (Habermas 1989, 51). An emergent class (the bourgeoisie) conceived, shaped and launched a public sphere allegedly on behalf of all. It was limited in effectiveness, however, in that it was an exclusionary public sphere, which had deeply embedded within it the specific class interests of its creators. This dual agenda was justified, although seldom articulated, on the grounds that the interests of both property owners and other citizens pursuing their democratic rights were identical; the property owners and the literary world were, after all, typically from the same class



(Habermas 1989, 56). Newspapers, assigned such a fundamental role for this emerging public sphere, were highly commodified in the eighteenth century. By the time of the political trial of Thomas Paine for publishing his beliefs in democratic governance, both major London newspapers, *The Times* and the *Morning Chronicle* already routinely dedicated more space to advertising than news (Keane 1991, 32).

An editorial staff became necessary, and soon newspaper publishers were no longer merely vendors of recent news (no matter how that news may have already been filtered by commercial interests) but instead now became "dealers in public opinion", with their media becoming "weapons of political parties" (Habermas 1979, 200). The commodified nature of newspapers soon came into conflict with their functions as vehicles of the public sphere (Habermas 1989, 169), anticipating the media's future role as a medium for a consumer culture. Habermas identifies the 1830s as when the shift occurs, at least in Britain, France and the USA, from "journalism of conviction to one of commerce" (Habermas 1979, 200). In the USA, it was propelled by the emergence of the penny press in the 1830s and yellow journalism towards the end of the century (Habermas 1989, 168-9), from which we have first the tabloid and more recently the typical sterile, hybrid (tabloid - broadsheet) North American daily newspaper belonging to a corporate chain. The deterioration of news coverage was stimulated even further by the advent of the commercial broadcast media, especially television, above all in the United States where private interests within broadcasting drove the development of public policy (Williams, 39-40) and ensured that the space and vehicles of the public sphere were occupied by the private interests of capital.

Let us place this development in its historical context. At the time of the emergence of the early tabloids, even the most "advanced" industrialized countries only allowed the electoral participation of a minimal number of their population. Not only were all women excluded, but in England after the first Reform Bill of 1832, five of every six adult males were still without the vote; and even the Reforms of 1867-8 continued to leave 70% of adult males disenfranchised (Seligman 1992, 104).

Under such circumstances, it is not surprising that we find the development of this bourgeois public sphere undergoing contortions to accommodate the class interests of those who drove its formation. As newspaper ownership began to concentrate into ever fewer hands, so economic and social power concentrated in private hands (Habermas 1989, 144-46). We find, then, a situation for this public sphere that more resembles a reluctant compromise negotiated among conflicting private interests than a consensus achieved within a community (Habermas 1979, 200).

According to Habermas, the public then became totally marginalized from the process of political decision-making, except for the occasional instance in which a public is created in order to express its acclamation for some pre-determined decision (Habermas 1989, 176). The public of private citizens was then reduced to being a public that was principally used to legitimize political compromises and which could no longer have participated in effective governance even if it were allowed to do so (Habermas 1989, 221). As C. Wright Mills noted, whatever limited society of publics that may have

once existed, at least on a local level with townhall meetings in nineteenth century USA, it was by the 1950s transformed into a "mass society" (Mills, 298-324). What had once been a process of making public the proceedings of state and other activities through the media became instead a process of making public only certain select information in a highly regulated manner. Rather than the bourgeois public sphere evolving into some form of autonomous publics, we find instead "public relations work" constructing a form of public sphere on a case-by-case basis (Habermas 1979, 200).

Crucial as Habermas's work on the public sphere is, it deservedly came under attack for the limited perspective from which he initially advanced his views. It was devoid of an appreciation of the involvement, activities and official marginalization of women, of the illiterate, of workers, peasants and artisans to name a few. His was initially a highly patriarchal viewpoint that simply failed to see an entire gender and in doing so privileged the bourgeois public sphere (Fraser 1989, 137). Although Habermas had declared his intent to limit the object of his study to the bourgeois public sphere, he was remiss in not at least mentioning that other non-bourgeois public spheres or other non-bourgeois realms of the same public sphere existed as well.

Where was the discussion or at least a mention of the discursive activities of this overwhelming majority formed by workers, women, peasants and others? Did not other public spheres exist simultaneously that were at least worth being mentioned? The failure to even reference these other public spheres invites confusion over whether Habermas was claiming rational thought to be the exclusive domain of the ruling class -

or more specifically, of the male members of that class. Had not workers and other popular sectors struggled at great cost to create an alternative public sphere or spheres? Their discursive activity was rooted in their own lived experience, their lifeworld<sup>2</sup>, marginalized from the creation of the bourgeois public sphere but immersed instead in either a proletarian public sphere (Negt & Kluge, 57-62) or other non-bourgeois public spheres (Fraser 1993, 13).

Efforts to create a functioning bourgeois public sphere were part of the dominant project of bourgeois democratic struggles. The bourgeois public sphere, however, was so short-lived as an independent sphere, that it is dismissed as an unrealized ideal by some and as unrealistic by others. Not only were the majoritarian classes nowhere to be seen, but neither was the majority gender visible (Fraser 1993, 7-9). Only elements of the bourgeois public sphere were mentioned; indeed they were explored in depth.

Responding to these criticisms, in the conclusion of a volume entitled *Habermas and the Public Sphere*, Habermas articulated a series of shifts since his first writing of the public sphere in *The Structural Transformation*. Central among these shifts is Habermas's acknowledgement that it is inappropriate to speak of a single "public sphere" and that a different context entirely is established if one acknowledges the existence of multiple and indeed, competing, public spheres. Regarding the exclusion of women, Habermas came to accept that this exclusion was not merely incidental, but constitutive

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<sup>2</sup> "Lifeworld" is understood, following Habermas, to include all the taken-for-granted elements of the background against which and within which we live our lives (Habermas 1984, I, 335). The lifeworld can be understood as a cultural system that establishes a series of assumptions upon which we rely to articulate ideas to others (Crossley, 101).

for the political public sphere itself, given its role in maintaining patriarchy. From the very beginning, then, “bourgeois democracy... contradicted essential premises of its self-understanding” (Habermas 1992b, 424-28).

Habermas recognized his over-simplicity and excessive pessimism in his original portrayal of the public sphere. Once it had been “infiltrated by power,” it undertook functions aimed at persuading the public rather than merely fulfilling its critical functions of self-regulation of communicative processes (Habermas 1992b, 437-8). From the 1980s onward, Habermas no longer considered it possible for the state apparatus and capitalist economy to be transformed democratically from within. Instead he sought a theoretical framework that could offer a means by which to prevent the logic of civil society being “colonized” by the logics of the state or capital (Habermas 1992b, 444). This is a task that I too seek to address.

## **B. CIVIL SOCIETY**

When Habermas spoke of the public sphere, he was referring in abbreviated form to “the public sphere of civil society” (Habermas 1989, 23). What then is this “civil society,” increasingly cited in recent years but almost never defined? Although it may be a highly useful concept for the analytic framework that it allows, as will be seen, it may also be confusing, suggesting the need to review the concept and its evolution in order to

contextualize a definition of "civil society." Usage of the term has shifted significantly over the centuries.

## 1. EARLY HISTORICAL USAGES

The earliest comprehensive overview of the evolution of the term "civil society," up to (but not including) the twentieth century is provided by John Keane in his *Democracy and Civil Society*, published in 1988. It is the first of a series of books Keane has published on civil society. To use the term "civil society" at this point in history, as Keane does, is highly problematic. He adopts the usage of the term as introduced by Max Weber, resulting in his employing an outdated understanding of civil society, which does not seem to take into account contemporary practice and the discourse adopted by civil society itself as it works out its identity. Keane's own usage will be analyzed following a review of the historical usages he offers.

Keane presents five distinct interpretations of civil society that have prevailed under different circumstances in the last five hundred years.

i) The graphic description provided by Thomas Hobbes of a state of nature in which there was a "war of all against all" was contrasted by him to "civil society." The early usages, which consider "civil society" to be that which was not the state of nature, run back through Jean Bodin (1530-96), Thomas Hobbes (1588-1679) and Baruch Benedict

Espinoza (1632-77) (Keane 1988, 35). For these early theorists, this state of nature was a "war of all against all," where life was "nasty, brutish and short" (Hobbes [1651] 1988, 65). Civil society was the result of the laws and rules established by a state (Keane 1988, 35). In this usage, the two terms, state and civil society, are inseparable; they are flip sides of the same coin. The assumption was that civil society would only exist if there were a state. The contrast is not between civil society and the state, but between civil society (including the state) and the state of nature (Lively & Reeve 1997, 66). This usage and understanding dates back to medieval Europe through Baldus (Canning 1980, 202) and St. Thomas de Aquinas to Moerbeke's translation of Aristotle's *Politics* and indeed, as we will see below, even to the Romans' translation of the Greek original.

However review of the apparently peaceful and egalitarian relations in the matrilineal and matrifocal<sup>3</sup> stage preceding the rise of the patriarchal state (be it under a regime of slavery, monarchy or capital) belies this framework. There is no historical nor prehistorical evidence to support the claim that the advent of the state allowed humans to rise out of a state of "war of every man against every man" (Hobbes [1651] 1988, 70). In fact, evidence suggests the opposite, that before the existence of a patriarchal state or before any known patriarchal society, there seem to have existed well-organized societies that were not based on violence. It could be reasonably argued that the creation of the patriarchal state allowed humans to rise out of a state of "war of all against all" only if one limits one's concerns to patriarchal societies, typically done to date by assuming, without debate, that all societies are, have always been and could only be patriarchal. These issues will be explored in Chapter 4.

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<sup>3</sup> Matrifocal refers to a society that focuses its relations around the women of the society.

ii) Usage of the term "civil society" shifted with John Locke, Immanuel Kant, Samuel Frieher von Pufendorf, the Physiocrats and the Scottish Enlightenment thinkers (particularly Adam Smith and Adam Ferguson), who saw "civil society" as being perfected by the state, although not originating with it. Unlike their predecessors, they saw society as being natural, not imposed by an authoritarian state (Keane 1988, 35). This was particularly true of Ferguson and his Scottish colleagues, James Dunbar and John Logan (Keane 1998, 118-9). In both these early usages of civil society, the state is seen as a vehicle of positive influence. While understanding civil society to have been a natural evolution, those of this school were far from being advocates of egalitarian relations. John Locke was not alone in considering patriarchal rule within the household to be the origin of state power (Locke [1698] 1964, 213) with both rooted in the "power" of the father as a "natural" phenomenon ([1698] 1964, 215).

iii) Keane claims that it was not until Thomas Paine's *Common Sense* that the term "civil society" was contrasted with the state and placed in opposition to it (Keane 1995, 117). This is true in a general sense only. Paine did not use the terms "civil society" and "state" in *Common Sense*, where he makes the point most clearly and vehemently. Paine refers instead to "society" and "government": "Society is produced by our wants, and government by our wickedness..." and "Society in every state is a blessing, but government even in its best state is but a necessary evil; in its worst state an intolerable one..." (Paine [1776] 1976, 65).



iv) For G.W.F. Hegel, the task of the state was to preserve and to transcend civil society. Civil society, including the economy, social interest groups and institutions, was understood to be historically constructed; the state sought to keep civil society subordinated. The development of one part of civil society was considered by Hegel to often oppose another part of civil society in what Hegel referred to as a "self-crippling" tendency of civil society. This led Hegel to claim that civil society could not remain "civil" unless it was politically ordered and that only a supreme public authority, such as the state, could do so (Hegel, 1942, 127-35). Thus Hegel adopted a framework involving dominance of civil society by the state.

But generations of subsequent social and political analysts including Otto von Guericke (Black 1990, xx), Karl Marx and Friedrich Engels, also adopted a position derived from Hegel's understanding of "civil society," although often with significant variations, resulting in Hegel's basic concepts having a profound impact on future developments. Although he did not articulate a "public sphere," Hegel did present the key categories of public authority, public opinion, public freedom, public spirit and publicity, supporting extensive freedom of public communication (speech and press) as the means by which to promote the formation of public opinion (Cohen and Arato 1992, 111-3).

v) The final usage of civil society that Keane presents can be found in the model that he refers to as the *democratic state*, derived from the writings, among others, of John Stuart Mill and Alexis de Toqueville. Civil society here is understood to be a self-organizing, legally guaranteed sphere, which is not directly dependent on the state. These

authors stress the importance of protecting and renewing civil society. For de Tocqueville, countervailing "civil associations," out of the reach of the state, were necessary as checks against the advent of despotism, even electorally produced. An independent, self-organizing civil society is a necessary condition of democracy. De Toqueville insisted that the "independent eye" of society, formed from a plurality of self-organized civil associations, was necessary to consolidate a democratic revolution (Keane 1988, 51). For Cohen and Arato, de Tocqueville revealed the "compatibility" between civil society and democracy (Cohen & Arato 1992, 117). But in doing so, de Tocqueville exaggerated the democratic qualities of then existing societies (Keane 1988, 51).

The separate models from Hegel and de Tocqueville are similar inasmuch as they employ the same categories in each model, but they differ as to where power lies in each model. Hegel has the state controlling civil society, while for de Tocqueville civil society was to control the state. Although these differences are extremely critical for other reasons as we will see below, here I would like to draw attention to how both models employ the same state vs. civil-society dichotomy as does the model promoted by Thomas Paine.

Thus while each of the last three of the five concepts above can be seen as separate definitions in their own right, all three share the trunk meaning introduced by Thomas Paine of contrasting civil society to the state. Thus we may think in general terms that there were three major historical usages of the term "civil society" (as used by Hobbes, Locke and Paine respectively), with Hegel and de Tocqueville as variations of

Paine's model. A fourth major model or usage will be presented shortly. Henceforth, until we explore the fourth model, unless specified otherwise, the term "civil society" will be used to refer to civil society as separate from and in tension with the state.

## 2. "CIVIL SOCIETY" SINCE THE EIGHTEENTH CENTURY

Since the eighteenth century, the dominant usage of civil society has been in reference to a sphere of activity outside and separate from the state, as suggested by Thomas Paine. One or another of the variants of this model was prevalent from that time until the last decade of the twentieth century.

Marx and Engels employed the term "civil society" in reference not only to non-state associations and organizations of private individuals operating as part of a public but also in reference to capitalist economic relations. In *The German Ideology*, in one of the few instances where Marx or Engels used the term in more than a passing manner, they wrote:

The form of intercourse determined by the existing productive forces at all previous historical stages, and in its turn determining these, is *civil society* (26).

This, for Marx and Engels, included the economic and well as social forms of intercourse. The 1947 translation of *The German Ideology* by R. Pascal clarified that the term "civil society" had until then typically been translated as "bourgeois society" (203). This mistranslation seems to have been a product of a reductionist Marxist position which

in turn would have contributed to a usage of civil society that is limited to elements of bourgeois formation, thereby justifying the political position that denies autonomy for civil society and instead advocates its control by the state.

This usage of civil society with the economic subsumed as merely one of its parts, may have made sense at a time when the state was a monarchical monolith and monopoly capitalism had yet to emerge. But it makes little sense today, when monopoly capital prevails; economic relations of capital have seemingly come to dominate all else and are increasingly coming into contradiction with all other relations. Today it is imperative to employ a theoretical framework that separates out capitalist economic relations from civil society, locating each in a distinct sphere of activity. This is especially important if one seeks to address the differences between the two and to reclaim elements of civil society as distinct from capitalist relations. It is exceptionally difficult, if not impossible, to envision a post-capitalist society, and the way to establish it, without a framework that separates out the capitalist economy from the rest of civil society.

Marx used "civil society" in much the same manner as did Hegel, although, unlike Hegel, Marx and Engels located the "family" within civil society (Marx & Engels 1947, 26; Marx 1979, 45). For Marx, the eventual abolition of classes also implied the abolition with it of the distinction between civil society and the state (Keane 1988, 56) inasmuch as government would be reduced to mere administration of things. But it was specifically the negative aspects of civil society, which were both divisive and dehumanizing, that Marx stressed, exposing the social consequences of capitalism

(Cohen and Arato, 117). Keane maintains that the idea of a *socialist* civil society never occurred to Marx (Keane 1988, p63).

In the following quote, Keane reveals why it has been easy for Marxists to be confused over a Marxian definition of civil society.

Civil society embraces the whole material intercourse of individuals within a definite stage of the development of productive forces.... The term "civil society" emerged in the eighteenth century, when property relationships had already extricated themselves from the ancient and medieval communal society. Civil society as such only develops with the bourgeoisie; social organization evolving directly out of production and commerce, which in all ages forms the basis for the State and the rest of the idealistic superstructure, has however, always been designated by the same name. ([1888] 1973, 76)

"Civil society as such only develops with the bourgeoisie..." creates confusion. Does this imply that in spite of others having referred to civil society in earlier periods, Marx and Engels would use the term only to refer to bourgeois civil society?

There is confusion over whether Marx and Engels were referring to the bourgeois civil society under capitalism or civil society in general. This confusion is not unlike that arising with Marx's usage in the *Grundrisse* of the term *production*: at times it referred to production under the capitalist mode and at times it referred to production in general under any mode of production. There would be no reason to criticize Marx for this shortcoming, as he only left unedited notes. Regarding usage of the term civil society, it is possible that Engels may be responsible for the uncertainty. The subsequent Marxist usage of civil society in this manner well into the 1990s is less understandable.

Keane, for his part, employed the following definition: "...civil society can be conceived of as an aggregate of institutions whose members are engaged primarily in a complex of non-state activities." (Keane 1988, 14) Keane then contrasts those institutions of civil society as independent of the state. Although Keane rejects Marxism, on its most fundamental grounds Keane's definition of civil society still does not advance beyond that offered by Marx or Weber a century and a half ago.<sup>4</sup> Keane writing today still employs a usage, which has simply become obsolete.

Although Cohen and Arato demonstrate a much deeper understanding of contemporary usage of the term "civil society," Keane dismisses their contributions as part of the "historical ignorance and lack of clarity and outright confusion in recent discussions of the state-civil society distinction." In a footnote Keane continues: "The failure to recognize the important historical shifts of meaning of the distinction is endemic to the literature on the subject." He then cites the works of Jean Cohen and Andrew Arato (Keane 1988, 36). Any who have read Cohen and Arato's 1992 *Civil Society and Political Theory* would be hard pressed to concur with Keane, whose work is considerably less thorough than that of Cohen and Arato, the work Keane is criticizing.

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<sup>4</sup> When reading Keane's four books published between 1988 and 1991 on civil society, one is stimulated by some initial ideas but quickly disenchanted by the severe limitations of his framework and what he proposes to do with it. It seems almost as though Keane had adopted his understanding of some aspects of civil society from elsewhere, some unattributed source. Andrew Arato claims in an article in *Praxis International* (1989) that indeed that is exactly what John Keane had done with his and Jean Cohen's joint work which they had generously shared with Keane prior to its publication.

### **3. THREE-PART MODEL: STATE - CIVIL SOCIETY - CAPITALIST ECONOMY**

While the two-part model of civil society as distinct from the state may have been useful during earlier periods, it has become obsolete. Those who today promote civil society as an instrument of capital continue to employ the two-part model. It allows them to attempt to conceal the contradictions between capital and autonomous activities of civil society; it allows them to reduce civil society to the capitalist market (Paoli & Telles 1998, 71).

A concept of civil society that draws a distinction between the capitalist market and civil society as well as the state allows for the highlighting of separate logics and activities between the capitalist economy and civil society. If a fundamental contradiction lies between the capitalist market and the interests of civil society, a three-part model would allow for the elucidation of these relations, rather than contributing to conceal them. In Marx's time capitalist relations were still described as part of civil society. But in recent years a new definition of civil society emerged, based on the three-part model, as will be seen below. It arose more through popular usage by social movements than through discussion in academia, although this also occurred. Until the last two decades of the twentieth century, the only writers to at least hint at an alternative approach, albeit in unelaborated form, were Antonio Gramsci and, in a different way, Karl Polanyi and, perhaps, Talcott Parsons (Cohen & Arato 1992, 118-158). Gramsci alone, however, employed the language of "civil society."

Gramsci's version of civil society was derived principally from Hegel as was Marx's, but Gramsci's differed significantly from both. As did Marx, Gramsci included family and political culture in his understanding of civil society (Cohen & Arato 1992, 143). But unlike Hegel or Marx, Gramsci, at least on some occasions, did not include the capitalist economy within the sphere of civil society (Gramsci 1991, 182). Although Gramsci's usages were conflicting, he pointed towards an innovative three-part system, wherein civil society was presented as separate from both the state and the capitalist economy, as will be quoted shortly (Gramsci 1971, 208).

Those who have read only the 1971 Quintin Hoare and Geoffrey Nowell Smith's English translation of selections from Gramsci's *Prison Notebooks* may be forgiven for not having seen Gramsci's theoretical framework as three-part. Gramsci was not consistent in how he used the term "civil society." Indeed, in his effort to emphasize different aspects, I would argue that he used "civil society" in possibly four or even five different manners. Comparable to Hobbes (1971, 261; 1995, 75), to Paine (1971, 52), to Marx (1971, 293) and in a three-part model. If one accepts the additional usage below as Lockean, then this would mean that Gramsci, in his prison notebooks written over years, seems to have employed all but one of the multiple usages mentioned thus far.

Most of the time Gramsci seems to conceive of the state and civil society as being both parts of a larger whole. Sometimes the relationship described is one of opposition within unity. Some might argue this is somewhat in line with a Lockean usage, although



this is more appropriately seen as a unique, albeit unclear, Gramscian usage. "If the state (even in its wider sense of civil society)..." (Gramsci 1995, 64), implies that the state may be conceived as part of civil society, as does the following. "Only the state apparatus or the whole of organized civil society?" (Gramsci 1995, 323). The following usage, however, suggests the opposite: "...the question is that of the absence of a clear statement of the concept of the state and the distinction within it between civil society and political society, between dictatorships and hegemony, etc." (Gramsci 1995, 439). Most often, however, Gramsci contrasted civil society with what he interchangeably called the state or political society (Gramsci 1971, 12). Clearly Gramsci conceptualized a complex relationship of civil society and the state within a larger whole, but in different instances he seems to have emphasized different aspects of this complex relationship.

When Gramsci contrasted civil society to political society or the State, he would typically leave out any reference to the economy. Sometimes the economy would stand apart from the other two spheres, but typically it remained unmentioned. Nowhere is Gramsci's articulation of the three-part model more clear, with civil society specifically delineated from both the state and the capitalist economy, than in an extensive quote within an editorial comment in an introduction to the second section of the "Notes on Politics," which the editors entitled "State and Civil Society." It is worth noting that this title was written by the editors, not Gramsci, and clearly reflects their understanding of the term, not Gramsci's. In this chapter, "State and Civil Society," it is twenty-six pages into the selected text (of excerpts drawn by the editors from different prison writings) before the term "civil society" appears (1971, 235).

Ironically, the editors, who employ the traditional Marxist, two-part framework with the economy embedded within civil society, quoted the passage below seemingly because they believed it was an example of a Gramscian usage of "civil society" consistent with their own. It is the first sentence that is most relevant.

...Between the economic structure and the State with its legislation and its coercion stands civil society...To expect that civil society will conform to the new structure as a result of propaganda and persuasion, or that the old *homo oeconomicus* will disappear without being buried with all the honours it deserves, is a new form of economic rhetoric, a new form of empty and inconclusive economic moralism. (1971, 208-9)

The introductory paragraph to the chapter in the 1971 translation ends with the additional short, yet revealing, comment from the editors: "Here civil society is in effect equated with *the mode of economic behavior*" (1971, 209). Having been dubious that even Engels could edit Marx appropriately (1991, 138-9), Gramsci would likely have been furious at editors re-arranging his own work (never mind introducing titles of their own and failing to employ the same definitions or usages for terms).<sup>5</sup>

Rather than exemplifying the editors' own two-part model, this quote instead points clearly towards the major contribution in this regard that we have from Gramsci - that of a three-part model: "...Between the economic structure and the State...stands civil society...." Indeed this is the clearest quote in English from Gramsci to suggest a three-part model.

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<sup>5</sup> "There is no doubt that Engels has evinced a disinterestedness and a lack of personal vanity unique in the history of literature... But the fact is that Engels is not Marx, and if one wants to know Marx, one must look for him above all in his authentic works, published under his own personal direction." (Gramsci 1991, pp138-9)

Talcott Parsons, for his part, although heavily influenced by Hegel, differed from him, like Gramsci, by separating out the economy as well as the state from the realm of "civil society." Although Parsons referred to this latter sphere as "societal community," the social integration of numerous institutions (Cohen & Arato 1992, 117-8), Cohen and Arato consider this to be synonymous with "civil society" (Cohen & Arato 1992, 138). Parsons "represents a synthesis of the liberal concept of civil society as differentiated from the state with a stress on social integration, solidarity, and community..." (Cohen & Arato 1992, 119).

Cohen and Arato identify Gramsci and Parsons as the first to declare that relations in contemporary society were reproduced not only through economic and political processes but through the interaction of social associations, legal structures, cultural forms and institutions of communication (Cohen & Arato 1992, 425), all of which possess some significant degree of autonomy from both the economic and the political spheres. However, Parsons also advanced some extremely unusual positions, including that elements of a post-capitalist, post-socialist model already existed in the 1930s in U.S. society (Parsons 1971, 114).

Karl Polanyi adopts a similar theoretical framework that set civil society apart from both the state and capital in his watershed analysis, *The Great Transformation*. Polanyi suggests that by the nineteenth century, society already contained two clearly distinct "organizing principles": that of the self-regulating market ("economic

liberalism") and that of societal self-protection (Polanyi [1944] 1957, 132).<sup>6</sup> These two organizing principles were identified as potentially antagonistic (Polanyi [1944] 1957, 177). Rather than examining the issue further, Polanyi instead makes reference to the tension between the economic relations and the state in order to point to the existence of the tension (Polanyi [1944] 1957, 133-4). What is important for our purposes is that he invokes a framework with a distinction between the economic order and civil society. Here Polanyi is referring to the conflict between capitalist relations and civil society, although he did not use the term civil society. The organizing logic of the market would, of course, be the logic of capital. This notion is explored further in chapter 9, which examines neoliberalism.

In today's world, already visible in the time of Gramsci, corporate power has clearly come to impose its imperatives on other realms of social activity. To continue to consider the capitalist economy as another element of civil society would be to limit our theoretical framework for it would tend to obscure the role of monopoly capital. Clearly today we would benefit from a theoretical framework where capitalist relations constitute a separate realm from that of either the state or civil society.

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<sup>6</sup> "...two organizing principles in society, each of them setting itself specific institutional aims, having the support of definite social forces and using its own distinctive methods. The one was the principle of economic liberalism, aiming at the establishment of a self-regulating market, relying on the support of the trading classes, and using largely *laissez-faire* and free trade as its methods; the other was the principle of social protection aiming at the conservation of man (sic) and nature as well as productive organization, relying on the varying support of those most immediately affected by the deleterious action of the market -- primarily, but not exclusively the working and the landed classes -- and using protective legislation, restrictive associations and other instruments of intervention as its methods." (Polanyi, 1944, p132)

Such a theoretical framework leads to Habermas's initial three-part model of different spheres or realms of activity. This aspect of Habermas's theoretical framework has been most clearly articulated by Jean Cohen and Andrew Arato, in *Civil Society and Political Theory* (1992). As Andrew Arato wrote endorsing a Habermasian perspective, in response to John Keane, "civil society would become the key concept of a new critical theory of all contemporary industrial societies, redeeming important elements of the heritage of both radical democracy and socialism" (Arato 1989, 135).

Keane reveals the pronounced degree to which he is disconnected from popular movements, as indeed is Habermas (although Habermas acknowledges his isolation and on occasion has accepted criticism from others regarding his positions about such movements, most notably feminist critiques). This characterizes most of those who offer theoretical contributions on these topics in the academy. Keane fails to consider the widespread usage that popular movements make of the term "civil society."

For Keane it is the three-part nature of Habermas's and Gramsci's model, which makes it allegedly inoperable (Keane 1998, 16-7). He fails to acknowledge that by refusing to isolate capitalist economic relations from the sphere of civil society, conflicts between these two sets of interests can be more easily concealed. Without this three-part framework, it is not as easy to articulate the need to employ the state against capital to protect and nurture the autonomy and vitality of civil society. It is between civil society and capital where the principal contradiction lies, not between the state and either of the other two. What could be more confusing than to bulk the two polar opposites together,

as though they were one? Surely there is more value in accentuating the *differences* rather than the *similarities* between capital and civil society at this point in history.

A broadening of the two-part theoretical framework of civil society and the state to three spheres and three separate sets of interests, institutions and indeed logic, seems essential and long overdue. Some of the questionable positions legitimizing the state's domination over civil society adopted by post-Marx Marxists, especially Leninists, may have been avoided had capitalist relations been separated off as a category. Perhaps Lenin would not have supported Taylorism, as it could possibly have more easily been identified as part of the logic of capital. Definitely Eastern European state intolerance of bourgeois relations could have been more easily identified as distinct from any rationalization of repression against civil society in general.

The relations *among* the three realms are critical for these define the relations of power. This would be a framework which seeks not to empower a state over civil society, but instead seeks to empower civil society over the state, as did Paine and de Tocqueville, as well as over capital, unlike de Tocqueville (O'Donnell 1998, 52-3). A new public sphere would, of course, be necessary for democratic self-governance; this new public sphere of civil society would be the means through which civil society would control the state.

Under such a model of society in transition, perhaps the state would be mandated to control capital, but never would the state attempt to design the very fabric of civil

society. Such a framework requires that capital be clearly distinguished from civil society and therefore that each be relegated to separate spheres, overlapping as they may. Any democratic society would need to locate power within civil society and extend civil society's power over both the state and the economy.

#### **4. CIVIL SOCIETY AND DEMOCRACY**

"Civil society" was a central element of theoretical frameworks in social and political theory in the eighteenth and the first half of the nineteenth centuries. In the nineteenth century, with the consolidation of nation-states, the debates that focused around the concept of "civil society" were now eclipsed by discussions based on the concept of "citizen" and "citizenship" (Seligman 1992, 101-2). Discussions of the nation-state and its resulting relations displaced those of civil society vis-a-vis the state. De Toqueville was one of the last theorists to use the term "civil society" in a positive light for almost a century and a half, unlike Marxists (de Tocqueville [1840] 1980, 351; Alexander 1998, 3). In the last two decades of the twentieth century, there has been a resurgence in the use of the term "civil society" from a positive perspective. For example, Keith Faulks employs both the concepts of civil society and citizenship, arguing that citizenship "provides a framework for the interactions between individuals within civil society" (2000, 107). His post-liberal concept of citizenship calls for rights and responsibilities to be mutually supportive and not juxtaposed against one another as in liberal theory (2000, 164). But many social and political activists today who question the

value of the nation-state also question the notion of citizenship because of its exclusionary nature and its apparent reliance on the nation-state; they prefer to adopt instead a framework based on the concept of civil society. Advocates of the interests of capital, likewise have not opposed the resurgence of the term civil society since they continue to locate the market within civil society. Thus we find a strange convergence of usage for this polysemic term that cries out for clarity. The three-part model allows for clarity of class differences by isolating capital from other aspects of society. This is absolutely critical for a highly evolved stage of capitalism.

The term “civil society” reappeared where civil society was attempting to re-assert itself and even to challenge the state. This occurred earliest in Eastern (central) Europe where the term "civil society" played a central role in opposition thinking in the 1980s (Ash 1990, 147). The term became widely used as the opposition to state socialism-from-above consolidated in Eastern Europe. Subsequently, the concept became popular in Latin American nations as well, although with different implications. It emerged in Latin America as a "concept and social construction" during the period of widespread struggle for democracy and against poverty that unfolded in one Latin American country after the other during the late 1980s and 1990s; it was legitimated by the overwhelming support enjoyed with the earlier emergence of civil society in Eastern Europe (Reilly 1998, 178). Latin American authoritarian regimes had an increasingly difficult time containing the social movements of this new emerging civil society (Mainwaring 1992, 301).



According to Jeffrey Alexander, the term civil society in most Spanish-speaking Latin American countries, "emphasized the direct relationship between citizens and the state authority while it ... banned open competition between classes, groups, or any other cluster of social interests" (1998, 27). This attitude is one which promotes the common interests of civil society, its unity and its acceptance of diversity. It is an outgrowth of the unity built in struggle against repressive regimes, be it as early as the 1970s in Brazil (Alvarez 1993, 194-97) or later in other parts of Latin America. Some Latin American analysts have placed the formation of new social movements in Latin America and other parts of the less industrialized world as being in "the forefront of the transformation of modernity" (Escobar, 1992, 420). This unity of diverse segments of civil society in opposition not only to the repressive state but to capital was facilitated by a model that clearly separated each of the three realms. At stake has been the ability to generate "new ways of seeing... by displacing the categories with which Third World groups have been constructed by dominant forces" (Escobar, 1992, 420).

Nowhere in Latin America has the usage of the three-part model been more widely accepted than in Mexico. There civil society was contrasted not only to the state and the party that ruled the country, but to capital. The declarations from the Ejercito Zapatista de Liberacion Nacional (EZLN) have employed that usage since they made their existence known and began issuing public declarations in 1994. This tripartite separation was critical in Mexico given the corporatist relations that emerged under the single party that had ruled since its formation half a century earlier, the Partido

Revolucionario Institucional (PRI). The PRI model is a corporatist one that can most clearly be analyzed with a three-part model as will be seen later.

The term civil society in both Latin America and Eastern Europe was employed by social activists in the pursuit of democratic norms of governance, although in both instances the outcome was something considerably less than democracy. The use of the term "civil society" in Eastern Europe, where after 1990 ideologues could trumpet the victories of capitalism over socialism, seems to have contributed to the term being widely accepted as an analytic category. There has been significant debate over the meaning of the term. This chapter attempts to contextualize that discussion. To my knowledge, the earliest positive usage in the twentieth century of the term "civil society," other than the fleeting reference Gramsci made to trade unions or social movements also being part of civil society, was from Jurgen Habermas in his first publication, cited at the beginning of this chapter. It was also Habermas who first promoted the three-part model, first most clearly articulated in *The Theory of Communicative Action* (1984). In 1996 Habermas described civil society as follows:

...(I)ts institutional core comprises those nongovernmental and noneconomic connections and voluntary associations that anchor the communication structures of the public sphere in the society component of the lifeworld. Civil society is composed of those more or less spontaneously emergent associations, organizations, and movements that, attuned to how societal problems resonate in the private life spheres, distill and transmit such reactions in amplified form to the public sphere. (Habermas 1996, 366-7)

Most of those in the 1980s who used the term to describe either Eastern Europe or Latin America typically contrasted civil society only to the state, in a two-part model as introduced by Paine. But in 1994, the Ejercito Zapatista de Liberacion Nacional erupted

onto the Mexican and international political scene, employing a three-part model, without ever identifying the framework as such. Even though the EZLN offered little theoretical debate, its arrival was a thunderous outburst, giving the EZLN considerable weight among civil society in many parts of the globe, as will be seen in chapter 9. In many circles "civil society" came to be used as the Zapatistas used it, without an accompanying theoretical debate in the literature. This usage can be found in the following excerpt, from the Final Plenary in La Realidad (Table B), in reference to actions against neoliberalism:

...all agreed they need to be collective and from below because this is a space that neither the state nor the market can take from us; it's a space in which we can work. (First Encuentro, 47; my translation)

My review of usage of the term in the 1990s reveals "civil society" to be increasingly used as part of a three-part model (Swift 1999, 16-7; J. Ehrenberg 1999, 235; Florini 2000, 7; Reilly 1998, 169-208; Magnusson 1996, 63), with Ann M. Florini by 2000 even entitling the book she edited as *Third Force, Emergence of Transnational Civil Society*. Nonetheless, the explicit incorporation of the capitalist market within civil society continues to be widespread within sociology (Tester 1992, 16-26; Hall 1995, 17-20), anthropology (Buchowski 1996, 80; Dunn 1996, 27-8; Hann, 1996, 159-163; Gellner 1994, 53-6, 87-9) and even more so in political science (Fine 1997, 25; Hindess 1997, 26; Lechner 1997, 177; Metzger 1998, 4-5; Lively & Reeve 1997, 63). For the purposes of this work, however, henceforth the three-part model will be assumed.

## C. CONCLUSION

The nineteenth century witnessed an erosion in usage of the term "civil society" in favour of discussions of "citizenship" as the nation-state became increasingly powerful. In a neoliberal world where the power of the state has steadily come under attack, civil society has emerged as an independent force at the same time as there was a proliferation in the usage of the term (Alvarez et al. 1998, 17). With the crumbling of the top-down Eastern European attempts to build socialist societies and the decline of Marxism came a renewed interest on the left to think anew both the categories employed and the assumptions behind them. Out of this emerged a concept for that part of society that had largely been silenced by the state, whether in Eastern Europe or in Latin America.

The term "civil society" has subsequently become widely adopted by many different people with different theoretical frameworks and different agendas. These cover a spectrum from non-governmental organizations or NGOs (most of whose claims to represent the interests of "civil society" need to be questioned carefully and usually rejected<sup>7</sup>) to civil associations and social movements. To discern which of these bodies and movements may be considered as "authentic" expressions of civil society would require determining what logic underlies their discourse and what interests they thereby pursue.

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<sup>7</sup> James Petras explains not only how NGOs function as extensions of the state, but also how "(t)he structure and nature of NGOs, with their "apolitical" posture and their focus on self-help, depoliticizes and demobilizes the poor" (Petras 1997).

The concept of civil society is important to this study primarily because it is the realm in which the public sphere is located, an essential element for the establishment of democracy. Seen as that intersection between the realms of civil society and the state, it is in the public sphere where democratic governance would occur, if it were to occur. Indeed it is out of civil society that democracy would likely emerge, if it emerges at all, although this democracy may well spread itself into all activities of the state and the economy.

Democracy is not a set of formal rules nor even a series of liberal democratic principles. Democracy is in essence a discursive activity. The objective of discussion is to make decisions that result in action. It is guided by norms which evolve separately in each society to meet the particular needs of that society, but which embody concepts of freedom, equality, respect and self-governance.

John Dryzek argues in *Democracy in Capitalist Times* that "proliferating political venues (public spheres in civil society, community politics, workplaces. etc.)...make it hard to determine whose preferences should be aggregated and when" (1996, 146). Instead discursive democracy "copes more easily with indefinite, porous, problematic, and contested boundaries" (1996, 146). In addition, discursive democracy provides the means to cope with highly complex social problems (1996, 146). Power in a democracy resides in people who make their decisions discursively. Which people and how this may occur is to be explored in Part Two. How we came to live in societies which claim to be

democracies yet seem to largely fail to be democratic is a question which will be addressed in the Parts Three and Four.

But first we will need to explore what it is that we mean by democracy. A logical starting point would be to review the **origin of democracy** as we know it. What are the earliest examples we have of democracy? What are the principles that guided those societies and which practices evolved which made a society democratic? Indeed how did they come into being? All these questions will be explored in Part Two.

As well we will explore a question that is seldom, if ever, asked: who are the **earliest known theorists** of democracy? If these are not names commonly associated with democratic governance, then how did that come to be the case? These issues of political theory will be the focus of Part Three.

And finally what are the **prospects for democratic governance** today? What forces are most likely to contribute to bringing this about? What are the critical elements, communicative and otherwise, necessary for introducing democratic governance today? This will be addressed in Part Four.

**PART TWO**

**EARLY DEMOCRATIC PRACTICES**

## CHAPTER 3

### ATHENIAN DEMOCRACY:

#### WHEN MALE CITIZENS GOVERNED DEMOCRATICALLY

The term "democracy" comes to us from the Greek *demos*, meaning people and *kratia*, rule (Oxford International Dictionary, 478-9) and refers to the situation where the people are both the rulers and the ruled, i.e., the people govern themselves. This is the original meaning of the term, which emerged out of an actual practice of democratic self-governance that evolved in Greek city-states over centuries. Classical Greece is typically considered to have been the earliest known instance of a people in a large urban centre governing themselves.

This chapter will review the development of democratic governance in Classical Greece, taking Athens as its example. It seeks to identify characteristics of democratic activities and relations useful for understanding exactly what is democracy. Proceeding chronologically, the chapter will first identify those specific institutions and practices that allowed for the remarkable nature of Greek democracy. This was governance discursively determined among a massive population in which there were significant class differences and a pronounced variation of wealth.

Although we do not know with certainty the class composition of Classical Athens, all accounts agree that the commoners constituted the great majority of the



population. Slaves were considered by George H. Sabine to never number more than one-third of the total population after 600 BC. The population of Attica, the bioregion in which Athens was located, may have reached three hundred thousand at its peak with a majority of non-slave male labour working as farmers, tradesmen or artisans. The next largest category of residents would have been foreigners who were freemen but not citizens, although neither were they subject to social discrimination. In third place were four categories of Athenian citizens, a status possible if one was a son born to Athenian parents. To which of the four categories one belonged was initially determined by birth (Sabine 1961, 4-5) prior to the first known significant democratic reforms, but it was later based on wealth or agricultural yield reflecting property qualifications (A.C. [c.322 BC] 1950, 74-75). The oligarchy made up the wealthiest category of citizens both before and after the democratic reforms, for political equality was not synonymous with economic equality. The two middle categories of citizens (*hippeis* and the *zeugetai*) grew in significance and size, while the enormous poorest class (the *thetes*) reduced in size following the initial fundamental democratic reforms, as will be seen shortly. Women of all classes were excluded from all forms of official political activity.

First we will review the specific organizational forms, mechanisms and rights that evolved during this period, then the historical manner in which these mechanisms evolved in the creation of the most well documented historical instance of democratic governance. Finally the conclusion will explore the manner in which Athenian democracy constructed reality through performative speech. The analysis will employ the basic categories adopted by Austin and Habermas.

## **A. SUMMARY OF ATHENIAN DEMOCRATIC INSTITUTIONS**

The following is a summary of the major democratic institutions and citizen rights of Athenian democracy with a brief mention of some of their salient points. The specific features of Athenian governance that made it democratic may be classified into democratic organizational forms, democratic practices and democratic rights.

### **1. ORGANIZATIONAL FORMS**

There were three fundamentally democratic bodies in Classical Greece as speakers to the assembly frequently noted: the assembly, the *boule* and the jury courts (Hansen 1991, 247). The first and last of these were established by 600 BC, while the *boule* assumed its final highly democratic nature in 462 BC. Each of the three was open to all citizens who shared equal rights of access, although the latter two were filled by sortition (the drawing of lots). The assembly was the sovereign body of citizens which functioned legislatively, while the *boule* was largely its administrative arm, preparing matters for the assembly, and the jury courts performed the judicial functions.

**a. ASSEMBLY** The assembly was open to all citizens. It met a minimum of forty times a year (Jones 1986, 108) and entertained up to four hundred proposals each year (Saxonhouse 1996, 6).

...(T)he assembly was a battleground of speech in which words were, through felicitous speech performances (i.e., the enactment of decrees), transmuted into social and political realities. (Ober 1998, 116)

Athenian democracy was direct. Attendance at assemblies was open to all adult citizens. The president of the assembly was drawn by lot and served for a single day (Finley 1973, 20). In spite of complaints that this process was too stressful on those who were selected, it continued (O'Neil 1995, 68). The power of the assembly was limited only by the bounds of the constitution (Finley 1983, 80). Any official could be removed by the assembly on ten specific occasions each year (Jones 1986, 48).

**b. *BOULE* - COUNCIL OF FIVE HUNDRED.**

The members of the *boule* or Council of Five Hundred were selected by lot each year at the *deme*, or most local, level from citizens who volunteered for the position that year (Hansen 1991, 247). It was the *boule*, with its initial debate of issues, that many consider to have provided the real school of democracy in Athens on a daily basis. The Council of Five Hundred met around 275 days each year, which was more than six times as frequently as the number of scheduled assembly meetings (Dunn 1992, 14). The *boule* prepared the issues for discussion in the assembly. Its role was not to be a policy-making body, however, but merely to service the needs of a democratic assembly (A.C. [c.322 BC] 1950, 129-30): to prepare the agenda; to draft decrees or legislation of their own initiative or in response to directives from the assembly; to respond to administrative matters if non-contentious, leaving the contentious matters to be decided in the assembly (Jones 1986, 118); even to entertain visits of envoys from foreign states as well as of

Athenian officials or individuals seeking to address or report back to the assembly (Sinclair 1988, 73-5).

Some consider that the *boule* functioned, in large part, as the executive branch of government but under extremely tight control, while others maintain that the lack of autonomy of this body precludes the *boule* from being called an executive. The assembly, if it so decided, was not bound to accept any advice from the Council, for it could accept, reject, amend or substitute alternative motions as it saw fit (Kagan 1991, 54). It was forbidden for any citizen to hold a non-military administrative position more than once, except for the Council, where twice was possible although not in succession (Hansen 1991, 249; A.C. [c.322 BC] 1950, 140). This exception presumably resulted from insufficient candidates.

**c. JURY COURTS – *Dikasteria***- Initially composed of citizens over thirty years old, rather than eighteen years as required for participating in the assembly, these bodies met in a judicial capacity rather than a legislative one. They are assumed to have come into existence shortly after 600 BC, but they became thoroughly democratized one hundred and forty years later, with the introduction of the *per diem*, which compensated jurors for the income lost that day. Peoples' courts (*dikasteria*), meeting with jurisdiction over all Athens, likely met 150-200 days of the year (Ober 1989, 141).

Athenians were uncompromising in their concern for equality before the law (Jones 1986, 45). Courts tried cases for both civil and political reasons; trials of a

political nature often had juries of thousands (multiples of five hundred) plus one, while civil trials typically had 501 jurors (Hansen 1991, 187). In both cases, the juries functioned as a form of surrogate assembly. Juries typically delivered a decision on the same day as proceedings began; the decision was made by majority vote, using secret ballot (Finley 1973, 79). The jury courts in Athens had an extremely high reputation for justice, even among critics of democracy or those who were penalized by these bodies (Wallace 1989, 127).

## 2. DEMOCRATIC PRACTICES

### a. *PER DIEM*: compensation paid for daily public duty.

One innovation that worked to ensure political equality was the paying of a *per diem* for the services of officials (Jones 1986, 49). Such payment meant that poverty would not act as a deterrent to poor citizens participating fully (Dunn 1992, 43). During hard times, it is assumed that this may have even been a sought-after form of employment for some less wealthy citizens. By the middle of the fifth century, this *per diem* was extended to officeholders, Council members and jurors, and later to some soldiers and sailors (Finley 1983, 72), but the amount was, not surprisingly, less than a day's wages for a skilled mason or carpenter (Finley 1973, 19). Early in the fourth century B.C. a *per diem* was even paid to the members of the assemblies if, of course, a quorum existed. With the introduction of the *per diem*, offices filled by lot came to be typically filled by the more humble citizens (Jones 1986, 49, 104).

No other Greek city-state paid its public figures or citizens for such public services. Finley considered this a crucial factor in stabilizing that form of governance (1973, 48). He concluded that selection by *lot* and *pay* for office "were the linchpin of the system" (1973, 19).

b. **GRAPHE**: public prosecution that could be brought by any citizen.

Athenian citizens expected informed advice from members of the assembly (Jones 1986, 133). He who initiated a new mechanism was responsible for it working as presented. Accountability came to exist at all levels, including those who gave bad advice to the assembly (Roberts 1982, 7).

*Graphe paranomon* offered a clear mechanism to ensure assembly decisions conformed to existing law (Sinclair 1988, 221). Under *graphe paranomon* a citizen could be indicted for an "illegal proposal" even if the proposal had passed the assembly (Finley 1973, 26-7). This mechanism is thought to have probably been part of the Ephialtic Reforms (460s BC), although there is no documented evidence for the practice until 399 BC. There are references in speeches to the practice as early as 414 BC (Stockton 1990, 44-5). There were more than fifty different types of *graphe* besides *graphe paranomon* (Hansen 1991, 356). Most were directed against those seeming to abuse a public office for private gain.

c. **EUTHYNAI** (or *euthunai*): trial at end of an official's term; a rendering of accounts; a final review of office.

All officials who had filled public function underwent a public scrutiny or *euthynai*; all but the *archons* (the highest public officials whose duties shifted over the centuries) went before the *dikasteria*, with a court of 501 jurors (Hansen 1991, 222). The *euthynai* for *archons* was carried out in two stages: first, an audit of the accounts overseen by officials drawn by lot from the assembly; and second, a public hearing in the *Agora* under ten officials (presumably selected by lot from the *Boule*) where any citizen could raise complaints (Wallace 1989, 95).

All officials were subject to possible deposition and prosecution, if cause were shown; specific assembly meetings each year were reserved to routinely review all such issues (Hignett 1967, 224).

d. **OSTRACISM**: banishment from the community.

This was a form of temporary, albeit prolonged, banishment from the community for political reasons, introduced by Cleisthenes in the late 500s BC (Wallace 1989, 73).

The ability to resort to ostracism speaks volumes about the nature of Athenian society and its dominant values. This mechanism was employed to remove from the community and from involvement in its affairs those who on rare occasion were deemed

to have transgressed the norms of democratic practice, typically to have amassed too much personal power. An ostracized individual initially was exiled for ten years (Finley 1973, 26), but this was later reduced to five years (Reeve 1998, 89, footnote 74).

Once a year, in the sixth *prytany*<sup>8</sup> the assembly routinely considered whether an ostracism should occur (Rhodes 1972, 55). If it was so decided by a majority vote, then on the eighth *prytany*, in March, all citizens would come to the assembly with the name of the individual they wanted ostracized written on a piece of broken pottery. If there were at least six thousand votes cast in the ostracism, then the person with the most votes against him was banished from Athens although his property was safeguarded in his absence (Stockton 1990, 33). Although we do not know any precise numbers of ostracisms in Athens, at most there were clearly no more than one a year. While the number of ostracisms was likely two or three times as many, the actual number of documented cases known today, however, is only ten (Roberts 1982, 143). Introduced late in the previous century, Aristotle claims the practice was not used until the 480s when Athens may have experienced an ostracism each year (O'Neil 1995, 31). There is only one known instance after 443 BC (in 417 BC) (Cartledge et al. 1990, 233). Although this measure seems harsh by today's terms, it facilitated more than a century of democratic governance without a *coup d'etat* (Kagan 1991, 17). Even Aristotle accepted the necessity for ostracisms in a democratic society, for he considered this mechanism to be the most important one "to pursue equality" (Aristotle [c.325 BC] 1981, 215).

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<sup>8</sup> The *prytany* was an organizational form of the ten tribes, whereby each one would send fifty delegates to the *boule* selected by lot, but with specified numbers of them being drawn from all the *demes* that made up a "tribe" (Ober, 1989, p72). Each *prytany* assumed responsibility for the assembly for a tenth of the year (Sealey 1987, p42). Each of these *prytanies* had four major assemblies each year. Certain activities were designated as routinely reviewed each year by specific assemblies of the year.



Although those who fear being subjected to it may have thought otherwise, ostracism seems to simply be yet another example of an innovative institution evolved by the Greeks to meet their unique set of democratic needs. Ostracism was, as Ober put it, "a public demonstration of the binding nature of democratic decisions on an individual" (Ober 1989, 74).

e. **ROTATION OF OFFICE:** Rotation is a principle whereby no one serves a second term until all those qualified have served a first one (Hignett 1967, 227-8).

Athenians followed the principle of rotation, when possible. In any decade, between a quarter and a third of the citizenry would have served an annual term on the Council of Five Hundred alone (Finley 1983, 74). One consequence of these numbers is that citizens would have had to serve twice on the *boule*, as indeed was the situation with each citizen being able to serve twice on the *boule* in a lifetime, whereas any other position besides juror was permitted only once. So important was it to Athenian citizens to have participation in their own governance that they risked the possibility of having incompetent people in office for a short term rather than suffer corrupt figures in power for a long term (Jones 1986, 107).

f. **SORTITION** - The drawing of lots replaced elections, which were dismissed as a form of aristocratic rule.

Although the *boule* would eventually allow all those who wished to serve to do so, the process was accomplished by drawing lots to determine who of those eligible would serve in a given term. Drawing by lot or sortition was used to permit each citizen an equal opportunity to participate in governance. To do so, of course, requires that the duties of those selected be limited, clearly delineated and not requiring special skill, so as to ensure that the role of the functionary be entirely administrative and routine. Thus there was a highly prescribed set of norms governing each act in the governing process (Jones 1986, 104). Even the president of the assembly was chosen by lot although he held the office only for a single day (Hignett 1967, 237).

Almost all administrative positions, including the Council of Five Hundred, were determined by drawing lots (Stockton 1991, 121). To ensure the most equitable distribution, a series of allotment mechanisms, *kleroteria*, were devised and applied as needed to fine-tune the process, (Hansen 1991, 248, 360). The mechanisms varied; the principle remained the same. Selection by lot together with pay for office were central elements that made the democratic system function (Finley 1973, 19).

### **3. DEMOCRATIC RIGHTS**

In Herodotus' *Histories*, Book 3, Otano is cited listing four major criteria for a democracy: *isonomia*; sortition; *euthynoi*; and all deliberations before the community (Saxonhouse 1996, 50). These embody the qualities of communicative rights, equality, accountability and transparency respectively.

a. **ISONOMIA** - equal right of citizens to exercise political rights (Hansen 1991, 359).

Athenian citizens did not claim that people were equal in nature, but rather they sought to introduce mechanisms that would compensate for whatever differences did exist. The earliest is *isonomia*, which Athenians thought could construct equals (Saxonhouse 1996, 42). The concept of *isonomia* was apparently able to resonate with "communal aspirations" going back to the origin of the *polis* (Leveque & Vidal-Naquet 1996, 22).

*Isonomia* can be seen as underlying Solon's measure to allow all Athenians to be represented before the courts by a third party, which allowed citizens as third parties to represent non-citizens who had suffered injustices. This was a critical element that ensured the well-being of those not extended rights of citizenship. *Isonomia* was what characterized Athenian society as distinct and what was cited by citizens as being the essence of their egalitarian system prior to the identification of their form of governance as "democratic" (Fornara & Samons 1991, 42).

b. **ISEGORIA** - right of citizens to address the assembly.

*Isegoria*, the right of citizens to speak at the assembly, was highly cherished (Finley 1973, 19), but it was only entrenched in the early fifth century (Starr 1986, 91).

Although many interpret it as similar to "freedom of speech," in societies where most citizens are excluded from participating in their own governance and have no assembly to address, Ellen Meiksins Wood describes the concept of *isegoria* instead as simply foreign to a liberal democracy (Wood 1996, 123).

## **B. THE EVOLUTION OF DEMOCRACY IN CLASSICAL GREECE**

The Greeks elaborated in their city-states a set of democratic norms and sophisticated institutions under specific historical conditions to create democratic governance, tailored to the size and special characteristics of their polity. Their amazing accomplishments provide us with principles, if not mechanisms, which might still be adapted or approximated for use today. Studying the evolution of these mechanisms and principles can provide insight into the process that led to the creation of democratic governance, albeit under specific historical conditions that no longer exist. Let us now briefly review the emergence of those institutions and their characteristics that made possible the profound communicative options required for democratic governance.

The study of democratic practices in Ancient Greece is often limited only to Athens. There are good reasons for this. The Athenian city-state is a focal point in this discussion not, however, because Athens was the earliest known documented Greek democracy. It was not. Both the city-states of Dreros on Crete and Sparta on the mainland are known to have had democratic governments earlier than Athens (Finley

1983, 57). Nor was it the only city-state to develop a full-fledged mature democracy of the type that evolved in Classical Greece. It was not. Both Corcyra and Syracuse developed similar forms of governance (O'Neil 1995, 71-5).

There are, however, two reasons to privilege the study of Athens. For one, much more documentation from the ancient scholars on Athens has survived than is the case for any other Greek city-state. For another, it is probable that Athens was at or near the pinnacle of Greek democratic practice, offering one of the finest examples of democracy from that period. Although Corcyra and Syracuse may have rivaled Athens in achievement, there is a wealth of documentation of Athenian democracy unlike either of the other two.

One point stands out above all others regarding democracy in Athens and Classical Greece in general: that democracy emerged from a protracted historical process. Communicative mechanisms and norms evolved over a very long period of time. For Athens, this process is understood to have begun in earnest with Solon in 594 BC, although the *polis*, a self-governing community (Stanton 1990, 16), is known to have existed in Athens at least as far back as the eighth century BC (Starr 1986, 35).

Naval power was considered by surviving Greek texts attributed to “Pseudo-Xenophon” or the “Old Oligarch” to be intimately, but complexly, interconnected with Athenian democratic governance (Ober 1998, 16, 19, 26 and 43). All three of the Greek cities to evolve the most sophisticated forms of democracy, Athens, Corcyra and

Syracuse, had powerful navies (O'Neil 1995, 77), as did Rhodes later (O'Neil 1995, 78 and 116).

## 1. SOLON

Solon came to power early in the sixth century BC, although there is reason to believe that as much as fifteen years earlier he had already served as an *archon* for the city-state and still commanded significant respect among the elite and the poor alike (Stanton 1990, 34). The office of *archon* dates back at least to 682/81, when it seems to have been instituted by the aristocratic nobility to replace the authority of a previous line of kings (Hignett 1967, 42-4). It is unclear whether Solon was again named *archon* in 594 BC, as writers of antiquity who lived centuries after Solon have presumed (*Athenian Constitution*<sup>9</sup> [c.322 BC] 1950, 72) or whether he assumed a special authority beyond that of *archon* for which there was simply no title. In 594 BC he had been offered the position of tyrant but refused it, preferring instead to rule only with the support of Athenian citizens in the assembly (A.C. [c.322 BC] 1950, 75).

In the surviving texts from that period, the circumstances that gave rise to Solon coming to power are typically described as resulting from class struggle (Stanton 1990, 34; A.C. [c.322 BC] 1950, 72). Plutarch wrote of the period that most of the disenfranchised of Attica (the larger polity within which the city of Athens was located)

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<sup>9</sup> The authorship of the *Athenian Constitution*, although often attributed to Aristotle, is in sufficient doubt as to not warrant a name. The Greek name of the work is typically translated into the Latin *Athenaion Politeia* or *A.P.* In English it has come to be known as the *Athenian Constitution* or *A.C.* As the work was not originally entitled *Athenaion Politeia*, neither *Athenaion Politeia* nor *A.P.* will be privileged over the English name and initials.

had during this period come together "to choose a trusty man as their leader, set free the condemned debtors, divide the land anew and make an entire change in the form of government" (Plutarch [c.AD 110] 1967, 437). The elites, for their part, seem to have feared their entire overthrow, had they not allowed for some significant reforms (Stanton 1990, 76). The *Athenian Constitution* (long considered the authoritative source for information on Classical Greece and still widely attributed to Aristotle) claimed on this issue:

...For the common people had believed that he would bring about a complete redistribution of property, while the nobles had hoped he would restore the old order or at least make only insignificant changes. Solon, however, set himself against both parties, and while he would have been able to rule as a tyrant if he wished, he preferred to antagonize both factions while saving the country and giving it the laws that were best for it, under the circumstances. ([c.322 BC], 78)

Of the four objectives that Plutarch outlined above for the commoners, Solon accomplished all except for the lone objective that the *Athenian Constitution* identified for the commoners: land redistribution (Hignett 1967, 108). However, this demand of the poor rural peasants was eventually also fulfilled. Although it is still unclear precisely how, the land tenure system shifted over the course of the sixth century from one where the great estates, which dominated Attica at the beginning of the century, were replaced by smaller parcels of land in the hands of a larger number of farmers by that century's end (Frost 1994, 52). Growing prosperity seems to have been one contributing factor.

It has been assumed that Solon came to power in 594 BC by being elected by the assembly (Hignett 1967, 79). All accounts suggest he was the choice of both of Attica's warring parties, the upper class and the commoners (*A.C.* [c.322 BC] 1950, 72).

Until the beginning of the sixth century BC, as the *Athenian Constitution* claimed:

...All the land was in the hands of a few, and if the serfs did not pay their rent, they and their children could be sold into slavery. All loans were contracted upon the person of the debtor, until the time of Solon....  
([c.322 BC] 1950, 69)

Solon is considered to have put an end to that practice, canceling all debts and calling upon all those who had fled to avoid payment of debts in Athens to return to their homeland as free individuals (Ober 1989, 61). He is considered to have freed those slaves in Attica whose condition had resulted from indebtedness "and (in some way) to [have] restore[d] to Athens those sold abroad as slaves" (Stanton 1990, 54). Although acknowledging that "all scholars" have tended to assume that this practice "had a significant effect on the control of land" (Harris 1997, 103), Edward M. Harris makes a lone case for Solon's actions having been instead the abolition for serfs of required payment of "protection money to the local lords" (1997, 111). There is, however, agreement that what Solon's laws did was to transfer the previous protection of the poor by the wealthy to the state (Sealey 1987, 124-5). In doing so, he provided the institutional break from aristocratic power to one based on wealth, whereby wealth could automatically transfer into increased political power, thereby defusing pressure for change from the disenfranchised *nouveau riche* (Ober 1989, 61).

In *Politics*, Aristotle described Solon's contributions as follows:

...As for Solon, some think he was an excellent legislator because: he abolished an oligarchy which had become too unmixed; he put an end to the slavery of the common people; and he established the ancestral democracy,<sup>10</sup> by mixing the constitution well. For they think the council

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<sup>10</sup> It is possible the reference here is to forms of "ancestral democracy" that existed before the time of Solon. That possibility will be reviewed in the following chapter.



of Areopagus is oligarchic; the election of officials aristocratic; and the courts democratic. But it seems that the first two, the council and the election of officials, existed already, and Solon did not abolish them. On the other hand, by making law courts open to all, he did set up the democracy. ([c.325 BC] 1998, 61)

In 594 Solon reorganized Athenian society. He is attributed with having divided all Athenian citizens into four groupings based on differences in wealth, determining, among other things, their eligibility for holding public office (Stanton 1990, 66; Hansen 1991, 30). Differences were based exclusively on wealth and agrarian yield (Finley 1983, 13). As the system it was replacing was based on privilege by birth, the move from aristocratic rule to one based on wealth may be seen as progressive, especially since it was ultimately only a transitory step. Solon himself, however, was in all probability no democrat (Roberts 1994b, 51; Ober 1989, 63; Wallace 1989, 54), although he introduced measures that were popular and democratic such as the creation of popular courts (Aristotle [c.325 BC] 1981, 160). It was only, however, when Athens moved away from wealth towards a system where wealth played a minimal role and norms of equality among citizens dominated that it would seem appropriate to speak of democracy.

Herodotus and Aristotle, who are among our best sources from antiquity with respect to Athenian democracy, have been shown to have been inaccurate on a variety of claims with respect to events (Stanton 1990, 23-85). They described events that occurred one and a half to two and a half centuries earlier respectively. Herodotus has been called the "first European historian" (Austin 1969, 29); Cicero called him the "Father of History" (Fornara 1983, 165), but his writings, like Aristotle's, were based on oral renditions of history (Austin 1969, 31). This, of course, raises doubts as to the

authenticity of their claims regarding issues which occurred well before they lived. Plutarch, for his part, was even more distant, writing seven centuries after Solon's reforms. These authors are only cited in this work to substantiate a claim if more recent scholars have assessed the specific claims under discussion to be accurate to the best of our knowledge.

Solon introduced a constitution and laws that served as the basis for future democratic developments in the fifth and fourth centuries (Ober 1989, 299), although the "constitution" was not a single written document as is understood by the term today but one that is based on practice as is common law (Hignett 1967, 99). It was a complex web of normative actions that relied initially on a few pieces of written legislation carved into monuments for all to read (Camp 1988, 102, 104; Hurwit 1999, 100). Among that attributed to Solon is a law that permitted impeachment of those who conspired to deprive people of their political rights (A.C. [c.322 BC] 1950, 76). Another law seems to have extended citizenship to those who had either previously been permanently exiled from their city or who practiced a trade and had taken up residence in Athens with their entire family (Plutarch 1967, 471-3; Stanton 1990, 65). Solon introduced measures of an increasingly inclusive nature.

The *Athenian Constitution* has traditionally been attributed to Aristotle, although today many scholars doubt he wrote it (Sinclair 1988, 228). Nonetheless, it seems to be the work of someone who was familiar with Aristotle's thinking (Hignett 1967, 28-30) - perhaps a gifted student (Stockton 1990, 2-3), although John J. Keany makes a

convincing argument for not yet dismissing the possibility that it could have been Aristotle (1992, 5-19). Whoever it was, the author considered three of Solon's most important measures to be: the abolition of debt-bondage; the right of a third party to intervene in lawsuits on behalf of an injured party; and the introduction of an appeal to jury courts, composed of all ranks of citizens (A.C. [c.322 BC] 1950, 77; Finley 1983, 107). The latter was considered by the author of the *Athenian Constitution* to have been the most important of the three (A.C. [c.322 BC] 1950, 77), although it cannot be denied that the other two changes were pre-conditions for democratic measures.

The appeal to jury courts (*heliaia*) referred to what was probably initially merely a judicial session of the assembly, which worked to shift power from the hierarchical pinnacle of *archon* back to the people (Hignett 1967, 95, 216; Sealey 1987, 62), although the *heliaia* may have consisted of a lesser number of citizens than the assembly (Sealey 1987, 66-70). The *Athenian Constitution* claims this measure allowed the common folk, the fourth and lowest category of Athenian citizens, the *thetes* or "menial labourers," to attend the assembly and to participate in its proceedings as a court (Stanton 1990, 66), although, to our knowledge, they had no other role in the other institutions designed or promoted by Solon. The fact that the court was a court of appeal makes it all that much more important for it would have shifted power, in the final instance, at least over certain issues, into the hands of the Athenian underclasses (A.C. [c.322 BC] 1950, 75-7). Eventually a jury system of courts would proliferate throughout the *demes*, the most local level of governance in Athens.

The changes introduced by Solon were profound. The foundation was established for determining public policy and law discursively. Rhetoric inevitably emerged in such a discursively-based society. Good oration was critical to defend (or prosecute) before juries of hundreds or thousands, just as it was to address the assembly and persuade it to adopt a particular position, which few citizens ever dared to do (Ober 1989, 79). The assembly was clearly dialogic, where in response to a speech, an orator could expect both verbal responses such as catcalls, cheers or heckling and non-verbal expression of interest or boredom (Ober 1989, 104).

Among the specialties that evolved in Athenian society were those who were recognized as “*rhetores*.” Mid-fifth century BC “*rhetores*” were citizens who put a motion before the assembly. By late fifth century and throughout the fourth century, the term came to refer to active political experts who often addressed the assembly (Ober 1989, 105). Antiphon, around 430 BC, is considered to have initiated the practice of writing speeches for others – first for trials, then for the assembly (S.C. Todd 2000, xiii). While the Greek elite considered rhetoric to be essential for a proper education of any refined elite citizen, the teaching itself of rhetoric was popularly viewed with suspicion. It was considered likely to be anti-democratic at the very least, if not a corrupting influence (Ober 1989, 70). Response to the backlash generated by this professionalization resulted in “the rhetoric of anti-rhetoric” (Hesk 1999, 208, 215 and 230). The political role of the *rhetor* was to articulate the unspoken will of the people, offering the assembly sound political advice (Ober 1989, 314). For this he was often extended great latitude (such as allowed to address the assembly relatively frequently),

but he was also subject to numerous mechanisms to make him accountable, including punishment for having proposed unlawful laws (Ober 1989, 109 and 329-30).

Athenian democracy did not rapidly revamp institutions but instead slowly proceeded to democratize control over them, resulting through radical reforms in a profound shift in power relations among Athenian citizens. The Council of Areopagus, for example, is commonly understood to have existed, as the *Athenian Constitution* claims, prior to Solon (Wallace 1989, 37). Solon, however, changed the composition and functions of the body. Before Solon, the Areopagus seems to have been made up of fifty-one jurors selected from among those over fifty years old of "distinction." We do not know how they were selected nor by whom; possibly they were self-perpetuating as a body (Wallace 1989, 52). Solon changed the Council to consist of all former *archons* who had successfully undergone public scrutiny during and after their terms (Wallace 1989, 94).

Solon expanded the archonships to nine besides the chief *archon*, all of whom after 594 BC were elected and scrutinized by the assembly (Wallace 1989, 54). After 487, the assembly elected one hundred candidates with the final ten being drawn by lot; a century and a half later even the one hundred were drawn by lot (Wallace 1989, 126). Before Solon it is understood that the position of *archon* was powerful, while that of Areopagus was not (Hignett 1967, 82; Wallace 1989, 71-2). Afterwards, the reverse was true (Wallace 1989, 82).

The Council of Areopagus was seemingly reshaped by Solon to fulfill new functions, although it is not clear whether the changes are the work of Solon or were later innovations. It was entrusted to act as the guardian of the public order and to try any who "conspired to deprive the people of their political rights" (A.C. [c.322] 1950, 76-77). These are responsibilities that were later transferred to the Council of Five Hundred or *boule* in 462 BC, which was reconstituted each year by lot (Hignett 1967, 168). Until the 320s, the Areopagus retained responsibility for legal decisions over premeditated killing and, if fatal, poisonings, woundings or arson (Wallace 1989, 121). Thus a regime of political rights took hold under Solon, together with entrenched mechanisms to enforce these rights. Whether such rights and mechanisms were of his creation or simply an expansion of earlier rights is not clear.

The basis of citizenship seems to have been expanded over the centuries predominantly to those who were willing and able to go to war to protect the city-state. The first class to be so empowered were those who independently supplied their own armament, the *hoplites*. In 621 BC, Draco supposedly extended Athenian citizenship to all those who bore heavy arms in battle, *viz.* the *hopelites* (Ober 1998, 358). The concern over self-defense drove together all classes of the peninsula. One of the most prestigious actions of a wealthy Athenian was to outfit a *trireme* (naval vessel) for war as part of the Athenian navy (David Cohen 1995, 75). Economic prosperity for the middle classes allowed for greater numbers of Athenians to obtain the necessary equipment to become *hoplites* and fulfill a critical function in Athenian democracy (Raaflaub 1997, 57). They were extended formal power by Solon (Hignett 1967, 94) and consolidated in power after

the tyranny of Peisistratid ended in 510 BC (Hignett 1967, 394-5). The *thetes* seemingly developed their political consciousness as members of the navy; their critical role in Athenian military power ensured their political voice would not be silenced (Strauss 1996, 313-22).

Military service in Athens was provided by the citizens themselves in a form of "citizen" army and navy. It was common for all Greek city-states to have most if not all of their citizens both trained in the use of and equipped with arms (Finley 1983, 21). Following an Athenian war citizenship rights were sometimes extended to those non-citizens who were resident in Attica among those who had fought on Athen's behalf (Edward Cohen 2000, 67-8). Women were not required to serve as warriors. Leadership and organization of the military was deemed too specialized to allow for sortition to fill the positions of generals. Mistakes from decisions made in other circumstances could always be rectified, but during war the costs were too high. Ten Athenian "*strategoï*" or generals were elected each year (Finley 1983, 58). There was no limit to re-election of these ten generals; indeed Pericles, having already served several discontinuous terms, was re-elected consecutively from 443 to 429 (Sinclair 1988, 39). Most of those who were impeached by the assembly were also military leaders. This seems to have approached but not exceeded one tenth of all generals (Roberts 1982, 174-75).

Although women were not allowed political rights in Classical Greece, as they were religious ones, they were clearly allowed economic participation, in trade as well as

production. Indeed the only account of a detailed business transaction that survives to our times is a highly successful one conducted by a woman (Edward Cohen 2000, 108).

One immediate economic change Solon implemented to assist the poor, who could no longer borrow money by putting themselves up for chattel, was to outlaw the export of any food other than olive products (Stanton 1990, 54). Thus while we find one option emerging under Solon of a system which created the conditions necessary for a future Athenian democracy through politically balancing the interests of the different classes, we also find Solon promoting at least some economic policies that protected the poor and ultimately contributed to the growth of the middle classes (Sealey 1987, 117). His encouragement of emigration of skilled labourers to Athens by extending citizenship to them helped expand the skilled workforce and the crafts (Figueira 1998, 222). Both measures would prove beneficial later to developing a powerful navy (Ober 1998, 19).

The constitution and laws implemented under Solon remained in place and were observed even by the tyrants, Peisistratid and his sons, who usurped power between 546 and 510 (Thucydides [422 BC] 1954, 444); indeed, they were observed throughout the fifth century and most of the fourth (Ober 1989, 299).

## **2. CLEISTHENES**

It is not until 507 BC, after the defeat of the Peisistratid tyranny and the introduction of sweeping reforms attributed to Cleisthenes, that democracy is considered



by most to have emerged in Athens (Finley 1983, 55). Although Cleisthenes was from an aristocratic family, he held no official position in government. Historians have assumed that, as an aristocrat, he was entitled to address the assembly (Ober, 1996, 38). It appears that, as a private citizen, Cleisthenes, introduced a series of democratizing laws into the assembly. They were adopted, initiating more than a century and a half of democratic government in Athens, and in fact, many of these institutions endured in Athens for seven hundred years among a much reduced citizenry (Hansen 1991, 33-4). Historians have typically assumed that because Cleisthenes lacked sufficient electoral support among the elite, he sought instead to extend the basis of decision-making to ever-larger circles of citizens (Starr 1986, 90).

These reforms re-designed the basis of Athenian citizenship with far-reaching effects. They divided Athens into ten newly-created "tribes" (not based on any past tribal definitions); each tribe had three districts (*trittyes*): one in the city, one on the coast and one in the hills. The grouping together of districts from each of the three different parts that made up Attica: city, coast, hills, attempted to ensure a unity of city-state despite a division into smaller districts (A.C. [c.322 BC] 1950, 90). Cleisthenes' re-organization provided the structural basis whereby the previous organization of the aristocracy was broken up, and differences were minimized among the regions of Athens, be they city, suburbs, coastal or remote countryside. It provided for connections throughout the region that bound together different interests to minimize conflict between urban and rural or peasant and artisan. Each district had at least one *deme*, typically a village in Attica (Starr, 91). The thirty districts had 139 *demes* in all. Of these, the average *deme* sent

four to six members to the *boule*; but thirty *demes* sent only one, while eight *demes* sent ten or more citizens to the *boule* (Stockton 1990, 57-8).

Each *deme* had its own assembly to manage its own affairs as well as to undertake any task delegated to it by the city assembly. These tasks could range from supplying a given number of jurors or candidates from which to select members for the Council of Five Hundred, to being vigilant to ensure the survival of democracy itself. The *demes'* assemblies varied in time and place from one *deme* to another, but their procedures and norms were modeled on those adopted by the *polis* assembly. It was in the local *demes* assembly that all citizens were approved and registered as Athenian citizens (Whitehead 1982, 92-3).

Although Cleisthenes' reforms would eventually lead to the concept of political egalitarianism, this was not necessarily his original intent. No more than Solon did Cleisthenes likely anticipate a future when the "common people" of Athens would, "in a premeditated spirit, take the reins of government into their own hands" (Fornara and Samons 1991, 66). Rather, the shift occurred over time. The people, in their quest for democratic governance, managed to construct and solidify the democratic option in one effort after another. There were numerous hard fought battles before democratic governance was solidified by Athenian citizens.

In 487/486 the shift from election of political positions, such as *archon*, to their selection by sortition meant that necessarily and intentionally the powerful position of

*archon* would change. No longer was the "best" candidate to be chosen and power invested in him, but instead it would be a rotation among equals. Discretionary power was reduced to a minimum. For *archons*, this was a shift from tasks of leadership to those of oversight (Hignett 1967, 175).

One of the consequences of no longer electing *archons* but selecting them by drawing lots was that the Council of Areopagus, which was made up of all the ex-*archons*, would also now need to have its responsibilities lessened (Hignett 1967, 188). It is unclear whether the election of Athenian officials was replaced by sortition under Solon, as the *Athenian Constitution* claims ([c.322 BC] 1950, 75), or whether it more likely occurred at the end of the sixth century (Hignett 1967, 322). Even Aristotle, not a democrat, claims in *The Politics* that Athenian elections, when they still occurred, were not democratic but aristocratic: "...the mixture contains...an aristocratic element (the fact that the officials are elected)..." ([c.325 BC] 1981, 160-61). Under the tyrants as well, election was used, to ensure "that office should always be held by men of their own party" (Hignett 1967, 322) referring to those who were part of an inner circle of allies. With Athenian democracy, however, sortition replaced election.

The Council of Five Hundred or *boule* was selected by sortition, with each of the ten tribes selecting fifty members by lot at the *deme* level (Stockton 1990, 84). When in 487/6 the ten *archons* were drawn by lot, instead of being elected, they were drawn from a pool that also had been selected by lot in the demes (*A.C.* [c.322 BC] 1950, 75-6; Wallace 1989, 126), producing a double sortition (Sinclair 1988, 78). This sortition was

a central pillar of Athenian democracy; it guaranteed a participatory democracy.

According to Finley, it was the *boule*, based on sortition, that offered the best school for democratic governance, at least in early Athens (1983, 74). Hignett agrees.

If the *boule*...had been filled by the ablest men in the community, the government would have been oligarchic in fact if not in form. Hence the importance attached by the Athenians to the maintenance of sortition. (Hignett, 231)

### 3. EPHIALTES' REFORMS

The second major modification to the political system originally designed by Solon came as "Ephialtes' reforms", introduced by Ephialtes to the assembly in the decade before his mysterious death in 462/1 BC. Little is known about Ephialtes himself other than his role as a military leader who commanded a fleet of thirty warships during the 460s and that he was referred to as "the political leader" of the assembly who introduced a series of radical reforms which were adopted at the end of that decade (Stockton 1990, p41). Together with Pericles, Ephialtes sponsored legislation to remove the remaining privileges from the aristocratic Areopagus (Reeve 1998, 61 footnote 148). He also suggested reforms to reduce the qualifications necessary for office and the jurisdiction of both political and judicial bodies.

In an open, discursively-based political system where the assembly was sovereign and exercised political power and the judiciary consisted of large juries without "professional" court or police officials but instead merely testimony of two sides of a

conflict, the skill of oration reigned supreme. Fully cognizant of this, the Athenian assembly imposed harsh terms to ensure the governance remained democratic. Ephialtes, like Cleisthenes and Solon before him must have been great orators as well as being both competent political and military analysts. Critics of any political leader who persuaded the assembly would typically identify such persuasive orators as “demagogues,”<sup>11</sup> as any defendant before a jury would accuse his (private) prosecutor of being a “sycophant”<sup>12</sup> (Johnstone 1999, 57). While the assembly respected good oration, it also adopted mechanisms to restrict the commodification and professionalization of instruction in oration and rhetoric and was suspicious of the motives of those who sought such skills.

Ephialtes’ reforms involved the transferal of power to enforce laws from the Areopagus to the *dikasteria* or dicasteries (jury courts) (Munn 2000, 267), resulting in a proliferation of law courts. This proliferation was not a single act but occurred throughout the decade following their initiation in the late 460s BC (Fornara and Samons 1991, 63). According to the *Athenian Constitution* by 453 BC, citizens over thirty years old of every *deme* were called upon to serve as jurors for trials within the local *deme* (O’Neil 1995, 64, 96). The introduction of the *dikasteria* to the most local level between 462 and 453 BC extended the political participation that was accessible to any citizen through participation in the *deme* assembly to the judicial realm. Both allowed continual

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<sup>11</sup> The term “*demagogue*” literally meant “he who leads the *demos*” and implied good oratory and advisory skills (Ober 1989, 107). Thus successful leaders of the assembly such as Pericles were considered to be “*demagogues*” (Ober 1998, 266).

<sup>12</sup> The definition and origin of the word “*sycophant*” is unclear, but its usage always implied someone who was not socially acceptable (Allen 200, 158-67). Its usage seems to have arisen from those who sought a modest fee for prosecuting public crimes as there existed no public prosecutor nor process for prosecution other than citizens who took it upon themselves to do so. The suggestion is that *sycophants* were in pursuit of personal gain (Osborne 1990, 87, 99). The negative characterization may have arisen in response to settlements out of court that resulted in accusations not even being brought into the public sphere. See Osborne 1990, 83-102, Harvey 1990, 103-121 and Allen 200, 158-67.

involvement in the political and legal issues most relevant to a citizen's own immediate affairs.

The power of the Areopagus collapsed, while the power of the assembly, *boule* and juries rose (Stockton 1990, 50). During this period, as part of the Ephialtes reforms, the *boule* assumed some limited judicial powers, however, these powers were restricted from the beginning and remained under the supervision of the assembly (Rhodes 1972, 179-206).

The so-called "revolution of 462 was the decisive stage in the development of the constitution from a moderate to a radical democracy..." (Hignett 1967, 213). From around 461 BC, with a series of reforms, a full fledged democracy can be said to have existed among Athenian citizens (O'Neil 1995, 61). There was an **assembly**, a **boule** and **jury courts**, all of which contributed key elements of democratic rule, all of which were rooted in discursive action. It seems to be about this time that the term *demokratia* itself came into usage (Munn, 18), while it took another twenty years for the term to be the "standard term to describe the Athenian form of government" (Ober 1989, 82; Saxonhouse 1996, 32). However, as Fornara and Samons state already in the period after 508/507, "Without a doubt, legally and in fact, the *kratos* of the city-state was taken possession by its citizenry, the *demos*" (1991, 56).

Before Ephialtes reforms, the necessary qualification to hold political office, including *archon*, was ownership of property (Fornara and Samons 1991, 64). This

requirement was removed for all but the position of *archon*. The absence of property qualifications for citizens became a principle of the new democracy (Ober 1989, 193). Although the property requirements to become an *archon* were not eliminated, they were significantly lowered around 457 to include the top three of the four property-based classes of citizens. Now all but the *thetes* could fill the position of *archon*<sup>13</sup> (A.C. 322 BC, 96). Apparently by Aristotle's time, i.e., in the fourth century BC, even *thetes* were allowed to fill this position (A.C. [c.322 BC] 1950, 75; Stockton 1990, 85; Wallace 1989, 126), although the codified laws do not reflect this change.

#### 4. PERICLES

Pericles continued to introduce important legal reforms after Ephialtes' death. The most important of these was that of paying for jury duty (Sinclair 1988, 37). While participation of all four categories of Athenian citizens was permitted before Pericles reforms, the need to not lose a day's pay was greater for those of less income, resulting in a lower percentage of that class being able to volunteer for jury duty. After the assembly adopted Pericles' reform providing a *per diem*, the mere claim to Athenian citizenship now entitled one to paid public service. This measure permitted the active participation of even the poorest citizens in the management of the affairs of state.

Even payment for attendance at the assembly was introduced late into the Peloponnesian War, under circumstances where many Athenian citizens were abroad

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<sup>13</sup> Those who preferred to see a situation where there was no position of *archon* could be seen as advancing a position of *an-archon* (no-*archon*) or anarchy. This would not be an undemocratic alternative but potentially a fully democratic one.

fighting (O'Neil 1995, 67). During most wars (at least the Persian, Peloponnesian and Corinthian Wars), judicial action in Athens was postponed until Times of peace (Allen 2000, 108). It was following the wars that Athens most rigorously engaged in political experimentation (Ober 1998, 371).

However, at the same time as extending the rights and benefits of citizens, Pericles also reduced their number. He successfully proposed limiting Athenian citizenship to those who could prove citizenship from both parents (by means of the mother's father) and not merely from the father's side. This restriction, although not retroactive, seemingly resulted in preventing an additional five thousand Athenians (of an estimated thirty thousand citizens) from becoming citizens over the next five years (Robinson 1959, 34), although it is unclear exactly what the terms of the citizenship law were (Podlecki 1998, 159-61).

Pericles is widely considered to have been one of the greatest leaders of Athens, yet, as was probably the case for Ephialtes, the only official position he ever held was general. Like Cleisthenes, he "led" the assembly by means of having individually nursed specific motions through the assembly. His influence was attributed to his acute judgment and awareness of affairs of state (Jones 1968, 126-27). Kagan asserts that the constitution after Pericles was "as thoroughly democratic as the world has ever seen" (Kagan 1991, 47).

Hignett elaborates:



...(T)he principal changes introduced between the revolution of Ephialtes and the death of Perikles were: the development of the popular courts; the introduction of pay for *dikasts* and other civilian officials; the abolition or reduction of property qualifications for magistracies; the use of sortition for most appointments; the strict limitation of the competence of the magistrates<sup>14</sup>; the acquisition of full sovereignty by the people and its realization in the three popular bodies, the *ekklesia*, the *boule*, and the *dikasteria*. (215)

All three popular bodies, the popular assembly, the Council of Five Hundred and the jury courts, were open to all citizens who cared to participate, although except for the assembly, subject to a draw by lot. Many consider the watershed of these changes to have been the introduction of the *per diem* for jury duty (Fornara and Samons 1991, 71).

Ten generals were elected each year, one from each of the ten tribes established by Cleisthenes (Stanton 1990, 167). Generals were often re-elected, as was Pericles (Robinson 1959, 34-5), especially after repeatedly encouraging the assembly to wage successful wars to defend itself from Sparta (Thucydides [422 BC] 1972, 110). The power of some military leaders grew during war and often tended to carry over into peace times as well if not kept in check (Robinson 1959, 35). While *hoplite* formation had demonstrated itself to be widely understood to be superior among armed land battles, Pericles considered Athens's naval strength to be critical to its survival and dominance in the region through the element of rapid troop deployment (Ober 1998, 90).

Although this refined Athenian democracy was violently interrupted by a Spartan-backed oligarchic *coup d'etat* in 411 BC, by 403 BC democracy was once again re-installed in Athens. The assembly chose very wisely and generously to not seek revenge

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<sup>14</sup> The term "magistrate," as was common practice, is used in reference to *archon*.

in 403 for the atrocities committed against the Athenian people. It took an invasion from Macedonia in 338 BC to ultimately undermine the democracy, albeit only temporarily (Ober 1989, 333; Loraux 2002, 256-62).

By the opening of the third century BC, the peasants as a class had shrunk in size and no longer formed the basis of Athenian democracy although it is unclear why (Mosse 1973, 114). The democratic measures of the assembly were still largely observed into the second century BC, except for one critical change: election of officials instead of selection by sortition. Political power by the third century was concentrated in the hands of a small group of rich landowners (Mosse 1973, 136). Although late in this semi-democratic period *archons* were elected on three occasions of crisis (294-92; 97-95 and 91-88 BC), this never did become the norm for selecting *archons* (O'Neil 1995, 109).

The *demo* of "democracy" came to refer not only to the "people as a whole" or the citizen body but by the third century BC also was used to refer to "the common people" (Finley 1973, 12-3). Democracy was appropriated and endowed with an alternative meaning. It had originally evolved out of the notion of the rule of the *demes*. The *demes* had become, after Cleisthenes' reorganization, the location of critical grassroots self-governance on which the governance of all Athens depended. It was in its 139 *demes* where citizenship was established, where sortitions for the Council of Five Hundred occurred, where the *dicasteries* held local courts. It was here at a very local level that self-governance was experienced most directly, that norms and mechanisms were honed and debated at the most accessible level.

The reference to *deme* implies the entire *deme*, without any exclusion of the upper classes. It would seem reasonable to assume that the later meaning of “democracy” as rule by the common people emerged among resentful privileged classes who no longer held political privileges. If the will of the *demes* could be clearly determined, as it seems occurred in Athens, then this will of the majority of an informed citizenry in a class society would likely frequently be distasteful to the economically privileged classes (Ober 1998, 39). The privileged classes could easily come to consider the rule of a majority to be simply rule by the commoners, if for no other reason than because commoners would indeed form the majority. The polysemic nature of the very word “democracy” led to political confusion and a mischaracterization of the term over the next two millennia.

### **C. OBSERVATIONS ON ATHENIAN DISCURSIVE DEMOCRACY**

The sophisticated democratic mechanisms of Athenian self-governance were part of one of the most conducive situations ever documented that allowed for a practice of discursively determined public actions, i.e., actions arrived at through public discussion and resolution. These were refined institutions and practices, carefully structured to ensure democratic governance for all those who were classified as citizens. Through its various legislative, executive and judicial bodies, Athenian democracy constructed reality, as noted by Josiah Ober, “through the social practice of performative speech”

(Ober 1998, 200). This speech was aimed at determining action following rational debate, open to all citizens. So normalized was this situation that the Greeks used the very same term, *logos*, to refer to the concepts of speech, words and reason (Saxonhouse 1992, 122).

In the 10,000 years or so since neolithic times when humans became sedentary beings and began to live in communities based on cultivation, language has been used to accomplish a growing number of communicative tasks. As these communities grew and social relations became increasingly complex, the usage and nature of spoken language would also have become increasingly complex. It is not surprising that language has come today to perform numerous tasks of communication simultaneously.

These numerous tasks of simultaneous communication were delineated by Austin into three categories. To locutionary and perlocutionary forms of action in speech, Austin added "illocutionary" ones (Ober 1998, 36-8). Habermas embraces Austin's distinction among locutionary, illocutionary and perlocutionary speech acts of propositional statements, but he refined the distinctions. Of Austin's three forms, the first, locution, provides a speech act regarding the state of affairs. The second, the illocutionary, establishes the mode of address using a performative verb in the first person present, such as "I speak to you." The third form, perlocution, involves having an effect on the hearer. Habermas summarizes these three forms as: "to say *something*, to act *in* saying something, to bring about something *through* acting in saying something" (Habermas, 1984, I, 288-95). Ober applies Austin's speech act theory to political

discussion, an application to which Austin never alluded, using it to clarify the complex relations among democratic knowledge, social practice and critical political theory.

The refinement that Habermas added is not of immediate concern, but we will return to it. Habermas draws a distinction that Austin did not between *communicative* action and *strategic* action with respect to perlocution. Habermas described linguistically mediated strategic action as "those interactions in which at least one of the participants wants with his (sic) speech acts to produce perlocutionary effects on his opposite number" (1984, 295). Communicative action, for its part, is an approach of open-ended discussion involving not only the application of established norms but the questioning and re-interpretation of those norms together with an eventual agreement on a common course of action (Cohen & Arato, 435). It seeks to achieve a means for arriving at a consensual agreement on *how* to discursively determine a collective course of action, as well as to actually determine it.

Whereas in strategic action one actor seeks to *influence* the behavior of another by means of the threat of sanctions or the prospect of gratification in order to *cause* the interaction to continue as the first actor desires, in communicative action one actor seeks *rationally* to *motivate* another by relying on the illocutionary binding/bonding (*Bingungseffekt*) of the offer contained in his speech act. (Habermas 1991, 58)

Although Classical Greece indeed offered examples of strategic action, more importantly it also offered examples of communicative action (particularly in assemblies in the last half of the fifth century BC). Communicative action is an element that can be found only in a vibrant public sphere, however created. It requires that those involved in the process assume that they have both the right and the ability to govern themselves.

These rights are fundamental to concepts such as *isegoria* and *isonomia*, but they were embodied in the communicative practice of nearly two centuries of popular discussions to achieve ever more democratic practices. The refining of this communicative practice over a very prolonged period was enabled by the entrenchment of the rights established and the ability of democratic governance to meet the needs not only of the popular classes but, seemingly, of the whole of enfranchised Athenian society. This communicative action would have been essential in ensuring democratic relations be built.

#### **D. CONCLUSIONS**

While communicative action may have been the vital element of Athenian democracy that ensured its re-creation, time and again, other elements are also critical to isolate. Athenian democratic governance developed as part of a process driven by class struggle. It was a process whereby democratic institutions, norms and practices were refined to consolidate democratic governance. The democratic mechanisms that ensured open and effective public speech in Athens evolved over centuries. This need for a prolonged process to refine democratic institutions, norms and practices is another major lesson to draw from the discussion of Classical Athens.

More importantly, however, we may also take from Athens a series of democratic practices, principles and lessons to examine the degree to which they have relevance

today. Sortition or drawing lots is a mechanism that worked to ensure democratic practice in Athenian democracy, yet today this concept is hardly known to us. This practice tends to create conditions for on-going participation by citizens, when there are many members of civil society who wish to participate. It would work towards creating and sustaining a participatory democracy. Democracy is not a question of electoral politics; it is a practice that is discursively based on communicative action as well as normative action.<sup>15</sup> Democracy is a way of living, a form of self-governance that is necessarily a time-consuming process. Before examining the possibilities for democratic self-governance in the present context, we need first to examine other historical instances as well as to look further into the past to see what, if any, egalitarian relations may be found, as will be done in the following chapter.

Athenian democracy was based on participatory involvement, employing both **rotation** and **sortition**. It evolved forms of **accountability** (*euthunai* and *graphe*) as well as economic means (*per diem*) to allow, and indeed encourage, even the poorest citizens to participate in the political process of governance. It evolved organs for mass participation in legislative (**assemblies**), judicial (**jury** courts) and, to a limited degree, executive (*boules*) functions. **Rights** of *isonomia* and *isegoria* worked to create and preserve a culture of democratic governance. On the other hand, mechanisms such as ostracism worked to strengthen democracy by preventing forms of strategic action undertaken by seemingly ambitious politicians from threatening to undermine the very existence of democracy.

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<sup>15</sup> This refers to actions that follow established norms without discussion of what the norms should be.

With these democratic concepts, institutions and practices, Athenian society was able to achieve, through its discursive practice, an empowerment of its enfranchised popular sectors. Although inclusion was limited, the practices themselves were indeed democratic for through these practices power can be said to have ultimately lain with the citizenry.

As long as the *demos* remained arbiter of public opinion and policy, the word *demokratia* was a name for a political society and culture in which the most basic and elemental human power -- the power to assign meanings to symbols -- belonged to the people. (Ober 1989, 339)

To the people? Is this an accurate statement? What is the significance of the exclusion of women? Let us explore whether these apparent issues of gender and class difference magnify or diminish as we head further into the past. Let us also see how far back democratic relations can be traced. Was democracy in Classical Greece more or less exclusionary than political deliberation in the societies that preceded it in Old Europe? What can we learn from egalitarian societies in Old Europe that is important for contemporary efforts to realize democratic self-governance? These are the questions behind the exploration of democratic practices that predate Hellenic Greece in the next chapter.



## CHAPTER 4

### WHEN WOMEN GOVERNED IN EUROPE AND THE NEAR EAST

This chapter examines historical and prehistorical roots to the conditions that led to the Athenian democracy. It identifies earlier societies that employed some degree of democratic practice and locates the likely origin of these practices in early egalitarian, matristic<sup>16</sup> societies that predated patriarchy. The chapter argues that earlier egalitarian societies shaped Greek civil society and made possible the public sphere that developed around the Greek *polis*. With such sophisticated communicative forms of democratic governance as evolved in Classical Greece, how could these relations be so thoroughly democratic for the few who were enfranchised, yet disenfranchise half of the population, exclusively on the grounds of gender? The intent of this chapter is to situate the evolution of democratic governance historically among democratic practices which preceded those of Classical Greece and to seek out not only instances of early democratic practice but, in particular, any gendered and inclusionary practices.

#### I. DEMOCRATIC PRACTICES PRIOR TO CLASSICAL GREECE

It is often claimed that democracy was an "invention" or innovation of the Ancient Greeks (McLean 1986, 140; Leveque et al, 102). But while it is undeniable that Classical Greece did indeed evolve highly sophisticated forms of democratic governance, I will argue there were important precedents. All human achievement has evolved under

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<sup>16</sup> "Matristic" refers to gendered relations wherein women play a dominant social and political role in a society, without this implying oppressive relations.

specific, historical conditions, building upon the past and standing on the shoulders of previous accomplishments.

Classical Greece may well represent the most comprehensive and sophisticated forms to date of direct democratic practice implemented on a large urban scale in spite of its exclusionary nature for most of those who lived in Greek city-states. (Somewhere between sixty and eighty-five per cent of the adult population was excluded.) However, numerous indicators have, for a long time, pointed towards there having been significant traditions of more inclusive democratic practice pre-dating the Hellenic Greeks.

Moses Finley, in *Democracy Ancient and Modern* (1973), makes reference to the Assyrian and Mesopotamian "democracies" but dismisses both since, he claims, their apparent impact on contemporary society has been "null" (Finley 1973, 14). In *Politics in the Ancient World*, Finley also describes the Etruscans and the Phoenicians as "democratic societies" but again does not attempt to explore either, confining himself instead to Classical Greece and Rome (Finley 1983, 53). Let us then briefly review these early societies that predate Hellenic Greece.

#### **A. ETRUSCANS**

It was from the Etruscans that the Romans learned their most sophisticated skills and techniques (Grant 1980, 95). During the first two and a half centuries of its existence, Rome, only ninety-two kilometers from the major Etruscan city-state, was

initially so dependent upon Etruria that it has been called "virtually a Etruscan city, and part of the Etruscan world" (Hampton 1969, 30). Indeed the very unification of the villages on the Seven Hills to form the city of Rome is considered to have been modeled on Etruscan cities (Grant 1980, 18). The ancestry of the Romans, however, was radically different from that of the Etruscans. The Romans were "Indo-European" (MacNamara 1973, 181). The Etruscans, however, were not; they were instead among those who populated Europe for untold millennia before the arrival of Indo-Europeans (Grant 1980, 68).

With only one exception, archeological findings from both burial sites and ruins of settlements suggest that by the ninth century BC, apart from its slavery, Etruria "had been broadly uniform, egalitarian, and classless" (Grant 1980, 117). From the beginning of the second millennium BC until the ninth century BC, Etruscan society seems to have evolved without major changes (Grant 1980, 80). Under the Roman Empire, these distinct characteristics of Etruscan society seem to have disappeared entirely.

## **1. ETRUSCAN DEMOCRATIC PRACTICES**

Popular assemblies are considered to have existed in Etruria for as long as we have records; although little is known about them, they are considered to have been held regularly in all Etruscan cities. Each year an assembly was held for the Etruscan Confederation at the Etruscan shrine of Voltumna, near Volsinii or what is today Bolsena in central Italy (MacNamara 1973, 161). We do know that at these annual assemblies, at

least in the fifth and fourth centuries BC, members of the Etruscan city-states elected one of their number, for a period of one year, to serve as a magistrate (MacNamara 1973, 166).

From fragments of written records, drawings and sculptures, it is known that Etruscan cities embraced democratic practice, holding mass assemblies for purposes of governance. These assemblies seem to have been inclusive at the local level, with direct forms of participation for citizens. There is no known involvement of women in the Etruscan assemblies, but then neither is there any knowledge of their exclusion nor, for that matter, is there any known involvement of men, although we know assemblies existed. Unlike most of the cultures of the Mediterranean of which we have knowledge, apart from some of the islands in the Aegean, Etruscan women seem to have had more equitable status than other women around the Mediterranean at that time.

Some information regarding gender roles is available to us from inscriptions on Etruscan tombs. For one, the Etruscans were matrilineal as well as patrilineal, i.e., they traced and recorded their lineage through both genders (MacNamara 1973, 167-8). In depictions of leisure activities, dining or spectator sports, women are shown as equal to the men in presence and in stature; sometimes it is clearly they who are the people of honour at an event. This was a practice that was not only unfamiliar to the Classical Greeks, but seemingly scandalized them (MacNamara 1973, 169). From all we know of Etruscan society, women may have participated in the assemblies but have been highly active in them.

Riane Eisler, citing studies in regions further to the east from which burial practices and metallurgy seems to have spread west into Etruria (Grant 1980, 79-80), maintains that prior to the numerous waves of Indo-Europeans into Europe, there existed in Europe and Asia Minor, more equitable, matrilineal, democratic societies (Eisler 1987, 43-4). The Etruscans, although she does not specify them, would seem to be derived from such egalitarian, matrilineal societies, likely one of its last significant expressions in Europe. This was not a new development in this part of the world as excavations of burial sites from pre-urban times in the Italian peninsula reveal the village communities also to have been egalitarian societies (Grant 1980, 63). The Etruscans seem to have exemplified egalitarian relations regarding women's participation, although entrenched patriarchy among the Indo-European Romans seems to have prevented this gender equality from being passed on.

## **B. PHOENICIANS**

The geography of the Lebanese coastal plains, divided by short rivers coming down from the mountains to the east, was an ideal bioregional setting appropriate for the emergence of the city-states of Phoenicia (Aubet 1993, 16). It is this most interesting of polities, the city-state, refined by the Phoenicians, Etruscans and Greeks, which seems to have resulted in the most manageable conditions for democratic participation within an urban centre of tens of thousands of citizens.

Phoenicians founded Carthage in 814 BC on the Mediterranean coast in northern Africa, in what is today Tunisia (Aubet, p75). The Phoenician city-state, Tyre dates back to 2750 BC, although the notion of "Phoenician" only came into usage from 1200 BC onward (Aubet 1993, 10, 19). Aristotle's discussion of the Phoenician city-states of the seventh and eighth centuries BC described them as governed by assemblies and councils of elders. He wrote in *The Politics* that the constitutional power in Carthage rested in the hands of two elected kings or magistrates, a Board of Elders, and a general assembly of the people (Aristotle [c.325 BC] 1981, 156-7; Harden 1962, 79).

In reference to the role of the popular assembly, when matters were referred to it by the monarch, Aristotle stated:

Moreover, when a matter agreed upon by Kings and Elders is so referred, the people are not merely allowed to listen to the proposals of the officials, but they have sovereign power to make decisions on them; and it is open to all and sundry to oppose and speak against the proposals that have been referred to them. (Aristotle [325 BC] 1962, 156-7)

Writing around 130 BC, Polybius, who was both a Greek historian and a general, wrote: "The Carthaginians had kings, the assembly of elders had the power of an aristocracy, and the people were supreme in such matters as were appropriate..." (Polybius [c. 150 BC] 1979, Book VI, 345). Moscati cites classical sources that indicate that in Tyre these councils were empowered to act in a decision-making capacity in the absence of the king (Moscati 1968, 29). In Sidon, these councils could even act in opposition to the king (Diodorus Siculus, XVI, para45, 1952, VII, 361-2).

### C. HEBREWS

It appears that early Hebrew society (over three and a half millennia ago) may also have been highly democratic but became hierarchical with the passing centuries. Although current Jewish culture is very patriarchal; it is not entirely clear, but it seems these patriarchal relations do not extend back into the earlier democratic period before the advent of monarchy.

As with the Phoenicians, popular assemblies were deliberative bodies for both judicial and political issues in Hebrew society. In legal and quasi-legal writings, "the people's assembly" was mandated to try such crimes as murder or to divide the spoils of war. Evolving from the traditions of the tribal nomadic society of the early Hebrews, where strong egalitarianism prevailed, these assemblies were "the supreme arbiter in all phases of the national life" (Gordis 1950, 383-84).

At some point midway through the second millennium BC, an executive position of "judge" or "magistrate" was created to rule over the Hebrew tribes. Some analysts have long held that the earliest of these, as among the Arabs, were women; after all, marriage among the early Hebrews and Arabs was matrilocal (Briffault 1927, Vol.I, 371-3). Later, although the title of "judge" remained, the functions changed. Around 1125 BC, a woman Hebrew leader, named Deborah is praised for her military prowess (Everdell 1983, 22). From the later period of the "Judges," most of those chosen to rule were now given the same title but for a different reason: "not by magisterial functioning

in a court, but by deeds of extraordinary martial prowess" (Finkelstein [1949] 1960, 20). That is, during this period, these so-called "judges" were no longer actually magistrates, but instead military heroes and army commanders who continued to be referred to by this now obsolete term.

The shift in Israeli society that occurred, in particular, during the transition from Saul, the last of the Judges, to David and Solomon, the first of the Kings, is important in documenting the erosion of democratic institutions, as is well presented by Hayim Tadmor (1969). The period is a crucial one because it is characterized by a major shift in forms of governance - from democratic forms of governance to monarchical ones (Tadmor 1969, 48).

The disappearance of popular assemblies as the regular bodies of direct governance did not spell their end as institutions. Popular assemblies would continue to be held on occasion, at least at a local level (Irwin [1946] 1967, 353-54). Elders played an important role in the assembly; a consensus was sought; no vote was taken (Gordis 1950, 384). Elders may have played a role not unlike that of the *boule* in Athens. Even after four hundred years of monarchy, the Hebrew clans still considered they had rights, even against their king. Irwin claims that those rights "implied the complete democratic position": authority rested in the last recourse with the people, no matter how often they had been submissive during the preceding centuries (Irwin [1946] 1967, 350). The assembly would appear in moments of crisis, implying that it still commanded prestige and that its consent was required "to give a decision binding force" (Gordis 1950, 387).



Such resilience for these institutions suggests a significant degree of longevity and entrenchment of these democratic practices.

#### **D. MESOPOTAMIA: THE CRADLE OF CIVILIZATION?**

Various peoples ruled in Mesopotamia in the Tigris-Euphrates River basin from the time it was irrigated as an entire valley at least five to six thousand years ago (Crawford 1991, 31-2). In reverse order, these have been the Assyrians, Akkadians (Babylonians), and Sumerians. Moving back in time from the more thoroughly documented cases to the more contested ones, the Assyrians and Babylonians will be reviewed before the Sumerians.

##### **1. ASSYRIANS**

The Assyrian king seems to have been crowned anew each year. This practice can be seen as an institutionalized custom derived from an earlier practice of electing their kings every year. Until the end of the second millennium BC, some Assyrian kings clearly played down their lineage, which was obviously royal, as though they preferred to give the impression that their rule was the result of being elected for the position or drawn through sortition rather than their having inherited it. As late as 833 BC, formal Assyrian rituals were still seemingly based on the drawing of lots (Oppenheim [1964] 1977, 99-101).

## 2. BABYLONIANS

The practice of drawing lots was used in early Babylonia as well (Oppenheim [1964] 1977, 208). Referring to the democratic institutions that evolved within the Babylonian cities, Oppenheim wrote that they consisted of a:

...community of persons of equal status bound together by a consciousness of belonging, realized by directing their communal affairs by means of an assembly, in which, under a presiding officer, some measure of consensus was reached as was the case in the rich and quasi-independent old cities of Babylonia.... (Oppenheim [1964] 1977, 95)

Thus, at the same time as kings ruled Babylonia, there were also popular assemblies with their own jurisdiction and mandate for elements of governance.

Joan Oates wrote of the *puhrum* or assembly as made up of freemen or citizens although there also existed provisions in Old Babylonian law for safeguards to allow those who were **not** citizens of a city to speak at its assemblies (Oates 1979, 69). In the Old Babylonian period before the second millennium BC, the terms *alum* (meaning "town" or "city") and *puhrum* were used interchangeably (Szlechter 1968, 16; Oates 1979, 68). Important issues were brought before the town as a whole, which met in an assembly to discuss such cases and to reach a resolution (Jacobsen 1943, 162). These assemblies made appeals to their kings and received responses from them. They made legal decisions, sold city property, and assumed judicial responsibility for determining punishment for serious crimes committed in and around their respective cities (Oppenheim [1964] 1977, 111-12).

Until the second millennium BC in Babylonia, "councils of advisors," made up of elders together with the "mayor," were expected to settle minor local disputes, however, the more important cases were brought directly before "the town as a whole" for resolution (Jacobsen 1943, 162; Oates 1979, 68, 71). Arlene Saxonhouse argues that egalitarianism is at the heart of the principles of ancient democracy, citing instances in Babylonia which display such egalitarianism, that were not "based on nature, but constructed by human ingenuity" prioritizing capacity to share (1996, 41).

Democratic institutions in Mesopotamia included both popular assemblies for determining action and practices for selecting officials such as sortition. A. Leo Oppenheim, renowned Mesopotamian archaeologist, in his classic *Ancient Mesopotamia, Portrait Of A Dead Civilization*, describes the popular assemblies in early Mesopotamia:

Constituted as an assembly, the community of citizens, though as a rule only of the old, rich and privileged cities, administered the city under a presiding official. Although no direct indications are available, one may well assume that, at least originally, the assembly included every householder, with the elders playing an important role. (Oppenheim [1964] 1977, 111-12)

Oppenheim sees a progression in Sumerian society from democratic norms to more authoritarian ones. That inclusive, popular assemblies, typically only existed, in the oldest of the Mesopotamian cities (Oppenheim [1964] 1977, 95) suggests that this was a long-standing tradition, seemingly pre-dating history.

### 3. SUMERIANS

From 5500 BC on, with urban centres in Sumer that were at most "small towns" (Saggs 1984, 13), we find indications of a considerable degree of state organization beginning to occur in southern Mesopotamia, partially shaped around the provision of irrigation (Reade 1991, 20). It seems that the original Sumerian towns grew up around sacred temples, where all indications suggest that the surrounding community was composed of persons of equal status (Oppenheim [1964] 1977, 114). From the end of what is known as the Ubaid period (early fourth millennium BC), we find a tendency away from communal and egalitarian practices towards an increasingly stratified society. This shift is most evident in the transition period from 4000 to 3500 BC (Lupton 1996, 34-35).

The Sumerian city of Eridu is considered by archaeologists and historians to have had thousands of residents by 4000 BC (Mallowan 1965, 15); until the 1960s it was the earliest known city-state (Oates 1979, 24). Cuneiform, the earliest confirmed samples of writing, which was initially pictographic but over time eventually shifted to phonetic forms of written speech, emerged in this context.

Both the terrain chosen and the proximity of Sumerian city-states to one another indicate a social climate distinct from the mutual hostility that characterized later Assyrian cities. The Sumerian cities were not constructed with any notable degree of defense; they were cities built on vast floodplains **without walls** to defend them. At

times these cities were even located within sight of one another (Oppenheim [1964] 1977, 113).

The absence of considerations of defense among these early cities should not be taken lightly and will be further explored in the second part of this chapter. The lack of concern for defenses suggests the predominance of stable and cooperative rather than volatile and antagonistic social relations. Mindful that in the older cities assemblies still enjoyed the right to govern, it seems clear that institutions of democratic governance, known to have existed in part during the period of stratified society, had their roots in an earlier period of egalitarian practice.

#### 4. ASSEMBLIES AND RULERS

Six thousand years ago, it seems that communities "in prehistoric Sumer were originally essentially democratic in their structure" (Oates 1979, 26). The assemblies are discussed in the earliest literary and historical texts: legal proceedings, administrative documents, and private and public correspondence (Szlechter 1968, 3-4). Assemblies were convened when necessary.

This assembly was called into session by emergencies, acting by **consensus** and **choosing a temporary leader** to carry out its wishes. As society became more complex and the crises more serious, the position of this temporary leader is thought to have become more powerful and more permanent. (Emphasis added; Oates 1979, 26)

The assembly would choose a "lord" to resolve issues of internal organization or a "king" (*lugal*) when attacked from outside (Jacobsen 1957, 103); when the crisis was over, the

office terminated (Jacobsen 1957, 104). Eventually the *lugal* would become the political ruler of the city-state, and "...although his position may at first have been elective, a dynastic system of royal succession soon developed...." (Oates 1979, 26).

In regard to the role of the king in Sumerian society, Samuel Noah Kramer, Sumerian archaeologist, states:

...(It is important to note that the institution of kingship did not come full-blown, full-grown on the Sumerian social and political scene; it had undergone a long process of evolution from the early days of such rulers as Gilgamesh and his predecessors, when the king was no more than a temporary leader appointed by the citizen assembly.... (Kramer 1975, 58-10)

The assembly also served as a court of law for serious offenses, at times resulting in sentences of execution or banishment (Oates 1979, 103). Assemblies in Mesopotamia, once walls were constructed, occurred at the city's gate or in larger settlements at its gates, whereby each city quarter with its respective gate was governed by its local assembly of citizens (Oppenheim [1964] 1977, 116, 128). Judges or magistrates, elected by the assembly, would also hold court at the gate. These practices were maintained in Assyrian cities until at least 2000 BC (Grayson 1987, 19). We have records of citizens' assemblies functioning as a court of justice in the old and holiest Sumerian city of Nippur until 1850 BC (Kramer 1981, 56, 364).

The first recent indication of these assemblies emerged in the 1940s when four clay tablets that had been unearthed among ancient Sumerian ruins were partially deciphered by Kramer; they were parts of a cuneiform poem about Gilgamesh, the earliest known narrative tale (Kramer 1981, 34; Maisels 1993, 3). A Gilgamesh epic

poem had long been known with versions in Sumerian, Akkadian, Hittite and Hurrian (Tigay 1982, 111-120), but this was the discovery of a new poem, not included among the epic versions; it was entitled "Gilgamesh and Agga" and translated into English by Kramer and Thorkild Jacobsen (Tigay 1982, 26). Jacobsen translated the first four fragments in 1943 and realized their historical political significance (Kramer 1981, 40-50). From these tablets, for the first time, we learned of the existence of what Kramer describes as "...the oldest known political assemblies..." (Kramer 1981, 31). By 1981, Kramer had found and translated a further seven fragments of clay tablets that allowed him to reconstruct and translate almost all of the 115-line poem (Kramer 1981, 35).

This poem about Gilgamesh's activities includes passages that describe his seeking approval from the popular assembly as well as from the council of elders in order to defend the city of Uruk against the troops of Kish (Kramer 1981, 31). Until the time of Gilgamesh (probably around 3,500 BC), the city of Kish, further north, had dominated Sumer since the time of the great flood (Reade, 33).<sup>17</sup> Popular assemblies may well date back millennia. It is certain that in the first known cities in Mesopotamia, six thousand years ago, the form of governance was already one of popular assemblies.

There is considerable evidence confirming to us the existence and the central political role of these assemblies in early Mesopotamia. The Sumerian name for assembly was *Unken*, meaning the "**circle of the people**," implying that the earliest assemblies were of a size where all could be accommodated in a circle. The term appears

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<sup>17</sup> This is now generally accepted to have been the same flood as Noah survived in the Old Testament, a flood of the entire Mesopotamian valley (Mallowan, 1968, pp8-9). It is unknown precisely when this would have been, but is assumed to have been between 4,000-3,500 BC.

in the very earliest texts from the period known as Uruk IV, late in the fourth millennium BC (Oates 1979, 26). The general assembly appears to have been “the ultimate political authority” in times well before Uruk IV (Jacobsen 1943, 166). Later documents confirm that the assembly remained an effective organ for local governance. As late as 2000 BC, the assembly was still empowered to write letters to the king to try serious crimes, make legal decisions and sell real estate (Oates 1979, 26). Their mandate was steadily reduced over the millennia, limiting the assemblies to fewer and fewer judicial and administrative functions (Szlechter 1968, 20).

In summary, by 4,000 BC, well over twice as far back as the beginning of Classical Greek democracy, indeed at the very beginning of history, there were already in Sumer, popular assemblies, which decided their society's most critical issues. For major legislative and judicial issues, the assembly seems to have been supreme. Over time, we find a steady yet gradual erosion of those practices and their replacement by hierarchical and centralized forms of governance. But before returning to democratic practices since Classical Greece, let us first explore possible origins of these early democratic practices. Let us now turn briefly to the two earliest known city-states to evolve in the Fertile Crescent and in Anatolia: Ebla and Catal Huyuk, respectively.

#### **E. EBLA**

Remains of pottery date the city of Ebla (in modern day Syria) back to 3,500 - 3000 BC (Pettinato 1981, 22). In the third millennium, Ebla seems to have been the



centre of the Fertile Crescent, with close ties to other city-states in Egypt, the Levant, Persia, Anatolia and Mesopotamia (Pettinato 1991, 40).

Giovanni Pettinato calculates that the "kings" of Ebla were elected for seven-year periods "with no ban on reelection" (Pettinato 1991, 73). He explains his calculation:

This theory is based on indisputable findings: first, that the rulers were not related; second, that previous rulers continued to live when a successor came into office...; and third, that the regressive system of dating normally started with the seventh year and ended with the first. (Pettinato 1991, 71)

Pettinato says nothing about the nature of the assemblies that elected the kings, presumably because he had no relevant information. He does, however, make a point of discussing his understanding of the situation of women in ancient Ebla. Women were prominent and occupied positions of prestige; this was true throughout all levels of Eblan society. They apparently performed equal work and enjoyed equal status. Women also held important offices and were known to be the heads of government ministries (1991, 75). There existed gods and goddesses as well as priests and priestesses, seemingly of equal rank (1991, 177, 180).

Pettinato says that queens played an undetermined role in government. They owned their own property. There are examples of queens as heads of state both on occasion when there was no king (Queen Arugu) as well as when there was a king (Queen Emar). These and other indications suggest that the queen, at least during some periods, was the dominant political figure and the centre of power; one of the Eblan records even documents the process for election of a new **queen**. Even in instances

where the ruling monarch was thought to have been a king, the queen mother had the special role of deciding the allocation of inheritance, thereby implying a matrilineal and matrifocal society. This and other aspects suggest that Ebla was a matristic society (Pettinato 1991, 75-76).

## **F. CATAL HUYUK**

Although writing, as we have come to know and use it, evolved in Mesopotamia, this does not mean, as was assumed until the last quarter of the twentieth century, that Sumer was "the cradle of civilization." Is all that predates Sumer to be considered uncivilized? More than three thousand years before either Ebla or Sumer's first city, Eridu, are known to have existed, there was already at least one city in existence: Catal Huyuk, an early urban centre on the plains in southern Anatolia. In the 1960s, James Mellaart and a team of archaeologists excavated the ruins of what is now the oldest known city of the world, having been inhabited uninterruptedly between 7100 and 6300 BC (Mellaart 1978, 12-13). Consisting of more than a thousand houses, Catal Huyuk had, by a conservative estimate, some 5,000 to 6,000 inhabitants (Mellaart 1975, 99). This was four times larger than Jericho, which until then had been thought to be the largest city during the seventh and eighth millennia (Mellaart, 1978, 14) and the oldest (Gadon 1989, 27).

Catal Huyuk survived intact for almost a millennium, yet none of the hundreds of skeletons found indicated signs of a violent death (Mellaart 1967a, 225) nor is there any

indication of weapons used against other humans. Of the 150 drawings found at Catal Huyuk, not one depicted a scene of social or political conflict (Gimbutas 1991, x).

### **GODDESSES, PRIESTESSES AND MATRISTIC RELATIONS**

Of the 139 buildings excavated at Catal Huyuk by Mellaart and his team, forty or more were estimated by Mellaart to have functions within Neolithic religion; they were more decorated than others with motifs of ceremonial significance. There is no indication that sacrifice may have been part of any of their ceremonies (Mellaart 1967a, 77). Important for informing us of their perception of experienced or imagined realities are the paintings, sculptures and plaster reliefs found inside numerous buildings presumed to be shrines. They reveal a theme of death, fertility and regeneration (Fagan 1995, 258).

The earliest statuettes were either of animals or what is unmistakably the supreme deity, the Mother Goddess (Mellaart 1965, 18), carved in stone or later made of clay (Mellaart 1967a, 181). Catal Huyuk is the largest known Neolithic site in the Near East for "Mother Goddess" figurines (Ehrenberg 1989, 70). The Goddess was associated with domesticated animals and plant life as well as being the patroness of weaving, a major neolithic innovation (Mellaart 1967a, 182-83).

Depictions suggest that this cult of the goddess was administered primarily by women (Mellaart 1967a, 202). The life-giving Goddess is presented as the dominant

image, suggesting that this may have been the major cultural theme (Mellaart 1965, 18; Gimbutas 1991, 255).

In the reliefs found in the shrines there were no images of males (Margaret Ehrenberg, 70). Male figures were portrayed not by images of male humans, but by the head of a bull, stag, or ram. Most of the smaller reliefs were of women with uplifted arms and legs, described by Mellaart as depicting childbirth (Mellaart 1978, 20). According to Dorothy Cameron, a member of Mellaart's archeological team in Catal Huyuk, one of the rooms in one of the shrines seems to have been a "birthing room" (Gadon 1989, 32).

Mellaart concludes that Çatal Huyuk civilization represented the climax of a neolithic process that "must have" begun in the Upper Paleolithic c. 35,000-10,000 BC (Gadon 1989, 21-2). There is no evidence that these early agricultural societies were patriarchal. On the contrary, in societies of hunters and gatherers, women tend to collect more of the community's plant food than the men (Wenke 1980, 135). The discovery of farming techniques is considered to have most likely been made by women (Ehrenberg 1989, 77). When agriculture replaced hunting and gathering as the primary food source, women's status and power may well have increased (Gadon 1989, 37).

The archeological evidence from Catal Huyuk tends to support the inference that women were equal, if not superior in status in these early agricultural societies. As personal belongings and sometimes the bones of corpses were buried under what is

assumed to have been their beds, it was possible to estimate where each member of the family slept. Inside each house, on the east wall, was a large platform with a bench extending from it for use by the woman of the house, for sitting, sleeping and possibly working. In the northeast corner there would be a smaller platform for use by the man of the house; while children or visiting relatives had their own platforms (Mellaart 1978, 17).

Mellaart notes that at Catal Huyuk, there is a "complete absence of sex in any of the figurines" (Mellaart 1967a, 201). He concludes that this should not surprise us since "...emphasis on sex in art is invariably connected with male impulse and desire" (Mellaart 1967a, 202). A culture in which women are revered, he suggested, would be more inclined to represent sexuality with images of breasts, navels and pregnancy for women (Mellaart 1967a), as occurred at Catal Huyuk. Some male analysts, however, interpreted these female representations as women "with legs wide apart in a position for intercourse" (Ian Todd 1976, 42).

Renowned archaeologist of prehistoric southeastern Europe and Anatolia, Marija Gimbutas wrote:

As it is seen from the temples with wall paintings and statuary, the Anatolian Neolithic was a Goddess civilization characterized by the dominance of the worship of the Goddess imbued with mysterious generative power, the importance of temples that functioned as social foci and catalysts for creativity in arts and religious expression, and by the balanced matrilineal social structure. From around 6500 BC, the same features of culture are found in south-eastern Europe and later in most of Europe up to the time of the demise of this civilization, between 4500 and 2500 BC. (Gimbutas 1991, 9)

This civilization survived even longer in pockets - on the islands of the Mediterranean until at least 1500 BC, extending overall to more than five millennia in duration before being crushed from without. Let us now explore this early, egalitarian civilization.

## II: OLD EUROPE

By 6500 BC, the peoples of coastal Greece and the inland plains had developed a thoroughly neolithic economy: with agriculture, ceramics, and domesticated animals. From Greece and the Aegean, the neolithic technology spread rapidly into east-central Europe (Gimbutas 1991, 5). With respect to domestic animals, in the Balkans at least, all the animals that are used there today, except for the horse, were already domesticated by 6500 BC (Gimbutas 1991, 436). Indeed, current evidence indicates the peoples of southeastern Europe had a complete set of domestic fauna (sheep, goats, pigs, cattle and dogs) some five hundred years earlier than is known for southwest Asia (Gimbutas 1991, 4).

From the seventh to the mid-fifth millennium BC, farmers in fertile river valleys of southeastern Europe evolved a distinct and increasingly sophisticated set of cultural patterns that was at least as old as similar developments in Anatolia, Mesopotamia, Syro-Palestine and Egypt (Gimbutas 1991, 17). Temples in southeastern Europe (at Cascioarele, in southern Romania) seem to predate the earliest traces of temples in southwest Asia by a millennium (Gimbutas, 1982, 68). There were farming villages in the Rhine Valley earlier than there were in Egypt (Mellaart 1975, 10).

There are more than one thousand known significant archeological sites in Europe that date between 7000 - 5500 BC. They are remains from the early cultures of *Oroto-Sesklo* in Greece; *Starcevo* in Yugoslavia and the southeast middle Danube basin; *Koros*

in southeastern Hungary; and *Cris* in western Romania. In the forefront among scholars investigating these cultures was the late archaeologist, Marija Gimbutas. By 1982, Gimbutas noted, barely fifty of these sites had been extensively excavated (Gimbutas 1982, 22); a variety of them by Gimbutas herself, including some of the oldest ones in Greece and the Balkans (Gimbutas 1991, 418-27).

Before 4500-4300 BC, there are no weapons or any indication of violence or conflict in Europe (Gimbutas 1991, x; Gadon 1989, 24). European settlements prior to 4500 BC were never built with hilltop fortifications (Gimbutas 1991, 352). Excavations reveal highly sophisticated societies dating back eight millennia to when agriculture was beginning to be practiced widely. Communities appear to have been politically independent and characterized by egalitarian relations among their members (Milisauskas 1978, 129).

The term Old Europe is applied to a pre-Indo-European culture of Europe, a culture matrifocal and probably matrilineal, agricultural and sedentary, egalitarian and peaceful. It contrasted sharply with the ensuing proto-Indo-European culture which was patriarchal, stratified, pastoral, mobile, and war-oriented, superimposed on all Europe, except the southern and western fringes, in the course of three waves of infiltration from the Russian steppes, between 4500 and 2500 BC. (Gimbutas 1982, 9)

What precisely do we now know about the early civilization of Old Europe?

Excavations from early burial and settlement sites have revealed agriculture as early as 7000 BC on the eastern Mediterranean coast and Cyprus, arriving inland in Greece by 6600 BC. By 6500 BC, agriculture may be found on the eastern coast of Spain, around



the Rhone, and in northern western and eastern coastal regions of Italy (Gimbutas 1991, 6). The pattern of diffusion clearly suggests maritime travel; Mediterranean sea travel is known to have existed from drawings in Greece as early as the seventh millennium (Gimbutas 1991, 156). It seems to have taken another one thousand years for agriculture to spread from the Aegean to what is now eastern France and Holland (6500 - 5500 BC) (Gimbutas 1991, 5). Previously, archaeologists had assumed that metallurgy originated in the Aegean and Anatolia regions, then spread to Europe. It now seems to have been the other way around, spreading from Europe to the Near East (Milisauskas 1978, 147-8).

#### **A. GODDESS FIGURINES**

The most widely encountered artifacts from Old European sites have been human figurines, almost always of women. These have typically been found in shrines or temples; thus they have been assumed to be related to the worship of a "goddess" in the same manner as occurred at Catal Huyuk. The same "mother goddess" figurines have also been found in the Indus Valley, dating back to the middle of the third millennium BC (Hawkes 1973, 57, 264-5); earlier roots for the Indus Valley civilization are not known (Wenke 1980, 505).

In Old Europe, the figurines have inscriptions on them. Archaeologists have assumed these inscriptions to be dedications to one goddess or another (Gimbutas 1982, 85); we are still unable to translate them. Indeed the inscriptions are only now beginning to become accepted as probably meaningful "writing," i.e., as a language that is able to be

deciphered. Finnish linguist Harald Haarmann considers Old European script, together with Sumerian pictography, early Egyptian hieroglyphs, the Indus script, archaic Chinese writing, and the pre-Columbian scripts of Mesoamerica, to be the world's original writing systems (Haarmann 1989, 263). The inscribed objects found at Tartaria in the 1960s are Vinca artifacts, produced two thousand years before Sumerian civilization developed its earliest known forms of writing (Gimbutas 1982, 87).<sup>18</sup> This Old European script appears to be associated with religious functions (Gimbutas 1982, 87).

How far back do these figurines and presumably related social relations extend? That is unknown, although miniature sculptures of the Goddess have been found dating back to 25,000 BC, long before any known neolithic activity. More than sixty female figurines, remarkably uniform in style with large breasts, buttocks and thighs have been found from the European Paleolithic period that preceded agriculture (Ehrenberg 1989, 66-67); the number of figurines mushrooms to around two hundred figures, if stylized versions of "women" are included (Gadon 1989, 6-7). None were of males. In Paleolithic art there are no traces of a father figure (Gimbutas 1991, 222). This lengthy heritage of goddess beliefs would have provided a deeply-rooted foundation for the subsequent role of the goddess in neolithic times. Matrilineality would have been the norm in primitive societies, owing to a probable difficulty in establishing fatherhood (Gimbutas 1990, 272).

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<sup>18</sup> Vinca refers to a single site where some 2,000 figurines and anthropomorphic vases were found (Gimbutas, 1991, p66) and also to an entire culture in Transylvania. This culture was replaced in the fourth millennium BC by a pastoral, stratified culture that introduced the horse to the continent. The earliest inscriptions were found in Tordos or Turdas (Winn, 87, 256) in 1874. In 1961, the more numerous Tartaria plaques were dug up near Cluj, Transylvania (Gimbutas, 1991, 309).

The identification of the fecundity of nature with the feminine gender seems to have manifest itself not only in female deities but also in female priestesses. Indeed, the ancient world was full of priestesses (Briffault 1927, Vol.II, 514). It would not be surprising for agriculture to have been in the hands of women since, if women were the principal gatherers of plants, they would therefore have most likely been the ones to observe the cycles of nature and begin experimenting with cultivation of seeds (Ehrenberg 1989, 77). The identification of women with the power of reproduction would, of course, have been reinforced by the very visible role women play in human reproduction.

The Goddess-centered art, with its striking absence of images of warfare and male domination, reflects a social order in which women as heads of clans or queen-priestesses played a central part. (Gimbutas 1989, xx)

The matristic societies of Old Europe would likely have been ones in which rituals related to birthing and dying were central social and cultural practices. These would tend to be societies in which women held both power and authority, not through the use of force but, instead, through persuasion and influence. Governance in these societies would have been shaped by beliefs without resort to force unlike future patriarchal systems, including slave societies.

For the societies of Old Europe to have endured for millennia without any evidence of violence suggests they were stable. To have been stable and without violence, one would assume a high degree of agreement and probably consensus-building norms. It is difficult to imagine that a form of governance could be as enduring as that of

Old Europe if these were not societies that were basically egalitarian, based on partnership between the genders. Anything less, then we could expect to find at least occasional societal ruptures into patriarchal expressions of violence - seeking to redress inequities through sheer brute male force. But we have nothing to suggest that this occurred. Instead we find what seem to have been egalitarian, matristic societies that endured for more than five millennia. What evidence is there for the actual existence of egalitarian or matristic relations in Old Europe?

## **B. THE EVIDENCE FOR MATRISTIC RELATIONS**

Evidence exists in numerous forms: archeological, from excavations of settlements and graves; literary, from ancient Roman accounts of their early relations with northern Europeans; as well as etymological and linguistic analyses that reach back before the written word. The latter involves tracing words through their stems and identifying the language group in which different words relating to different types of activity are rooted, i.e., of which origin, Indo-European or pre-Indo-European, are pastoral terms or agricultural terms or equine terms? Furthermore, analysis of mythology may also contribute to corroborate or call into question interpretations based on other evidence.

## 1. ARCHEOLOGICAL SETTLEMENT EVIDENCE

Archeological evidence of Old Europe reveals matrilocal<sup>19</sup> settlements. In some earlier excavations, findings were misinterpreted as larger buildings were routinely considered to have been the homes of chieftains; larger buildings suggested hierarchy since male dominance was simply assumed. In light of new evidence, Gimbutas reinterpreted some of these earlier findings from Greece to central Europe. These include larger buildings labeled "chief's quarters" which were later realized to be either community temples (Gimbutas 1991, 325), kitchens (Gimbutas 1991, 264) or longhouses (Gimbutas 1991, 330). Archeologist Tatyana Passek excavated a site in the 1930s that she identified as clearly indicative of a matrilineal society, nevertheless, an artist's portrayal labeled the larger buildings as "chief's quarters." The settlement patterns actually imply matrilocal and matrilineal relations (Gimbutas 1991, 330). Excavations suggest matrilocal societies, where the family units were based on a maternal grandmother and her daughters (Erhenberg 1989, 96).

All the ruins of Old Europe suggest a similar pattern over millennia: temples integrated with community life, no heavy fortifications and no outstanding central buildings (Gimbutas 1991, 326), even though the number of dwellings suggests many towns reached what must have been a population of 15,000 residents by the early fourth millennium BC. Even these large urban settlements (Trusesti, Habasesti, etc.) of Cucuteni in Moldavia and western Ukraine often separated by a mere ten to fifteen

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<sup>19</sup> This term refers to settlement patterns that are focused around a woman's family, typically with the maternal grandmother or maternal great grandmother as the central figure occupying the central and largest dwelling. These settlement patterns typically imply matrilineality.

kilometers, showed no signs of hierarchy (Gimbutas 1990, 260-2). Large and medium-sized houses were occupied by extended families of matrilineage, where all members seem to have been treated equally (Gimbutas 1990, 331).

## **2. ARCHEOLOGICAL BURIAL EVIDENCE**

Burial practices as well suggest that these were egalitarian societies. Each community was seemingly politically independent from the others yet widely sharing common cultural practices (Milisauskas 1978, 129). Most of the cemetery evidence reveals remarkably egalitarian burials in southeast and central Europe, 6500 - 3500 BC. Where differences do exist, these were slight and always favoured the female gender, often girls, as in Moragy-Turzkodomb and Zengovarkony in western Hungary. The importance of girls is considered to be a reflection of their hereditary status in a matrilineal society (Gimbutas 1991, 335). The neolithic "Linear Bandkeramik" or LBK culture from France to Romania (Gimbutas, 1991, p37) has to date the most thorough grave analysis of some twenty cemeteries, with between twenty and two hundred graves each which have been exhumed (Gimbutas 1990, 226-8); not one male grave suggests insignia or status of rank of any kind (Gimbutas 1990, 230).

None of the numerous cemeteries that date back to Old Europe suggest any form of social hierarchy based on wealth (Gimbutas 1990, 236). However, Old European graves do reveal that the oldest women were honoured with the occasional symbolic items of veneration in their graves or occasionally with gigantic monuments over them

such as long barrows among the Funnel-necked Beaker culture in eastern Germany (Gimbutas 1990, 234).<sup>20</sup> More than ten thousand megalithic tombs and long barrows in Western Europe have been identified (Gimbutas 1991, 338). These monuments required the communal effort of large groups of people. The henges, built in much of northern Old Europe for millennia, are now widely understood to have served as centres for trade, festivals, rituals and meeting places, as well as tombs (Gimbutas 1991, 208). Where these tombs have contained the lone remains of one individual, this has always been a woman (Gimbutas 1990, 234). Gimbutas concludes that the cemetery evidence "speaks for the existence of kinship-based societies, but does not indicate a hierarchy between the lineages or between the sexes" (Gimbutas 1990, 238).

There is little to suggest warfare in Old Europe; few settlements seemed to consider defense (Milisauskas 1978, 121). Few weapons appear in the graves, and the ones that do are more likely to have been for hunting than warfare (Gimbutas 1991, 352); there are no warrior graves from Old Europe (Gimbutas 1990, 254). This absence of signs of war for over two millennia implies "an absence of territorial aggression" (Gimbutas 1991, 331).

At Varna on the Black Sea, property seems to have been communally held until an abrupt change around 4500 BC, when wealthy individual graves appeared in cemeteries in eastern Bulgaria. Gimbutas considered this was likely the result of contact with the "Kurgans" (Indo-Europeans), whose patriarchal values embraced private

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<sup>20</sup> The Funnel-necked Beaker culture refers to a culture of Old Europe of which little is known; it is identified merely by its pottery. Located in eastern Germany, the culture built long barrows made from huge boulders deposited during the last ice age, which were used as burial grounds (Gimbutas 1990, 234).

property (Gimbutas 1991, 118) as opposed to a system of common property that was the norm in matrifocal societies of Old Europe. This is the first significant indication of elite male status in Europe (Marler 1997, 52).

Horia Ciugudean, who excavated several Cotofeni sites in the Carpathian mountains, also concluded that the process of Indo-Europeanization came from the Asian steppes of the North Pontic, east of the Black Sea, and eventually extinguished the earlier culture of the Mother-Earth goddess (Ciugudean 1979, 174-5). These *Aryan* invaders were thought to have over-run Europe, western, central and southern Asia. How they were able to do this was long considered "one of the great unresolved problems of history" (Wenke 1980, 521). Gimbutas's explanation was that they were warlike and had domesticated the horse (Gimbutas 1991, 352). They came mounted on horseback; with the force of male brute strength they dominated women as well. These were relatively primitive societies, but their military strength allowed them to defeat the more advanced egalitarian societies they conquered and plundered.

### **3. HISTORICAL EVIDENCE**

There is also evidence of egalitarian social relations in Old Europe from other sources including early historical accounts from the Greeks and Romans of "barbarian" societies they encountered: the Teutons, Gauls, Britons, etc. Although these peoples were the result of patriarchal waves of the Indo-Europeans, their societies seem to have retained significant elements of earlier egalitarian relations.



## a. TACITUS

On the existence and functioning of popular assemblies among the Teutons, or Germans as the Romans called them, the Roman historian Tacitus tells us that those rulers whom he calls "kings" did not inherit their positions but were, instead, chosen by the people. On minor affairs, only the chiefs needed deliberate, but on major concerns, the entire community decided. The German assemblies were entrusted with determining the criminal charges, above all those involving the death penalty. The importance of the assembly is indicated by the most serious punishment being to be barred from the assembly (and from rituals). The assemblies seem to have been held approximately every two weeks (Tacitus [c.AD 98] 1970, 106-10).

On issues of gender, Tacitus wrote that the German "barbarians" were exceptional in that the men were "content with one wife apiece..." (116). All Germans had the custom of a husband presenting a dowry to the wife (116). The wife would typically be "his match in strength and age" (118). The practices found in matrifocal societies were still alive in Germany two millennia ago:

The sons of sisters are as highly honoured by their uncles as by their own fathers. Some tribes even consider the former tie the closer and more sacred of the two, and in demanding hostages prefer nephews to sons, thinking that this gives them a firmer grip on men's hearts and a wider hold on the family. ([c.AD 98] 1970, 118)

Almost every reference to a religious functionary during this period is to a woman (Briffault 1927, Vol.II, 541). Among the Teutons, Norse and Celts, there were few male

priests, and in those few societies where there were priests, they typically dressed in women's attire (Tacitus 1991, 85; Briffault 1927, Vol.II, 95).

The Basques, with one of the last surviving pre-Indo-European languages in Europe (Gimbutas 1991, 348), still retain some of the neolithic burial practices (Gimbutas 1991, 295-6) and goddess mythology (Gimbutas 1991, 343). In the Pyrennes until recently, the eldest offspring, be that son or daughter, inherited the family's property. If this were a daughter, her husband would have no claim or control over her property (Briffault 1927, Vol.I, 397).

Matrilocal practices in marriage continued into the historical period, where they are documented (both by the first century BC Greek geographer Strabo and the laws written on walls at Gortyna Temple on Crete) as women's rights (to property and divorce at her pleasure, as men also enjoyed) together with prominent responsibilities for a mother's brother in raising her children (Gimbutas, 1991, 346).

#### **b. JOHANN JACOB BACHOFEN**

Long before Gimbutas, other scholars had already suggested a similar interpretation for Old Europe. Almost a century and a half ago, J.J. Bachofen (1815-87) researched what was then available as historical records, archeology, myth, and ethnography. His conclusions were profound: that Old Europe had for millennia been a matrilineal and matriarchal society. Karl Marx and Frederick Engels praised Bachofen's

work, indeed Engels dedicated his *Origin of the Family, Private Property and the State*<sup>21</sup> to Bachofen (and Lewis Henry Morgan, who, a decade before Bachofen, documented elements of matrilineal social relations among the Iroquois Confederacy in North America<sup>22</sup>). Most others remained silent. How Bachofen's well documented views were drowned out in favour of patriarchal interpretations of Old Europe makes a fascinating study. Riane Eisler (1987)<sup>23</sup> and Elinor W. Gadon (1989), among others, have made significant contributions in this vein.

For Bachofen, it was no surprise that the views he was putting forward were difficult for most to accept. While not all his specific claims have held up, the overall understanding has. In 1861, he cautioned that the matrilineal elements of Old Europe are "alien and unintelligible to the era of patriarchy" (Bachofen [1861] 1967, 92). There is much to suggest that this is as true today as ever, for even in the face of mounting evidence, the acknowledgment of these early non-patriarchal forms continues to meet impressive resistance.

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<sup>21</sup> Engels wrote: "I give a brief review of the development of the history of the family from Bachofen to Morgan principally because the English prehistoric school, which is tinged with chauvinism, continues to do its utmost to kill by silence the revolution Morgan's discoveries have made in conceptions of the history of primitive society..." ([1884]/1972, p35).

<sup>22</sup> Morgan, a pioneer ethnographer, documented how descent and inheritance among the Iroquois was exclusively matrilineal (Morgan, [1851] 1962, 84). Although men were always selected among the Iroquois Confederacy to sit in the Grand Council, who did so was always determined by women, typically the oldest matrons (Hecht 1980, 75-6).

<sup>23</sup> Eisler also lists those she considers "today's more exacting feminist historians and social scientists: Renate Bridenthal, Gerda Lerner, Dorothy Linnerstein, Eleanor Leacock, JoAnn McNamara, Donna Haraway, Nancy Cott, Elizabeth Pleck, Carroll Smith-Rosenberg, Susanne Wemple, Joan Kelly, Claudia Koonz, Caroline Merchant, Marilyn French, Françoise d'Eaubonne, Susan Brownmiller, Annette Ehrlich, Jane Jaquette, Lourdes Arizpe, Itsue Takamura, Rayna Rapp, Kathleen Newland, Gloria Orenstein, Bettina Aptheker, Coral Jacklin, and La Frances Rodgers-Rose and men such as Carl Degler, P. Steven Sangren, Lester Kirkendall, and Randolph Trumbach" (p149-150).

On women's roles in Europe even during the time of early Rome, Bachofen noted, from Plutarch, that Sabine women appeared in battle.<sup>24</sup> It was they who secured a peace treaty. There are numerous myths and traditions where women mete out justice, participate in popular assemblies and arbitrate peace treaties (Bachofen [1861] 1967, 82).

Bachofen traced the lengthy and intimate connection between women and agriculture, pointing out etymological connections between words conceptually related, such as the usage of the same Sabine word (*sporium*) for both 'womb' and 'fields' (Bachofen [1861] 1967, 131-2), establishing a clear connection between the fecundity of women and agriculture. Bachofen argues that since women were believed to be closer to the divine, they were thought to be able to more easily understand divine will.

That is why women were held sacred, regarded as the repositories of justice, the source of prophecy. That is why the battle lines parted at their bidding, why the priestess was an arbiter who could compose quarrels among nations. And this was the religious foundation of matriarchy. Woman...was the source of the first civilization .... (Bachofen [1861] 1967, 144)

The matristic relations of Lycia on the southwest coast of Asia Minor endured millennia after patriarchal relations had eliminated the social relations of Old Europe throughout most of the continent. These typify what were probably characteristic social relations throughout Europe before 4,300 BC. They were summarized by Bachofen as including: i) naming the child after the mother; ii) status derived from the mother; iii) inheritance to daughters, not sons; iv) family governance in the hands of the mother; and

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<sup>24</sup> The Sabine were an ancient culture in the mountainous country east of the Tiber River on the Italian peninsula.

v) community governance in the hands of the women. This set of practices, Bachofen claims, "belongs to an older period of human development" before patriarchy ([1861] 1967, 156). It seems quite clear that these same matristic relations existed in Greece as well in the millennia before the Classical period ([1861] 1967, 157) even though, by Classical times, the only official position a woman could hold was that of priestess (Blundell 1995, 161).

### **c. ROBERT BRIFFAULT**

Reflecting the patriarchal relations of our times, where women have been profoundly silenced, the next major academic contribution to unmasking the myth of patriarchal universality also came from a man. In 1927, Robert Briffault published his three volume work, *The Mothers*, which drew on the same kinds of historical sources as Bachofen had used as well as a range of new information that had come to light in the intervening sixty-five years.

From Plutarch, Briffault noted that Hannibal was obliged to negotiate terms to pass through Gaul, agreeing that any damages caused by his troops would be reviewed by "a council of women, whose decision should be accepted as final" (Briffault 1927, Vol.II, 538). He also points out that the Babylonian code of Hammurabi contains numerous provisions to protect the status of women as well as that of the priestesses, ensuring women rights to own property, conduct business, and plead in court (Vol.II, 252).

Early religion, according to Briffault, is highly connected with ensuring the necessities of life, above all food, typically the domain of women (Vol.II, 510). He points to common historical practices throughout the world wherein male priests impersonate women in women's dress. But the opposite occurrence, of women dressing like men when exercising priestly functions was not at all common, even though women did assume men's garb when participating in such male activities as war or hunting. This suggested to Briffault an early period for humanity when religion was the exclusive domain of women (Vol.II, 531-32).

#### **4. LINGUISTIC AND MYTHOLOGICAL EVIDENCE**

Marija Gimbutas provided significant elements of the archeological evidence from settlements and graves (cited above) through her own excavations as well as compiling further evidence from the findings of other archaeologists. Gimbutas also researched the mythological and linguistic dimensions of early European societies. Her findings regarding Old European civilization as it existed over millennia were paradigm-shaking. As linguist Wolfgang Meid puts it, in reference to Gimbutas' description of Indo-European languages being introduced to Europe: "Although the details of that process are very much disputed, the process itself can be taken for fact" (Meid 1997, 122).<sup>25</sup>

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<sup>25</sup> Joan Marler notes in 1997 that there were already nearly one thousand references to Gimbutas in the Social Sciences and Arts and Humanities citation indexes (105).

Linguistic studies indicate that the earliest terms for agricultural activity were pre-Indo-European, while terms related to the horse were Indo-European (Meid 1997, 126-8). Various studies have since corroborated Gimbutas' linguistic findings (Polome 1997, 103-4). She also first isolated in a scholarly study the distinct elements of Old European and Indo-European origins in Baltic mythology (Marler 1997, 212).

### C. "MINOAN" CRETE

Even those who resisted acknowledging that Old Europe was a civilization still classified Minoan Crete as such, often considering it the first European civilization, precursor of Classical Greece by a millennium (Renfrew 1972, 45).<sup>26</sup> Thrones in the palace-shrine led to early unsubstantiated claims of "Minoan kings." Only two graves survived, not looted by treasure seekers, which might have held the remains of those who could have occupied the thrones; both contained the remains of women (Gadon 1989, 103).

Women are depicted more often than men in Minoan art (Erhenberg 1989, 110); they are the central subjects and those women most frequently portrayed are typically shown in public (Gadon 1989, 100); they are often depicted as being treated respectfully by other people, mostly by other women (Erhenberg 1989, 116), yet elegant and uninhibited among men (Gadon 1989, 100). The men portrayed in the frescoes are often

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<sup>26</sup> Colin Renfrew was Gimbutas' archeological partner, but her theoretical antithesis; he advanced opposing arguments to Gimbutas' in the 1970s. None have withstood scrutiny.

smaller than the prominent female portrayed, who is presumably either the Goddess or her priestess (Gadon 1989, 102). Although men do appear in Minoan art, they do not appear as either priests or kings; typically they appear as craftsmen, musicians, pages, harvesters or sailors (Gimbutas 1991, 346). No representation of a dominant male has been found. Men and women are often portrayed in similar dress, implying that their roles were interchangeable (Gadon 1989, 100-2). There are no indications of either personal or town defense in Minoan Crete archeological sites (Renfrew 1973, 197).

In mainland Greece, settlements began to display more of the qualities of Old Europe after the Mycenaeans had conquered Crete around 1,400 BC (Renfrew 1973, 197), as the infusion of Cretan influence reinforced the lingering traces of Old European traditions, which were still present on the mainland (Haarmann 1997, 108-9), presumably including forms of governance. Inscriptions from tablets in Mycenaean Greece reveal that even though there was a king, the commune, by means of the assembly, was powerful and had a decisive voice in matters, independent of the monarch (Mylonas 1966, 207). These were forms of governance that seem to have survived from Old Europe and formed part of the context shaping the democratic period of Hellenic Greece.

With the arrival of patriarchy in Greece following successive waves of barbarian Indo-European invaders (Mycenaean, Achaeans and Dorians) from 2000 BC to 950 BC, the goddess religion went underground.<sup>27</sup> The Ionians then conquered the Hellenic

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<sup>27</sup> The Mycenaeans arrived in Greece around 2000 BC, first conquering the mainland and eventually subjugating even Crete. They destroyed the capital, Knossos and built an empire c. 1400 BC. By mid-thirteenth century BC, they were replaced by the Achaeans. The Dorians arrived at the beginning of the eleventh century BC and dominated the Peloponnesian Peninsula until nine hundred fifty BC. All ruled



peninsula, blending qualities of the rich Minoan civilization with their own patriarchal culture to yield a rich oral, yet patriarchal, tradition (Innis 1951, 7-8).

Under the new patriarchal gods, led by Zeus, who was frequently portrayed as raping local goddesses, priestesses and other women (Metzner 1997, 262), a new patriarchal social order and culture was imposed on all that was conquered (Gadon 1989, 144-6). Nevertheless various birth and agricultural rituals survived into the patriarchal times of the Athenian democracy, including the festival of Demeter Thesmophoria and Haloa, an earth fertility and birth ritual (Just 1989, 110). The women met together in their *demes* each year, choosing one of their number to preside over the assembly and to ensure adherence to the sanctioned norms. Only women were allowed to participate, presumably a recent modification aimed at preserving a threatened tradition (Gimbutas 1991, 344). The men reportedly disapproved but were reluctant to intervene in religious matters (Hawkes 1968, 286). This residual power of women could still be found during the Classical period of Greece in the Delphic Oracle through which advice was given to prominent statesmen from across the peninsula by an entranced woman, who, although it is unknown how the women were selected, was claimed always to be of peasant origin (Blundell 1995, 161).

Classical Greek civilization seems to have been the result of a patriarchal transformation of the practices of an earlier matrifocal society. No other interpretation so adequately explains the peculiar balance in Greek civilization between respect for the

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this peninsula for approximately the same length of time, one hundred and fifty years; all ruled by enslaving those they colonized.

feminine principle (Hawkes 1968, 285) and violent misogyny (Frymer-Kensky 1992, 205). The rape and domination of women play a huge part in Greek myth and iconography (Keuls 1985, 33-64). On the other hand, the equality among men that has achieved in Greek democracy mimics practices that were probably nurtured and transmitted from one generation of women to another in Old Europe. Just as the Romans built on and absorbed earlier Etruscan culture (Innis 1951, 11), so too the Greeks before them has built on the traditions of earlier civilizations (Innis 1951, 68). The discursive dynamics of the oral tradition were crucial to the deliberative assemblies that emerged (Innis 1951, 9 and 41). However, the feminine ethos of democracy was probably even more crucial – however much the new rulers tried to conceal the fact.

#### **D. OBSERVATIONS**

On the origin of the matristic elements of Crete and the Greek islands, Gimbutas wrote:

The matrilineal system in the 18th century, and in some (Greek) islands up to the 20th century, certainly did not emerge in these late centuries but must have continued unbroken from prehistory. Its persistence is found in areas not touched by the Indo-Europeans, where the process of Indo-Europeanization was weak, or where the Old European substratum was very strong, as in Greece and Etruria (Gimbutas 1991, 344).

We may now come to appreciate more clearly the origins of the egalitarian gender relations in Etruria as well as the origins for the democratic practices in Greece. Etruria and the Greek islands seem to have preserved institutions and practices that had once

extended across the expanse of Europe for millennia. Etruria's gender relations were likely the norm for Old Europe and the Near East prior to the fourth millennium BC; what was exceptional in Etruria was the longevity of their duration. Etruria's democratic traditions of popular assemblies, inclusive qualities and gender relations seem clearly to derive from Old Europe.

Civilization until now has typically been defined in androcratic terms, whereby precisely the qualities of patriarchy: hierarchy, monuments to individual glory, and militarily-secure citadels have been claimed to constitute necessary elements of civilization itself. Renfrew requires that all civilizations have social stratification (Renfrew 1972, 4). These qualities may well be characteristic of a *patriarchal* civilization, but not all civilizations have been patriarchal. Some of the societies discussed in this chapter clearly were not. What is needed therefore is a definition of civilization from a non-patriarchal perspective.

If the intent is to locate a society along a continuum from "barbarism" to "civilization" (Hole & Heizer, 439) or "primitive" to "civilized" (Renfrew 1972, 3), then clearly matrilineal Old Europe would be on the "civilized" end of the scale, while those patriarchal societies of nomadic horsemen who invaded central and southeastern Europe would be at the opposite extreme. Any definition of civilization that excludes Old Europe should simply be unacceptable. Those whom our history defined as "barbarians" during the time of the Romans have turned out to be from a more civilized heritage than that of the Romans; they simply lacked the same organized state and war machine that

the Romans had. Indeed the Romans would have likely remained on their seven hills in a truly barbaric state had it not been for the Etruscan "civilizing" influence in the first place.

## **E. CONCLUSION**

Given the pronounced Eurocentric nature of "western civilization" and the manner in which so many things of European origin have been projected to be universal, it is astounding that so few voices have been raised to reclaim Old European civilization. The silences on this issue have been deafening. It would seem quite clear that patriarchy in our society runs significantly deeper than ethnocentrism. For that matter, it would seem that patriarchy runs deeper than any of the other divisive, isolating and exclusionary mechanisms. Patriarchy seems to have been at the origin of social oppression as we know it, based ultimately on the use of brute force. Above all else, it is important today to take from this discovery of the past that there are options to patriarchy.

It endured for millennia until it was attacked by barbarians who replaced it with a patriarchal order of male privilege. Under patriarchy, history has very much been his-story; that which was not his-story largely became invisible. These early astounding civilizations typically have not even been acknowledged to have been civilizations, when Old Europe actually seems to have been the very proto-type of civilization itself.

The dismissal of non-patriarchal alternatives as unrealistic needs to be confronted with the historical past, which shows us that such alternatives are not only possible but, indeed, seem to have dominated human relations over an extended period of at least several millennia. The existence of matristic relations in Old Europe suggests to us not only that such relations are possible but that these prolonged relations likely provided extremely sophisticated institutions and practices in the past, which were critical to the subsequent evolution of democratic practices in both Classical Greece, as seen in the previous chapter, and of pockets in medieval Europe, as we will see in the following chapter.

From what we saw in this chapter, one must suspect that all that have been identified as "civilizations" in the patriarchal tradition would likely have actually emerged from the conquered remains of some earlier more highly evolved matristic civilization. There is little doubt that these early matristic relations allowed for a flowering of healthy social, economic and presumably political relations that were seemingly the basis for the subsequent emergence of Greek democracy. Society organized around peace, not violence, obviously not only can exist but, extraordinarily, seems to have thrived for millennia and would seemingly have continued uninterrupted had there not been invasions from without. Such social peace would imply egalitarian or partnership relations, as the archeological, mythological, historical and etymological evidence also suggests. These are the ideal conditions for the building of a healthy civil society, a dynamic discursively-based public sphere and with that, the possibility of democratic governance.

**CHAPTER 5**  
**REINVENTING DEMOCRACY IN THE SWISS CANTONS**  
**- DEMOCRATIC NATIONS IN MEDIEVAL EUROPE**

This chapter explores the long-standing practice of democratic governance in alpine central Europe, which existed from the thirteenth century until the end of the eighteenth. Neither the Swiss nor Rhaetian democratic forms of governance were ever invoked by future democratic theorists, except for one who lived the Swiss democratic experience. This issue will be further explored in chapter six; this chapter will discuss the development and mechanisms of democratic governance.

**A. HISTORICAL CONTEXT FOR SWISS DEMOCRACY**

The earliest surviving record of discussion of democratic practices comes from Classical Greek writings, written two and a half millennia ago. As they were originally written on parchment that was not durable, most of what has come down to us from that period was written and re-written over the millennia. What writing survived regarding democratic theory was almost exclusively written from a perspective that rejected democracy. While there is theory about democracy, it is not democratic theory. There exists, however, through Pseudo-Xenophon (Wolin 1996, 83), Thucydides and Herodotus, as well as various surviving plays, enough to identify how democracy was understood by those in Classical Greece who supported it (Castoriadis [1964] 1996, 125). No comprehensive body of democratic theory has survived from earlier than the last few centuries. However, there can be little doubt that such a body of democratic theory had

indeed evolved in Classical Greece, whether written or oral, for Greece was predominantly an oral society (Strauss 1996, 321). Classical Greek democratic theory was likely significantly more sophisticated than what emerged in the last millennium, but unfortunately it is probably lost to us for all time. In Part Three, the evolution of democratic theory (and that which masquerades as democratic) will be reviewed.

It was Arab scholars who preserved most of the extant Classical Greek and Roman literature as well as a body of Arab reflections on them. This literature was reintroduced to Europe through Spain by Arabs, then translated into Latin, by Jewish, Christian or Arab intellectuals familiar with Latin, Arabic and the vernacular (Sanchez-Albornoz 1974, 183, 198).<sup>28</sup> Most of Aristotle's writings, as we know them today, were only translated into Latin between 1120 and 1270 (Canning 1988, 355). They provoked and continue to provoke significant interest; in particular, Aristotle's *Politics* has exerted considerable influence on European academic political thinking since the thirteenth century (Procope 1988, 23). Even the Latin classics, such as the work of Cicero (who drew heavily from Aristotle) and the Roman lawyers, had not been available in Europe in Latin or any other language between the fourth and mid-twelfth centuries (Markus 1988, 91; Luscombe 1988, 169).

So lost was the understanding of democratic tradition that the appreciation of the sophisticated artistic and literary achievements of Classical Greece and Rome that the Renaissance rekindled in Europe led some to question how this elaborate culture could

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<sup>28</sup> The relative liberty that Jews enjoyed in Islamic societies compared to Christian ones allowed Jewish culture to flourish (Wasserstein 1985, 191).

have flourished under the system of democratic governance that existed in the more advanced Greek city-states. Surely such refined culture required extended periods of stability; and did not "democracy" degenerate into "mob-rule" as Aristotle maintained? Who could know better than Plato and Aristotle, who lived in Classical Greece? What reason would there be to question their integrity and accuracy? Democracy would need to once again be born anew.

There is no known body of democratic theory that survived from Classical Greece to the second millennium AD, although we know from surviving records (Pseudo-Xenophon, Thucydides and Herodotus) that discussion of democratic activities must have been widespread, reoccurring and on-going. The evolution of democratic practice, although not yet referred to as "democracy" in the first half of the second millennium AD, was a response, not to a theory, but to the conditions and the specific lived experience which existed in hamlets, villages, valley, towns or cities, bio-regions, and sometimes even kingdoms. Where there was democratic practice, surely there existed democratic theory, but if there was, none of it has survived.

After the ninth century, the Carolingians of the Holy Roman Empire no longer even attempted to legislate new laws for their European empire because they could no longer enforce them. Early in the eleventh century, once the dissolution of the Carolingian Frankish empire was complete, public order throughout most of Europe was reduced to local lords and their manors exerting control over surrounding peasants; there was no longer any cohesive social control beyond the local lords (Caenegem 1988, 179-



81). By the twelfth century we find a belt of cities across Europe, from Lombard northern Italy, through the Alps, north down the Rhine and Seine Rivers and the Frankish belt in between the two, to Flanders. The regions within this "urban belt" shared a common development of citizens' movements that were characterized by democratic practice (Dilcher 1997, 220-1). The democratic aspects of all of the local and regional polities in this belt deserve in-depth scrutiny, but for our purposes, one will suffice: the one which has survived the longest, the Swiss cantons. Some of these practices, in rudimentary form, can be traced back a millennium and a half; in some valleys, these are possibly continuous from the times of Old Europe.

This chapter reviews the evolution of the Swiss Confederation and the Rhaetian Freestate, with an eye to teasing out the specific elements that contributed to or emerged out of the maturing democratic process. The process unfolded without any record of a body of democratic theory to guide it. Throughout the process the participants themselves obviously would have evolved their own theory - in the oral tradition. This oral tradition was crucial since in the early centuries in high alpine reaches, few, if any, of the participants who nurtured the kernels of self-governance would have been literate.

As the process unfolded and there developed a need for written communication, so too grew the literacy among these Swiss peasants (Head 1995, 106). But there is no knowledge of a body of written democratic theory either contributing to or emerging from the Swiss experience until Jean-Jacques Rousseau, who wrote in the 1760s, three and a half decades before the Confederation underwent decline but almost half a

millennium after the creation of the first democratic Swiss perpetual league in 1291. At best, we have partial documentation of events in the first half of the last millennium, but typically nothing other than the texts of agreements or decisions.

## **B. EARLY SWISS ASSEMBLIES**

In what is today Switzerland, there were independent, yet related, processes involving the emergence, development and institutionalization of democratic practices in both the Swiss Confederation in the central regions and the Rhaetian Freestate farther to the east. The former consolidated itself in the fourteenth century, the Freestate in the fifteenth, and a radical Dutch Republic, resulting from similar communal development, in the sixteenth century (Dilcher 1997, 232; Head 1995, 90). Communes were widespread throughout most parts of Europe during the twelfth to fifteenth centuries. For the most part, they were better organized and older in southern and central Europe; however, nowhere was hierarchical medieval political authority eliminated as definitively and society so thoroughly transformed as in Switzerland and Rhaetia (Genicot 1990, 87; Head 1995, 11).

We know from archeological excavations that the Celtic Helvetii settled in Switzerland around the second century BC (Barber 1974, 22). Prior to Roman domination, what is today Switzerland was peopled by the Helvetians in the west and the Rhaetians in the east (Billigmeier 1979, 9). In AD 406-7, recorded history, the Teutones settled in the northern regions of Switzerland, coming to be named the Alamanni by those

recording history; in 443, the Burgundians settled on the shores around Geneva, creating the modern-day French and German regions of Switzerland (McCrackan 1970, 31).

Among the Teutonic institutions that were introduced to the region seems to have been the *Allmende*: the undivided land surrounding a settlement, held in common, typically with meadow, pasture and forest, as well as either swamp, lake, river or mountains (McCrackan 1970, 33-4; Blickle 1997a, 13-4). It is not known if such commons were also characteristic of those who earlier inhabited the region, but it would be surprising if they were not. The Teutonic practices of open-air legislative and judiciary assemblies (*Landgemeinde*) were employed to administer the *Allmende* or commons (Blickle 1976, 71).

This *Landgemeinde* evolved into a village commune system of decision-making, which in some cantons has endured right through to modern times (Lunn 1952, 38). The commune owned and administered communal land and communal buildings; it also assumed responsibility for the upkeep of the church, roads and bridges. The communal land typically included fields for cultivation, meadows, pastures, forests, and waterways; while the communal buildings most often included the village hall, tavern, bakery, brewery, mill, smithy, shepherd's house, granary, schoolhouse, bathhouse and poorhouse (Imsen and Vogler 1997, 14). The critical features of the European village commune in the first half of the second millennium, especially in the western and southern portions of the Germanic world, where rural communes were most prevalent (Scott 1998, 136), were: a membership who collectively benefited from common resources and contributed to the

cultivation and defense of those resources; a widespread desire for maximum legal and political autonomy for the commune; labour performed in the commune that was both volunteer and required by the assembly (Head 1995, 24); and a communal assembly that acted as the central body of self-government and decision-making, that proclaimed and recorded village law and elected or democratically selected any officers needed for daily business (Blickle 1997a, 17).

There were widespread, local assemblies, each of which decided a hamlet's affairs during the latter half of the first millennium in what is today Germany, Austria, Switzerland, Spain and Italy (Genicot 1990, 15-7); but almost all of these assemblies had been appropriated by the local lords before the millennium ended (Genicot 1990, 81). Only in the Swiss Alps (Barber 1974, 28) and the Pyrennes did any survive into the next millennium (Genicot 1990, 87). In the Alps, some of these communities were early members of the Swiss Confederation; others came to be founding members of the Freestate of Rhaetia.

There were two Swiss rural districts that came under the control of the Holy Roman Empire in the ninth and tenth centuries. In the thirteenth century, they were extended the status of "free communities" within the empire (Coddington 1965, 20). These were the cantons of Uri in 1231 (McCrackan 1970, 76) and Schwyz in 1240 (McCrackan 1970, 79).

## THE SWISS CONFEDERATION

In 1352, an effective political defensive alliance was concluded among various cities and rural areas that assumed the name of the Swiss Confederation (Rappard 1948, 7). The backbone of this confederation consisted of the three so-called Forest States: Uri, Schwyz and Unterwalden (all of Alamanni descent); these were all rural polities that shared similar internal forms of democratic governance and were drawn together in resistance to a common enemy, the Habsburgs (McCrackan 1970, 85). Schwyz, Unterwalden and Lucerne had already bonded together in a defensive pact as early as 1245, forming the first Swiss league of which we have knowledge (McCrackan 1970, 80), although Schwyz, Uri and Unterwalden are thought to have formed their first league not long afterwards (Blickle 1997a, 79). The first "perpetual league," however, was that of the three Forest States in 1291. The earlier leagues were open-ended without a date of expiry, but the "perpetual leagues" explicitly committed their members to permanency and thereby nation-building. The 1291 constitution creating a perpetual league is typically considered by the Swiss to have been the Swiss Confederation's first federal constitution (McCrackan 1970, 87). After all, this first perpetual league was the backbone of the Confederation.

The Confederation was governed or coordinated through an assembly where delegates came from each of the member cantons; the assembly had no formal rules (Brady 1997, 241). Like the Dutch Estates-General two centuries later, the Swiss at the "national" level of federation, operated on the basis of consensus (Head 1995, 104). The

leagues were primarily mutual defense pacts against violence from within or without with forms of arbitration designed to resolve conflicts among themselves and with agreement for common action against feuds, extortions, robbery and the appointment of non-resident judges (Blickle 1997a, 79). August 1, 1291, when the first perpetual league was established, is still celebrated in Switzerland as their day of national independence (Coddington 1965, 21). In 1351, the Confederation agreed that no member would recognize a lord without the approval of the others (Blickle 1997a, 79).

The rural communities of Uri, Schwyz, Unterwalden and Glarus had the long-standing tradition of *Landsgemeinde*, regular open-air assemblies. Although the assemblies elected local councils to oversee affairs between assemblies, the assemblies always remained sovereign and supreme. Power would only be delegated, for it could always be recalled (McCrackan 1970, 184).

It is still not certain whether urban or rural communes came first, although the oldest urban communes are to be found in northern Italy (Dilcher 1997, 232) from around 1100 (Putnam 1993, 121-2). Some scholars identify aspects of urban communes in small towns, such as local assemblies for the regulating of common privileges, which existed as early as the tenth century (Luscombe 1988, 162). By the twelfth century the process of state-building and the establishment of monarchies was well underway (Caenegem 1988, 185); feudalism, consolidating itself across the European continent, was of course fiercely challenged (Caenegem 1988, 209). In countries where powerful, centralized states emerged early, as in England and France, the communes died out; but elsewhere, in

Holland, Germany, Austria and Switzerland, communes flourished for more than half a millennium, from the eleventh to the sixteenth centuries (Black 1988, 606). The open-air assemblies in the Swiss cantons came to range in size from a few hundred to as many as ten thousand citizens (Kobach 1993, 17).

Communes were formed by those who held common commitments and who collectively took an oath, typically pledging to uphold the laws, freedoms, and customs (Quillet 1988, 522; Isenmann 1997, 194).<sup>29</sup> Rural as well as urban communes were associations based on voluntary membership (initially by only a part of the total community). The swearing of oaths assumed a central role in feudal associations and contracts (Luscombe 1988, 162-3), as they did among the communes that evolved under their shadow.

The practices in the Swiss rural communities were highly democratic. Governance in the cities, however, was generally less democratic as the chief magistrate and his council became the dominant political forces (McCrackan 1970, 185). Every Swiss city sought to achieve self-government; some succeeded; some did not (McCrackan 1970, 131). However, few cities were as democratic as their neighbouring rural cantons. Zurich was the most democratic of the cities; while Berne was the least (McCrackan 1970, 185). There were urban revolts in some Swiss and southern German free cities; these were attempts to obtain what rural communes and Swiss rural cantons already possessed, the equality of all citizens, that is, of all adult males (Blickle 1997a,

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<sup>29</sup> Etymologically, "commune" is derived from the "common oath" taken by its members (Quillet 1988, 522). This was a practice that existed among pre-communal guilds as well (Isenmann 1997, 191-2).

72). These democratic practices were limited by their evolution in a patriarchal society located in a very patriarchal Europe.

The urban communes of the Swiss German cities unfortunately did not expand to inclusively take in as citizens the peasants of the surrounding countryside within their very canton even though these peasants' lives would likely have been integrally bound to the urban economy.<sup>30</sup> This resulted in a pronounced difference of political practice between the Swiss urban and nearby rural cantons; by the sixteenth century, the rural cantons dominated by cities lost even greater political ground to an emerging oligarchy (Brady 1997, 237). Prior to 1525, eighteen rural revolts in the Swiss Confederation are documented, mostly in the cantons controlled by Lucerne, Zurich and Berne, resulting from the disparities between urban citizens and disenfranchised rural peasants within the same canton (Brady 1997, 245). This unresolved contradiction would ultimately undermine the Swiss democratic institutions.

Swiss guilds had until 1450 been a significant force within the democratizing opposition in the cities; after this time, however, they were increasingly neutralized by a growing urban oligarchy. The guilds became incorporated into and subservient to the local regimes, resulting eventually in their loss of political autonomy under local administrations which became professionalized (Brady 1997, 242-3). This process, which promoted measures to expand the oligarchy and limit other voices, found fertile ground in some popular quarters as well. Nowhere is this clearer than in the situation against women.

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<sup>30</sup> The lone documented exception was the tiny free city of Zell am Harmersbach, (Brady 1997, 237).



Over time, some guilds began to allow women members. Heide Wunder summarizes the German literature on this issue, citing numerous examples of women employed in different crafts and trade guilds. There had been independent women merchants since the thirteenth century. Some were wealthy women who continued their deceased husbands' enterprises. Other women were printers, money changers, appraisers, or clerks. Some women were jointly hired (equal signatories and paid separately) with their husbands to provide joint management of hospitals or orphanages or to provide services as farm supervisors, prison guards or toll collectors. There were a few unusual guilds that were made up entirely of women. Among the silk-makers and gold-spinners, in Zurich and Cologne at least, women apprentices worked under women masters (1998, 86-98).

Women slowly gained acceptance in various guilds, trades and communes in both Switzerland and southern Germany from the thirteenth until the sixteenth century, when these developments were halted by a concerted drive by the emerging local oligarchies to further limit public participation. The petty interests of guildsmen during this prolonged crisis led many to push for their guilds to be restricted to a privileged monopoly for themselves and their sons, contributing to a renewed exclusion of women (Brady 1997, 248).

In 1499, the Swiss Confederation, consisting of ten cantons, successfully defended itself against an invasion by the Emperor Maximilian I (Rappard 1948, 14),

effectively ensuring for the next few centuries the recognition of Switzerland as an independent nation. In 1513, alpine Appenzell became the thirteenth canton to join the confederation (Rappard 1948, 14). Although Appenzell had had no tradition of open-air assemblies until five villages united in 1377 to form a league, after that time it too adopted this new form of self-governance and has remained until today one of the cantons most deeply committed to preserving community assemblies (McCrackan 1970, 194-5; Codding 1965, 167).

The national governance of Switzerland, during the period of the Confederation, was undertaken exclusively by its national assembly. The form of governance it adopted remained relatively unchanged for four centuries until the Swiss were conquered by Napoleon in 1799 (Brady 1997, 241). The assembly consisted of delegates from the member cantons. All decisions required unanimity as well as ratification by all member cantons in order to become law. The differences between urban and rural cantons persisted: in the six rural cantons, assemblies dominated political life; in the cantons with significant urban centres, the cities dominated the remainder of their respective cantons to the exclusion of even the male rural citizens of the canton and practiced less democratic forms of governance (Codding 1965, 24-5).

Swiss industry had developed significantly over the decades. By 1800, Swiss agriculture was a profitable export sector. Industrial cotton manufacturing employed some 200,000 workers; even Zurich's silkworm industry employed 100,000. Metallurgy, transportation and banking were also dynamic sectors. Swiss levels of education and

culture by 1800 successfully rivaled that of most other European nations (Martin 1971, 134-36).

The Swiss communes followed the same communal-associative model of governance, as did neighbouring Rhaetia and the southern German regions (Blickle 1997a, 78). The Swiss confederacy is of interest in part because of its forms of democratic governance at the national level for it is an excellent example of a functioning confederacy. This confederacy allowed the strength of the rural cantons to be preserved, but it also established norms of non-interference in neighbouring cantons. For a yet more evolved form of "national" governance, we turn now to the neighbouring Rhaetian Freestate.

### **C. THE RHAETIAN FREESTATE**

While the Swiss Confederation was establishing itself in the central region of what is today Switzerland, similar communal democratic activities had long been occurring to the east in the alpine regions of what was known since Roman times as Rhaetia and is today the modern Canton of Graubunden (in German) or Grisons (in French).<sup>31</sup> At the time "the Freestate of the Three Leagues of Rhaetia" was formed sometime before 1450, the Swiss Confederation had already been in existence for one hundred and sixty-eight years.

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<sup>31</sup> The ancient Roman province of Rhaetia extended also into a portion of what is today Austria.

Conquered by the Romans in 15 BC, Rhaetia fell to the Franks in 486, whose king granted the right to the defeated Alamanni from the north to settle in Rhaetia (Billigmeier 1979, 13). Manors of local feudal lords dominated urban political power in Rhaetia during the sixth and seventh centuries as far as the Frank empire was concerned (Barber 1974, 25). But much of Rhaetian society of this period was economically self-sufficient and actually exercised local autonomy for social and economic decisions (Billigmeier 1974, 23). The *Markgenossenschaft* - literally the "Corporation of the Mark" or the Association of the Common (Barber 1974, 109) - was a communal association at the local level that employed and promoted both self-sufficiency and self-regulation (Billigmeier 1974, 24-5). It was made up of all men, whether bonded or free, who lived in a given region (McCrackan 1970, 75). They came together in *Landgemeinde* or assemblies to make decisions regarding the land held in common.

The Rhaetian collectivist tradition that had evolved in the high mountain valleys lent itself particularly well to this form of communal association (Barber 1974, 110). Although this kind of organization had existed throughout central Europe, there were few places where it managed to survive into the second millennium. Even in Rhaetia during the latter part of the first millennium, the democratic tradition and the foundations to support it were challenged and thoroughly repressed, except for the communal associations of the remote mountainous reaches.

Many scholars have maintained until recently that it was from the *Markgenossenschaft* throughout early German society that the experiences in collective

freedom and self-sufficiency of the second millennium directly emerged (Barber 1974, 28); it seems today, however, that the German communes did not descend, at least directly, from the *Markgenossenschaften* in Germany (Genicot 1990, 16). In Rhaetia, however, these traditions did survive, in part owing to the geographical isolation of Rhaetia itself. Since Rhaetian peasant assemblies predate the Germanic ones, perhaps it was the Rhaetian communal practice that became the prototype for the rural communes that spread through Germany and the Lowlands (Barber 1974, 111).

## **1. RHAETIAN COMMUNES, RHAETIAN LEAGUES**

The earliest documented evidence of a German commune is in a 1220 publication, *Sachen-spiegel*; however, there is evidence of numerous communes in Rhaetia a century earlier (Head 1995, 16, 44). By the late twelfth and throughout the thirteenth centuries, these assemblies assumed a full range of functions and spread throughout central and southern Europe (Genicot 1990, 71). Not all of the community needed to be members of the commune, although the entire community would benefit from the protection the communes established (Dilcher 1997, 220-1). As the commune evolved, however, it became common for the entire male population in Swiss and some German cities, citizens and resident non-citizens alike, to swear a citizens' oath of allegiance to the commune at the annual assembly (Isenmann 1997, 195). In Switzerland and the German free cities, communal oath-swearing continued until the eighteenth century (Dilcher 1997, 218-9).

From the thirteenth century on, communes flourished in both rural and urban settings (Blickle 1997a, 33). Although all members of a commune shared equal political rights and responsibilities, they did not have social or economic equality; after all, communes were designed, above all, to *mediate* among differences, not to *eliminate* those differences (Imsen & Vogler 1997, 13). Dialogue among citizens and communal decision-making seemed however to also contribute to a gradual reduction of the more extreme forms of class relations and economic differences in those instances where inclusive participation was allowed (unlike some of the urban-dominated Swiss cantons). The Swiss Federation to the west could emerge as early as it did not because communal practices were older in those valleys but because of the independent legal status the Forest States had acquired early in the millennium.

Between 1350 and 1500, the different regions of Switzerland experienced extensive conflict between the popular interests of communal power and those of the medieval lords. Eventually communal power emerged victorious in many regions, especially among the rural communal republics (Head 1995, 14). In the cities urban guild regimes installed themselves, although these were actually based on forms of power-sharing with the local aristocracy, which eventually gained the upper hand in many Swiss cities. Nonetheless the Swiss and southern German rural communes became the strongest and longest-surviving peasant organizations in early modern Europe (Scott 1998, 136). Initially the lords retained some authority by continuing to appoint the local judges, but by the fifteenth century, this too was eventually successfully challenged (Head 1995, 19). As a commune became the political body for governance in a town,

village or a rural zone (Blickle 1997a, 21), attendance at the assemblies eventually became obligatory for all male citizens, even resulting in penalties for those who failed to appear (Imsen & Vogler 1997, 15).

Women came to be increasingly involved in some communities, while they remained significantly excluded in others. Women had retained the right to hold court over marital relations; even throughout the earlier period of manorial relations, women seem to have retained a sphere within which they were immune from interference by the authorities protected by an "ancient women's custom" (Wunder 1998, 172).

The three leagues that made up Rhaetia (Chade, the Gray League and the Ten Jurisdictions, formed between 1367 and 1436) came together as a unity of three leagues, sometime before 1450 (McCrackan 1970, 206-7). By 1470 their unified practice and organizational forms were established, but formal, permanent unity occurred only in 1524 with the creation of the Freestate of the Three Leagues of Rhaetia. Even before being constituted formally, the Freestate had assumed an associated status of mutual defense with the Swiss Confederation, resulting from the perpetual pact the Freestate's Gray League had signed with the canton of Glarus in 1400 (Blickle 1981, 179-80; McCrackan 1970, 207).

The Rhaetian Freestate was formally based on three fundamental constitutional documents: the First Ilanz Articles of 1524, imposing conditions and limits on the Church, including the right of parish members to elect parish priests; the *Bundebrief* of

1524, formalizing more than fifty years of previous political practice;<sup>32</sup> and the Second Ilanz Articles of 1526, calling for every commune to freely elect its own officers and establishing almost unlimited communal sovereignty (Head 1970, 66-70). In the interim between the First and Second meetings in Ilanz occurred the unsuccessful German Peasant Revolution/Revolt of 1525, which was unusually widespread owing to the publication and wide circulation of their twelve demands (Blickle 1976, 63). The underlying cause of this and numerous other peasant revolts of the fourteenth and fifteenth centuries were the efforts of the lords to usurp the commons from peasant control and to re-impose serfdom on the peasants (Blickle 1976, 67-9). Whenever the lords overstepped their bounds, the peasant communities responded by renouncing their oaths of submission to lords, thereby opening up the existing relations to redefinition (Blickle 1991a, 64-5).

The formal establishment of the Freestate was part of the same movement that produced at least 130 peasant rebellions, each involving several villages or more, and 250 urban uprisings in Switzerland and southern Germany, between 1300 and 1524 (Blickle 1997a, 62). In the six years prior to the birth of the Freestate, 203 uprisings occurred (Brady 1997, 244). The main demands of the Second Ilanz Articles of 1526 are remarkably similar to those of the twelve articles of the German Peasant War of 1525.

The Rhaetia Freestate successfully rid itself of its feudal ties. The German peasant communes did not; they were, after 1525, slowly incorporated into numerous territories as states-in-formation throughout the Habsburg Empire (Blickle 1981, 181-2).

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<sup>32</sup> Of the thirty-one articles, ten dealt with how to resolve disputes among members (Head 1995, p68).



In southern Germany, the peasants, still with vibrant communes, were incorporated into imperial "territorial assemblies," controlled from above; these were nothing like the communal assemblies, where the communes had been able to establish any agenda to which its members could agree. By the seventeenth century, the German communes had become a shadow of what they had been a century earlier (Scott 1998, 139).

In general rural communes in the "urban belt" of Europe during the middle of the second millennium resolved local conflicts and determined a collective course of action for their peasant members (Blickle 1997b, 13). The village assemblies initially had one annual meeting scheduled in early spring, but they would also meet when necessary to manage communal resources, to redistribute village fields, to produce statutes and laws, to select a village council to oversee local affairs and to select employees to carry out specific tasks on behalf of the whole community (Blickle 1997a, 20). When troops were assembled for warfare, they elected their own generals (Head 1995, 64). When necessary, votes were sometimes taken spontaneously (Head 1995, 79). Many forms of voting were used, but never the secret ballot prior to the nineteenth century, when it was imposed through foreign domination; voters were expected to stand by their decisions publicly and frequently were called to vote by moving physically (Head 1995, 78).

Political discussion in the Rhaetian Freestate would have been at least as widespread as in neighbouring southern German regions, which sought but never attained the independence enjoyed by the Freestate. In both, routine discussion occurred in the taverns after work or on Sundays after church. Women played an important role in the

communicative process; they came together in the washhouse, the bakehouse and at feasts such as celebrations of births. Women were more often accessible to neighbours or travelers arriving from outside the community and tended to work together more often than the men (Wunder 1998, 170-1). News, of course, would be shared at home. If the community required some decision on a course of action, all of the discussion generated would then culminate in public debate among the men at the assembly.

Having evolved in partial isolation, the Swiss and Rhaetian communes had different histories and initially had different forms of internal governance (Head 1995, 94); through increasing contact and federation, however, they became more similar as they discerned what worked best. The demands of alpine existence have often been invoked as having initially led to collectivist practices (Barber 1974, 102). However, as time passed and the population grew, rotation increasingly replaced collective control for many tasks - each member took his share or managed a resource for a period. This collectivist history provided fertile ground for collective decision-making. Throughout the sixteenth century, distributive authority was further decentralized, becoming what Randolph C. Head described as "codified...in complex systems of rotation not subject to anyone's discretion" (Head 1995, 85). Resources and responsibilities were distributed **proportionally** when possible, and when not, then by **rotation** (Head 1995, 74). Alternatively, allocation was determined by the ancient practice of drawing **lots**, as with grazing rights or when a series of officials needed to be selected (Head 1995, 83, 176).

When issues were brought to a Rhaetian commune from elsewhere for resolution, the local officials would pass the word, then ring the town bell to convene an assembly, typically on Sunday at a customary hour. Once assembled, the issue under consideration was read aloud, followed by open discussion; all interested had the opportunity to state their opinion; the procedure culminated in a show of hands. The rule of the majority came to be the norm in routine affairs. However, consensus was sought when possible, especially when not discussing routine matters (Head 1995, 77-9). Strong incentives were used to prevent internal conflict (Head 1995, 24). The annual general assembly in most evolved communes in central Europe reviewed the commune's books, elected judges and jurors for the local court as well as other local officials, and beginning in the fifteenth century, passed civil laws and debated policy decisions for the coming year (Blickle 1997a, 17-20). By the late sixteenth century a majority of Rhaetian communes could decide almost any question - political, legal or constitutional - that came before the League for consideration (Head 1995, 82). They were particularly well organized to handle judicial matters (Genicot 1990, 31, 60).

When decision-making was organized in this manner, with high levels of citizen participation, as occurred in Classical Athens, it was considered crucial to restrict the range of activities allowed for any single official or group of officials; likewise, only less important administrative tasks were routinely entrusted to officials in the Rhaetian Freestate. These positions were filled either by election or by lot (Barber 1974, 176). Accountability was critical. Sovereignty decisively remained with the citizens in their local assemblies.

## 2. DEMOCRATIC GOVERNANCE AT THE NATIONAL LEVEL

Decision-making, at the "national" level of the Rhaetian Freestate as a whole, required new forms of organization. These were modeled to the degree possible on the local assembly, but when not possible, they incorporated the local assemblies into the decision-making process. Barber describes the critical norms that evolved at the local level to promote consensus-building as: reliance on persuasion, goodwill and public-spirited acquiescence in the pursuit of compromise. However, at the regional or national levels, commonality came to replace compromise as the guiding principle (Barber 1974, 186-7). All citizens could contribute to national decision-making through discussions in their local assembly (Head 1995, 89). But to collect these multiple opinions, "national" meetings had to be held, typically at the *Bundestag* assemblies. As well, there were smaller meetings or *Beitage*, undertaken by the presiding officers of each of the Three Leagues (Head 1995, 95-6), but in time, the *Beitage* came to be relegated to being a preparatory commission entrusted with setting forth the issues for discussion (Barber 1974, 184-5), not unlike a crude and limited form of the Athenian *boule*. In the sixteenth century, selection of candidates for the *Bundestag* increasingly devolved to more local levels, first from the *Bundestag* to the League; then from the League to the commune (Head 1995, 107).

Some of the sixty-six delegates to the *Bundestag* (Head, 99) assumed this function as part of their duties as local annually elected officials; others were elected as delegates

by a special local assembly (Head 1995, 103). Delegates' expenses for travel to common assemblies were compensated "out of common funds" (Head 1995, 88). Often these delegates would be required to carry positions between the commune and the assembly in writing, either at the request of the *Bundestag* for major policy decisions (Head 1995, 106) or as requested by the communes in their general assemblies (Head 1995, 111). Indeed the single most recurring demand presented to the national assemblies was for the delegates to the *Bundestag* to act only as messengers and to carry written instructions both to and from the national assemblies (Head 1995, 161). A similar situation in the Dutch Republic from the end of the sixteenth century until the end of the eighteenth century likewise led to delegates being bound by specific instructions (van Neiroop 1997, 273-4).

There was great concern in the Freestate over which canton would host the "common assembly," but it was decided early to rotate the location of the *Bundestag* and, consequently, its leadership for that year among the member Leagues and communes (Head 1995, 96). This practice was later also adopted by the Dutch Republic, although there the chair rotated each week (van Neiroop 1997, 273-4). Although these "national" bodies in the Freestate did not formally come into existence until 1524, they already existed *de facto* as a regular practice by 1470; by 1471, the norm of rotation of site for common assemblies had already been established (Head 1995, 59). By 1565, voting on national issues shifted to the commune rather than the league, ensuring grassroots control and eliminating an unnecessary, intermediate level (Head 1995, 109). All important issues were sent back to the communes for final ratification (Head 1995, 104).

The agreement of 1524, creating the Freestate of Rhaetia, reserved all powers regarding judiciary and economic affairs for the cantons (Barber 1974, 184). The common assemblies over the next few decades were rife with complaints over accountability. From 1540 on, the peasants are documented as feeling unheard in comparison to wealthy patricians (Head 1995, 125). Thus the Freestate assemblies responded by introducing the **referendum** (Barber 1974, 179); this mechanism existed also in the Swiss Confederacy at least as early as 1513 (Kobach 1993, 18), although its origins are unknown. The referendum was adopted for use in the Freestate in 1570 as a mechanism that expanded the jurisdiction of communal authority in a structure of decision-making that extended far beyond the commune.

Initially it was available for use in Rhaetia by almost anyone seeking an opinion or consultation from the other communes, be this the federal executive, individual communes, foreign states, envoys from their subject territories in the north of the Italian peninsula, or private citizens acting on their own. By 1551, however, the right to initiate a referendum had been significantly reduced (Barber 1974, 188). The procedure employed in this Rhaetian innovation seems not to have been contentious; its aim was not to count heads, but as Benjamin Barber described it, "to discover commonality, or in its absence **to create it**" (emphasis added; Barber 1974, 182). The referendum was used as a consensus-building mechanism. This is a far cry from today's discredited referenda in western societies, including Switzerland. Precisely to prevent referenda from degenerating into a mere stamp of approval or rejection, the communes passed a reform

that explicitly prevented referenda from being reduced to a mere yes-no decision (Barber 1974, 190).

During the first ten years after its introduction, the Freestate employed referenda forty times. Of the 1,500 entries for the deliberations of the Bundestag between 1570 and 1580, a further seventy-seven times issues were referred back to the communes for further discussion before resolution was feasible (Head 1995, 106). Having to resort to employing delegated authority at a national level and needing to address complex issues that required negotiation and compromise, referenda became one means by which to close the circle of grassroots decision-making by allowing the grassroots to have the final say. Delegates, typically not authorized to reach settlements other than total agreement, nonetheless were required to address major problems and to suggest solutions. Proposed solutions were always tentative, until the referenda received the input from all communes. By 1600, this early version of referenda became institutionalized and routine.

### **3. THE *FAHNLILUPF*, INSTITUTIONALIZED INSURRECTION**

In response to political injustices in Rhaetia - typically the failure to ensure decision-making at the grassroots - various methods to redress the grievance would be attempted, but the ultimate response when the discontent was widespread would be for the adult males to convene an emergency assembly, or protest assembly, known as a *Fahnlilupf*, literally meaning a "banner-raising" (Head 1995, 148). This was the name for

a political assembly convened by those who were often gathered together in the first place in their capacity as soldiers (Head 1995, 76); in time this process came to be employed even to initiate judicial proceedings. These were protest assemblies that occurred only at the regional or national level because they were concerned precisely with issues of representation and abuse of power (Head 1995, 159).<sup>33</sup>

Those troops who convened an emergency political assembly would send out calls to the surrounding areas to test if there was generalized support for action to resolve the complaint; if there was, they would gather together, forming a *de facto* national assembly (Head 1995, 160). If not enough communes joined in and sent delegates, as happened in 1565, then the effort evaporated; on other occasions, as in 1572, 1573, 1575, 1607, 1617, 1618, 1619 and twice in 1620, emergency political assemblies were convened (Head 1995, 148-50, 187). Efforts at the end of the sixteenth century to establish regular panels of communally elected judges to try political violations failed, and therefore the *Fahnlilupfe* continued to reoccur (Head 1995, 162).

A *Fahnlilupf* typically would pass articles to reform national governance. Acting as a *de facto* national assembly, a *Fahnlilupf* would draft new legislation to end whatever corruption had been confirmed (Head 1995, 148). Once this legislation was ratified, the *Fahnlilupf* that created these new changes became irrelevant and dissolved. The Rhaetian Freestate, as was common among Indo-Europeans, limited political and military participation to male adults. While some early references were to participants being the

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<sup>33</sup> Spontaneous assemblies certainly occurred at the local level, whenever they were needed, but these were not known as *Fahnlilupfe*.



"heads of households," the number of men in attendance at a *Fahnlilupf* would be "far more...than there were households in the communes" (Head 1995, 76).

If the assembly determined that injustices had been committed, then a formal judicial body or "penal court" (*Strafgericht*) would be convened. Each commune elected judges (often more than a total of fifty) to the *Strafgericht*, which would be mandated to undertake its proceedings for as long as necessary (Head 1995, 147). The earliest known *Strafgericht* dates back to 1450, but unfortunately we know almost nothing about these early meetings, as the proceedings either were not recorded or did not survive.<sup>34</sup> The injustice most often cited as provoking a *Fahnlilupf* was corruption, typically by one or a few elite families (Head 1995, 161-2).

Troops may have been called together for any reason, but once assembled, any soldier could question if there was sufficient support for a *Fahnlilupf* if serious complaints existed with respect to governance beyond the scope of the commune itself (Head 1995, 151). This meant that the use of **military** power by anyone in these regions created the circumstances under which the local people could call for **political** accountability to local assemblies. This practice rested on the communes being viewed as the embodiment of a collectivity of arms-bearing men (Barber 1974, 134, 198). The minimum age for participation in a community assembly was fourteen (Cranston 1968, 19), the same age at which male adolescents were expected to carry a firearm if the need for collective defense arose. Indeed, accounts of the assemblies by foreigners specify

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<sup>34</sup> Other early ones, of which we know almost nothing, occurred in 1517 and 1529 (Head 1995, p148).

that assemblies were attended by all those who are able to carry and use a weapon (Head 1995, 77).

The rural communal associations and their public assemblies in the neighbouring German regions had been definitively displaced by emerging lords and monarchs by the eighteenth century (Blickle 1997a, 27-9), but in Rhaetia, public assemblies and referenda continued uninterrupted throughout the seventeenth and eighteenth centuries. The public assemblies in the Swiss and German cities, however, were typically replaced, during that time, by small councils or other special bodies (Head 1995, 145). Although the assemblies in Rhaetia continued throughout these centuries, they were nonetheless increasingly challenged by wealthy families. As early as 1500, the dynastic nobility - who in most of Europe fought to see which of its members could transform themselves into the dominant lords, perhaps even princes - no longer existed in Rhaetia (Head 1995, 140). Of the twenty-six families that played leading roles in Rhaetian political life in both the sixteenth and seventeenth centuries, not one was of noble background; they were, however, wealthy, for wealth, be it from land or trade, had come to replace lineage (Head 1995, 137).

#### **4. THE DECLINE**

At the time of the French Revolution, significant inequities remained in Swiss society (among some urban sectors but more acutely between the rural and urban regions of urban-dominated cantons), enough for these sectors to support the revolution in

neighbouring France and wish to extend it to their own land. This internal fifth column provided support for the French armies to invade and seize control at the end of the eighteenth century, first of the Swiss Confederacy and then of the neighbouring cantons and allied Rhaetia (Coddling 1965, 25). Although the more democratic and independent rural cantons of the Confederation resisted for a few months, the cities fell immediately (McCrackan 1970, 303-5). The Rhaetian Freestate managed to survive a year longer than the Swiss cities like Berne. Eventually, however, it too was conquered, although subject to continual up-risings (Martin 1971, 158-59). After attempting six different constitutions in five years, eventually, Switzerland and Rhaetia had imposed upon them "the trappings of the modern nation-state under the *Constitution of the Helvetic Republic, one and indivisible*" (Kobach, 19).

In the first few years of the nineteenth century, Napoleon Bonaparte forcefully unified Switzerland and its neighbouring cantons under a Constitution that imposed representative democracy and a centralized, modern state. The Diet or federal assembly was now entrusted with such new responsibilities as creating a common currency, assuming the authority to declare war or peace, centralizing the military with a unified command, and regulating disputes among cantons, with most federal decisions now requiring only a simple majority (Coddling 1965, 28). After Napoleon's defeat, the cantons were allowed to return to their earlier forms of governance, although the earlier required unanimity in the Diet was now replaced with decisions requiring only a three-quarters majority (Coddling 1965, 29). The federal state continued and would continue henceforth with representative government as its central mode of governance.

The Constitution of 1848 established Switzerland as a Federal Republic but still guaranteed significant powers for the cantons (Lunn 1952, 68), allowing the cantons to retain primary responsibility in certain areas (Coddington 1965, 43-4). The 1848 Constitution was passed by a referendum, based on three-quarters majority, in spite of its rejection by six and half<sup>35</sup> cantons (including Uri, Schwyz, Unterwalden, Valais, Zug and Appenzell-Outer Rhoden) (Coddington 1965, 32) and questionable practices employed for ratification in Freiburg, Graubunden (Rhaetia) and Lucerne (Linder 1998, 7).

The 1848 Constitution guaranteed both the right of decision-making at the canton level and the right of "referenda," but no longer the referenda of earlier centuries. Between 1848 and 1874, the referenda at the federal level was highly controlled by the central government (Kobach 1993, 26). It had under Napoleon been reduced to a passive yes-no alternative, devoid of its previous consensual qualities, although still employed as a routine measure to finalize the adoption of any federal laws that did not demand implementation immediately. The referenda came to more closely resemble the *plebiscite* as it emerged in France, for use only on exceptional occasions and strictly at the government's initiative. This continued to be the dominant nature of Swiss referenda until 1874. With the passing of most of a century, the forms of participatory democracy managed to survive only in the most remote cantons of the Alps.

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<sup>35</sup> This number reflects the division of the Cantons of Unterwalden, Basle and Appenzell which had, by then, separated into two halves (Coddington 1965, 37).

The 1874 Constitution, for its part, once again allowed for the practice of citizen "initiatives" in referenda, but these required a petition first of 30,000 signatures, then 50,000 signatures after 1891, and 100,000 since 1977 (Kobach 1993, 42). Citizen "initiatives" were a mechanism introduced in an effort to offer more active grassroots input to accompany the passive referendum (McCrackan 1970, 339-41). This is a long way from the original single person who could invoke a referendum.

It would not be until 1942 that the cantons ended their own separate criminal and civil legal autonomy and adopted a national system of jurisprudence (Lunn 1952, 69). In the twentieth century only five cantons routinely continue to make their decisions by *Landsgemeinde*: Obwalden, Nidwalden (which together had originally made up Unterwalden), Glarus, Appenzell-Outer Rhodes and Appenzell-Inner Rhodes (Coddington 1965, 167).

#### **D. SWISS COMMUNICATIVE ACTION**

The Swiss cantons and republics established an extremely important practice of self-governance for well over half a millennium. At least in the Rhaetian Freestate, if not in the rural cantons of the Swiss Confederation, they managed to create a process that permitted what Habermas has labeled "communicative action," that is, that the participants in the assembly sought to reach a common understanding on how to proceed and not to merely manipulate others. Unlike "normative action," where a consensus is

presupposed and thereby reproduced with each interpretive action, communicative action is an approach of "uncurtailed communication" (Cohen & Arato 1992, 522), whereby discussion includes the questioning and re-interpretation of norms, a negotiation of definitions of the situation and ultimately an agreement on the course of action to take (Cohen and Arato 1992, 435). The lifeworld of the Rhaetian communes, defined as the commonly shared world of assumptions including "the totality of interpretations presupposed by the members as background knowledge" (Thomas 1981, 13), was defined largely by communal practices. Thus their normative action would have entailed many democratic actions. To arrive at the democratic relations that were established, there is no doubt that among the discussions leading to democratic governance, there were ones which specifically questioned and redefined their political relations as more egalitarian.

When the residents of Zurich who were on the city council discussed the application of existing laws or even when the peasants of Schwyz convened an annual assembly to discuss the redistribution of fields for the following year, adhering to unquestioned and perhaps unstated norms, these would be instances of normative action. But when the peasants in Uri, for example, discussed in their assemblies whatever they wished that was of relevance to their community, including what exactly the norms should be for decision-making, and then subsequently determined a course of action, then this is an example of communicative action.

Situations where absolutely anything was eligible to be raised for discussion if it addressed resolving the current problem must have occurred frequently during the

lengthy process of establishing Rhaetian Freestate democracy, long before the 1618 *Strafgericht* formally proclaimed the Freestate to be a democracy (Head 1995, 190). Communicative action is clearly not only intimately linked to democratic practice; it lies at the very heart of it. It is precisely this quality of being free not merely to discuss the application of norms and the execution of tasks but to interrogate those norms and decide upon a fresh definition of the situation that embodies the spirit of communicative action and, in so doing, captures one of the most essential elements of democratic practice.

A people who for centuries discursively resolved their affairs through regular, as well as spontaneous, local assemblies, including deciding and reaffirming time and again to implement forms of more democratic governance and redesigning their institutions to achieve this, obviously engaged in communicative action. There was no Swiss Solon as existed in Athens to serve up democratic relations on a platter, replacing more autocratic forms of governance. Instead, the political relations of the Freestate, the Forest States and other parts of Switzerland were discursively determined and built from the bottom up, fertile ground for communicative action.

Although the military nature of the *Fahnlilupfe* is highly problematic owing to its patriarchal qualities, the coming together of huge numbers and their determination in assuming self-governance is, for its part, exemplary. The *Fahnlilupfe* were not merely irresponsible outbreaks, as the privileged, wealthy families would have it, but the exact opposite - efforts to create responsible, accountable, and democratic governance. This was direct communal action (Head 1995, 182) to immediately constitute a public sphere

of regional or national extent in order to address issues of democratic governance.

Within this sphere would be established both legislative and judicial organs to meet the needs of the situation.

The *Fahnlilupfe's* role in creating the *Strafgerichte* was an integral one. Perhaps another manner of initiating a *Strafgericht* might have been found, although it is not clear how possible that may have been in sixteenth or seventeenth century Europe. Such assemblies can easily be envisioned, under other circumstances, without the military element of citizens necessarily bearing arms to ensure their authority. Because of the ongoing practice of convening national assemblies by means of these extraordinary and impromptu measures, it facilitated other national assemblies being called to address critical issues requiring a national response, as occurred in 1684 and 1794 (Head 1995, 149).

This may well have occurred in situations of institutionalized assemblies as in Classical Athens as well as the impromptu situations in the Rhaetian Freestate; in both cases, however, a critical element permitting this communicative action was the conviction that those assembled had both the right and the ability to govern themselves. In both cases, the citizens would have known that the two are interdependent. Certainly in the Freestate, how the governance would be structured nationally may not have been clear initially, but the right to govern was never in dispute nor was the ability. There was a clear determination that control would be in the hands of the local communes at a grassroots level. Their situation was discursively defined. The *Fahnlilupfe* were based



on efforts to discursively determine a democratic solution to a crisis and to put it into effect (Head 1995, 159). In doing so, they contributed to political sustainability of democratic governance and challenged bureaucratic or self-serving intermediaries.

The Swiss democratic experience may not match that of Athenian democracy in terms of its legacy of cultural achievements. But the Swiss experience is extremely valuable because some of its elements are more accessible to us, which may thereby allow us a clearer understanding of the process as it evolved and reveal to us more of the actual dynamics involved. It was also driven from the bottom up, rooted in a peasant class and not a middle class as in Athens. Because there was no Solon or even a *polis* but, instead, a grassroots, assembly-determined commitment to implement democratic forms of governance, we know that the resulting governance was discursively determined. It offers a case study of communicative action from which to draw lessons.

Rhaetian uprisings were, unlike most peasant rebellions elsewhere, an outcome of Rhaetians considering themselves to be the legitimate rulers who had assembled to discipline those leaders who had abused their authority (Head, 144). Over time the *Fahnlilupfe* became institutionalized as a right. The underlying principle that was preserved was one of sovereignty and the right of the common people to assemble in order to discuss whatever may be necessary to ensure democratic governance.

## E. CONCLUSION

For those concerned with democratic mechanisms today, there exists a historical wealth of experiences that would seem to be a useful place from which to start. All would likely require some degree of adaptation, but none should be discarded without good reason. Among the numerous democratic principles and mechanisms employed in the Swiss experience of democratic governance are the following:

- **Assemblies** or **circles**, depending on numbers, for discussion and resolution;
- Equitable division of responsibilities and benefits (proportionally if divisible; **lots** or **rotation**, if not);
- Elections only for positions requiring specialized **skills**; - **Limited power** for any official;
- **Consensus** when possible on substantive issues; majority vote when not possible;
- Final approval remaining with the grassroots assemblies;
- Beyond the local, never empowering **delegates** to decide for the whole, merely to communicate to others; and
- **Referenda** as a consensus-building mechanism among dispersed communities.

Except for the referenda, these are all practices that the Rhaetia Freestate shared with Classical Athens and with a range of societies seemingly including Early Europe. Some variant of all would seem useful to consider as options for the present. Even oaths or communes from the Alps need not be ruled out as possible options in some modified

form in today's societies. Oaths were found as well in Athens (Wallace 1989, 123; Sealey 1987, 48; Plescia 1970, 15-32). Also critical would be the **mechanisms of accountability** applied to every official at the end of his term of office, as in Classical Athens, including the routine consideration of impeachment for any official who was shown to be abusing the power of office or ostracism for any who were seen as becoming a threat to democratic rule. While mechanisms of accountability are necessary for any democracy, these need not, of course, assume such forms as ostracism.

Two issues important for democratic governance in today's societies are addressed by the Swiss and Rhaetians: for one, mechanisms for extending governance beyond the local level and for another, means by which to challenge authority on grounds of a failure to govern democratically and as a means to push for more democratic institutions and practices. The first issue, where numerous isolated communities formed part of a larger polity, is addressed by various mechanisms, including the alpine innovation of referenda (which deserves to be explored in greater depth by contemporary democrats). But it is also addressed more fundamentally by the use of delegates who communicate among the different communities rather than "representatives" empowered with a mandate to decide issues on behalf of the community.

The second concern is addressed by the use of mass direct action, best exemplified in the Rhaetian Freestate through the practice of the *Fahnlilupfe*. It both brought in new legislation to ensure the undemocratic practices not continue and established an on-going tribunal to correct existing injustices. The *Fahnlilupfe* was

fundamentally a mass direct action, indeed a non-violent direct action which sought to democratize governance. This was action based on citizens of a self-declared democratic society boldly asserting demands for corrective measures to ensure democratic governance by seizing democratic rights through force of numbers acting non-violently yet assertively.

In what were still oral cultures, the democratic mechanisms evolved in Switzerland and Rhaetian Freestate were not codified and posted for all to read, as in Athens two millennia earlier, but learned orally through practice. Time-honoured social and political institutions evolved to create a public sphere within which political discourse could shape local and national politics. The lengthy struggle to refine democratic institutions not only created the communicative context in which grassroots democratic governance could flourish at the local level, but it also generated innovative means by which democratic governance could be extended regionally and nationally, while remaining democratic and participatory. These efforts, of course, cannot be blindly duplicated, but the Alpine experiences do indeed present critical historical examples from which to learn.

**PART THREE**

**DEMOCRATIC THEORY: FROM PRACTICE COMES THEORY**

## PART THREE

### DEMOCRATIC THEORY: FROM PRACTICE COMES THEORY

In the democratic practices discussed in the earlier chapters, we find the evolution of democratic relations in response to lived experiences, not to any body of democratic theory.<sup>36</sup> In reference to Classical Greece, it is difficult not to agree, with Fornara & Samons: "Since we are, apparently, witnesses to the origins of political institutions, we cannot blandly presume that theory is prior to practice" (1991, 39). Indeed none of the body of written theory that has survived to modern times is "prior to practice."

Over the course of many centuries in Europe, the very concept of democracy, adhering to the tradition of Plato and Aristotle, was heavily maligned in the writings of any who addressed the issue. There are no surviving writings in which "democracy" was defended. As Aristotle and Plato had framed it, and as the later commentators who interpreted and re-interpreted those texts concluded, democracy was equated with "mob rule." It is not until the eighteenth century that we finally find scholars writing positively of democratic governance (Finley 1973, 9). However, here we find that the meaning of "democracy" becomes highly contested.

Part Two examines the origins of how our society came to be considered "democratic". Chapter 6 spells out the fundamental nature of the differences between the

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<sup>36</sup> Reference to "democratic theory," unless otherwise specified, is to a body of written theory not only about democracy but which endorses the practice.

two competing concepts of "democracy" that continue to cause confusion today. Chapter 7 identifies the earliest post-Classical democratic theory and explains what happened to that work. Chapter 8 lays out the evolution of our so-called democratic institutions and why they are or are not democratic. It examines the nature of political "representation."

## **CHAPTER 6**

### **IS ELECTORAL GOVERNMENT DEMOCRATIC?**

This chapter explores the political theory that emerged as democratic theory in the eighteenth and nineteenth centuries. The theorizing of Jean-Jacques Rousseau, on the one hand, and John Stuart Mill, following the work of his father, James Mill, on the other, represent radically different notions of democratic governance during the period pretentiously identified as the “Enlightenment.” While J.S. Mill held a range of differing and conflicting views on elements of democratic governance, it is only his best arguments in favour of representative democracy that will be analyzed.

#### **A. DIRECT/ PARTICIPATORY DEMOCRACY**

The Swiss and Rhaetian experiences of self-governance created the political context for the contributions of Jean-Jacques Rousseau, one of the most interesting and controversial political theorists of the Enlightenment period. Rousseau was the political theorist who most clearly articulated a political vision of democratic governance based on the Swiss experience. Rousseau continually explained to his confused European readers that his views were in fact consistent and not contradictory but must be viewed as a whole, as can be seen by reading the texts in chronological order from 1754 to 1762 (Cassirer 1963, 53; Gay 1963, 9-13; Masters & Kelly 1992, xix-xx). However, most



students of Rousseau's writings are unaware of the Swiss reality that shaped Rousseau's perspective and continue to claim that contradictions abound. For centuries, Rousseau's political vision has confused many while, occasionally, also being warmly embraced by others. Nevertheless, nowhere can be found a more systematic analysis and distillation of the democratic practices of Switzerland than in Rousseau's body of political theory written in the late eighteenth century. What then are the main views advanced by Rousseau regarding democratic governance?

## 1. JEAN-JACQUES ROUSSEAU

Rousseau became controversial because he challenged so many of the notions held sacred by the Enlightenment: private property, luxury, society, even the concept of "progress." Indeed he challenged the very project of the Enlightenment itself. Civilization, for Rousseau, was not a major achievement to be lauded but a plague that has afflicted humanity (Rousseau [1755] 1992, 62). Private property, as opposed to public or communal or personal property, constituted for Rousseau the basis for other more complex problems, including the major social ills of modern society. In *The Social Contract*, first published in 1762, Rousseau wrote:

It is conflicts over things, not quarrels between men which constitute war, and the state of war cannot arise from mere personal relations, but only from property relations. (Rousseau [1762] 1968, 56)

Jean-Jacques Rousseau's political writings, written a quarter of a century before the French took control of Switzerland, express a worldview, shaped by the political reality of his Swiss homeland. In writing the following often-quoted paragraph,

Rousseau explained he had in mind meetings, held in a village near Lake Neuchatel, which displayed the qualities of a "community of equals" (Cranston 1968, 18).

When we see among the happiest people in the world bands of peasants regulating their own affairs of state under an oak tree, and always acting wisely, can we help feeling a certain contempt for the refinements of other nations, which employ so much skill and mystery to make themselves at once illustrious and wretched. (Rousseau [1762] 1968, 149)

Rousseau was not referring to an imagined ideal situation. He did acknowledge, however, that although "(t)he people is never corrupted,...it is often misled..." ([1762] 1968, 72). Thus mechanisms would need to be elaborated to counteract this.

Rousseau also knew about some of the democratic concepts and practices that existed among the First Nations in the Americas. Jack Weatherford comments that the "contrast between the liberty of the Indians and the virtual enslavement of the Europeans became a lifelong concern for Rousseau and eventually led to publication of his best known work, *Discourse on the Origin and Foundations of Inequality among Men*" (Weatherford 1981, 124). Like the Swiss, the North American indigenous cultures promoted communal responsibility, individual freedoms and consensus-building mechanisms that avoided the use of coercion (Alfred 1999, 22, 25). The Iroquois had even proposed to the European settlers as early as the 1740s, the federated model that they had evolved for their own Confederacy (Johansen 2000, 26). At the Albany Congress in 1754, this model was successfully advocated by Benjamin Franklin to be the political form of federal organization that eventually served as a model for the United States of America (Hecht 1980, 71; Johansen 2000, 44). In 1986, the US Senate finally

formally acknowledged the indebtedness of the US confederal political organization to the Iroquois Confederacy (Alfred 1999, 157).<sup>37</sup>

## **2. DEMOCRATIC GOVERNANCE**

For Rousseau, democratic governance was based on assemblies of citizens. Popular assemblies were held at all levels: the community, village, commune or canton. Rousseau considered that these assemblies needed to be both fixed and periodic as well as extraordinary in emergency situations (Rousseau [1762] 1968, 137). Rousseau would not be the political theorist that Switzerland cried out for at times in its earlier history, when it was still trying to chart its way on a democratic course through largely unknown waters, although his writings were available for the French Revolution (Head 1995, 144). The Swiss were left to innovate and re-invent their forms of democratic governance. Rousseau was instead the belated political theorist, who wrote a political treatise that articulated the democratic experiences and institutions of the Swiss people developed over a period of centuries. This is the light in which to appreciate Rousseau's contributions. One cannot help but wonder why his writings are not more often contextualized in this manner when they are being taught.

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<sup>37</sup> The practices of the Iroquois Confederacy that informed the US Constitution and political system ranged from the very concept of a Congress that had representation of different numbers from each constituent state (Johansen 2000, 44) to that of refraining from using a person's name during proceedings in favour of a title (Weatherford 1981, 192). The major difference between the democratic governance of the Swiss and the Iroquois Confederacy was the latter's matrilineal system and the power held by women (Alfred 1999, 91; Hecht 1980, 75-6; Morgan [1851] 1962, 79, 84). This was an egalitarian partnership society more like that of Crete than the patriarchal society that created the Swiss Confederation.

Rousseau warned of the potential for any individual leading "any government in the world" to eventually "usurp the sovereign authority" if allowed to do so.

For while appearing to exercise only his (sic) rights it is very easy for him to enlarge those rights and to prevent, on the pretext of public tranquility, assemblies designed to re-establish good government.... (Rousseau [1762] 1968, 147)

Popular assemblies, Rousseau contends, have always been "the nightmare" of governments, which "spare no effort" to turn citizens against such assemblies (Rousseau [1762] 1968, 139). But it is precisely such periodic assemblies that Rousseau insists will prevent a usurpation of power, "above all those assemblies where no formal convocation is needed" (Rousseau [1762] 1968, 147).

The stronger the government, the more frequently the assemblies should meet (Rousseau [1762] 1968, 137). The general will should never be assumed but continually questioned (Rousseau [1762] 1968, 151). Rousseau considered the general will to result from a discursive process where ultimately votes would be cast, but within the context of an assembly seeking consensus to the degree possible, as occurred in Swiss communal assemblies (Rousseau [1762] 1968, 153). He cautioned that every individual has both a general will as a citizen and a private will, which may well be opposed to the general will and present different voices from those of the public interest (Rousseau [1762] 1968, 63). This general will was discursively determined under democratic mechanisms. Habermas, noting that Immanuel Kant drew clarity on this matter from Rousseau, said of the latter that he "understands liberty as the autonomy of the people, as the equal participation of each person in the practice of *self-legislation*" (1996, 472).

In the *Discourse on the Origin and Foundations of Inequality among Men*, Rousseau wrote that as a result of establishing society, we will forever have inequality and property, "for the profit of a few ambitious men henceforth subjected the whole human Race to work, servitude, and misery" (Rousseau [1755] 1992, 54). To make sense of Rousseau in light of the above, we must understand "society" as patriarchal society in the same manner that "civilization" needs to be understood as "patriarchal civilization." Although few would contest the claim that early societies such in Old Europe had a minimal, if any, state, it would be a far cry to maintain that they had little or no "society." (Rousseau presumably had no idea of the existence of egalitarian practices over millennia in Old Europe.)

Rousseau referred to the family as the oldest of all societies and as the first model of political societies where "the head of the state bears the image of the father..." (Rousseau [1762] 1968, 50). Here, of course, by "family" Rousseau is referring to the patriarchal family. In "society," "(t)he most decent men learned to consider it their duties to murder their fellows..." (Rousseau [1755] 1992, 55). This view was, of course, diametrically opposed to the predominant view of the Enlightenment that saw society as a civilizing and redeeming force. This was, in fact, a broadside aimed at the very core of the Enlightenment, for, in retrospect, it is clear that Rousseau, unlike most, was well aware at the time that the "Enlightenment" was not very enlightened at all.

In these various Governments, all Magistrates were at first Elective; and when Wealth did not prevail, preference was accorded to merit, which gives a Natural Ascendancy, and to age, which gives experience in affairs and composure in deliberations. The elders of the Hebrews, the Gerontes of Sparta, the Senate of

Rome, and the very Etymology of our word *seigneur* show how much Old Age was respected in former times. (Rousseau [1755] 1992, 61)

Rousseau turns out to be correct in many aspects of his prehistory; indeed, it seems likely that the earliest rulers of many societies were elected. It does seem that preference was based on merit; moreover, the earliest rulers may well have been women. Rousseau overlooks the patriarchal nature of Indo-European cultures (and his own views), their subjugation of women, and indeed their annihilation of the earlier, more evolved and more sophisticated, matrifocal cultures (of which, in the eighteenth century, he would likely have known nothing).

### **3. SWISS DEMOCRATIC GOVERNANCE AT THE NATIONAL LEVEL**

It is perhaps Rousseau's views on representative government that were most unusual for his time and that are most useful today. Whenever one town joins together with others seeking to establish a common form of democratic governance, the issue of representation arises. Assemblies become difficult if they require people to travel a great distance or if too many people need to assemble in a single location. So even when assemblies do occur at a local level, a hundred thousand people or more cannot participate in an assembly in the same way as can a few hundred or even a few thousand; assemblies of different sizes simply cannot be conducted in the same manner. New norms are required. Rousseau's initial reply to instances of political democratic unity of multiple towns or cities was to advise against them and to avoid them altogether. However, when towns did unite, he advised that there not be a fixed but a rotating capital and that the territory be evenly populated (Rousseau [1762] 1968, 138).

Rousseau sees representative government as the result of people who prefer to pay others to govern for them and to fight for them. "In a genuinely free state, the citizens do everything with their own hands and nothing by means of money." Rousseau attributes the shift to representative government to commerce, to "the avid thirst for profit" and to the "love of comfort" (Rousseau [1762] 1968, 140).

The popular assembly was, for Rousseau, the sovereign body; when it met, all representation reverted back to the people in assembly. "Sovereignty cannot be represented," Rousseau wrote in *The Social Contract* ([1762] 1968, 141). Those who assemble on behalf of others may be their messengers but not their representatives. "(T)he people's deputies are not, and could not be, its representatives; they are merely its agents; and they cannot decide anything finally" (Rousseau [1762] 1968, 139, 141). Thus whatever may be decided in the instance of a legislature must still return for approval from each commune.

Since the law is nothing other than a declaration of the general will, it is clear that there cannot be representation of the people in the legislative power; but there may be and should be such representation in the executive power, which is the only instrument for applying the law. (Rousseau [1762] 1968, 142)

Thus Rousseau rejects "representation" for any form of legislative body but insists upon it for the executive functions.<sup>38</sup> This need for an executive in Rousseau's theory is a

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<sup>38</sup> It seems to have been the fact that the assembly in Classical Athens assumed the executive functions of government that caused Rousseau to reject that Greek city-state in favour of Sparta.

When the people of Athens, for example, appointed or dismissed its leaders, awarding honours to one, inflicting penalties on another, and by a multitude of particular decrees indiscriminately exercised all the functions of an administration, then the people of

significant diversion from the millennial practice of the Swiss cantons. Why does Rousseau propose such a change? The next chapter will explore the likely source of that proposal.<sup>39</sup>

Rousseau maintains that the very "idea of representation is a modern one," that before modern times whatever forms of representation existed, they were certainly not perceived as democratic forms of governance; in fact, no word even existed for it (Rousseau [1762] 1968, 141). Rousseau was definitive about representation: "...(T)he moment a people adopts representatives it is no longer free..." (Rousseau [1762] 1968, 143).

Rousseau unleashed seething condemnations of the British parliamentary system of representative democracy:

The English people believes itself to be free; it is gravely mistaken; it is free only during the election of Members of Parliament; as soon as the Members are elected, the people is enslaved; it is nothing. In the brief moments of freedom, the English people makes such a use of that freedom that it deserves to lose it. (Rousseau [1762] 1968, 141)

The difference, of course, is that the British parliamentary system in its normative actions does not allow, even "in the brief moments of freedom" for contexts in which instances of communicative action could occur simply because no mass assembly exists and no set of comparable, alternative mechanisms has been established. Rousseau's response must be understood in light of a comparison to the Swiss assemblies and their democratic

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Athens no longer had what is correctly understood as a general will and ceased to act as sovereign and acted instead as magistrate (Rousseau 1762, p76).

This position of Rousseau's is confusing since Athens actually did allocate some of the executive functions to the *boule*, unlike the Swiss, who reserved such duties for the assembly.

<sup>39</sup> This discussion is found at the end of Chapter 8, immediately before the chapter conclusions.



mechanisms. No system of what is commonly referred to as representative democracy can come close to reproducing the dynamics of any functioning system of direct or participatory democracy. The British parliamentary system dates back to before the thirteenth century as a body that was convened and ruled by the monarch; it would be centuries more before it would tolerate any organized opposition within it. It would not be before the nineteenth century that the extremely lengthy and painful process of enfranchising any but the elite culminated in even extending the enfranchisement to other males beyond that elite. Even de Tocqueville acknowledged the critical role of assemblies as "constituting the strength of free nations" ([1840] 1980, 52).

Rousseau has been one of the most misunderstood political theoreticians of the Enlightenment period. The degree of misunderstanding of Rousseau and, in particular, insistence that his positions were contradictory reveals, in large part, the degree to which these critics were not aware of (or perhaps chose to ignore) the Swiss political reality. Rousseau's description of how a democratic society would function draws directly from Swiss experience. He articulated the ideals and practices that had dominated some regions of Switzerland for over half a millennium, but this empirical referent seems to have meant little to most of his readers in the eighteenth century or afterwards.

One of the few twentieth century political theorists to show any significant understanding of the positions actually advanced by Rousseau was Robert A. Dahl. Unfortunately, however, he too, like the theorists who understand Rousseau less, fails to appreciate the relationship of Rousseau's theory to the experiences of the democratic

cantons of the Swiss Confederacy or the Rhaetian Freestate. Dahl writes, "In his vision of primary democracy as the only legitimate kind of state or political body, Rousseau presents one of the most beguiling **utopias** since Plato's *Republic*" (emphasis added, Dahl 1970, 80). Failing to study the Swiss situation in any depth, Dahl chose only to cite the situation of Geneva and its undemocratic nature (Dahl 1970, 82). Geneva was a city that was not even part of the Swiss Confederacy during Rousseau's life. It joined Switzerland in 1814, with Switzerland only accepting the inclusion of Geneva under considerable European pressure (Martin 1971, 189).<sup>40</sup>

Rousseau considered that either election by lot or by choice was democratic, in one of very few references in the last few centuries to the lot as being a democratic practice (Rousseau [1762] 1968, 155). The lot was a mechanism employed in Classical Rome (Rousseau [1762] 1968, 165) and Greece as well as being deeply rooted in Swiss, including Rhaetian, practice.<sup>41</sup> Rousseau thought it best, as did the Classical Athenians, to fill military offices, for example, when needed, by election, for these offices require special skills. But lots, he felt, are more appropriate for instances that principally require common sense, justice and integrity, such as in political offices, noting that "in a well constituted state, such qualities are found among all the citizens" (Rousseau [1762] 1968, 156). Those positions filled by lot would have limited responsibility, while those filled by election would have mechanisms of accountability. For such an approach to work

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<sup>40</sup> Although not a member of the Confederation, for centuries Geneva had been allied to the Confederation, but not as closely as, say, the Rhaetian Freestate (Martin 1971, 124-25). As a formal alliance, the relationship dated back to 1477 (Martin 1971, 69). The oligarchic state of Geneva (Martin 1971, 125) was denied admission into the Swiss Confederation on numerous occasions before 1814: 1572, 1573, 1582, 1585 and most recently 1777 (Martin 1971, 97, 100, and 125).

<sup>41</sup> Henceforth, unless otherwise specified, references to Switzerland or the Swiss are intended to include Rhaetia and Rhaetians as well.

effectively, the tasks assigned to those positions filled by lot must be appropriately designated for the pool of people from whom lots are drawn.

Rousseau did not specify how voting was to occur, but presumably he had in mind either a verbal vote or voting by physically moving, which were common practices in Switzerland. He did specify that he did not consider the secret ballot a viable option. In explaining why, he cited the Roman experience, in which corrupt vote buyers successfully lobbied for the secret ballot (Rousseau [1762] 1968, 167). Corruption and its consequent vote-buying were prevalent in Britain in Rousseau's time (Pocock 1985, 87). For Rousseau, the secret ballot contradicted the notion of standing up for one's beliefs. To try to avoid bribery, Roman assemblies would have to be convened rapidly (Rousseau [1762] 1968, 167-8). With respect to organizations that lobby for explicit ends, Rousseau wrote that if it were possible, they should be banned; if not, then large numbers of them should be encouraged "as Solon, Numa and Servius did" ([1762] 1968, 74), for when one group grows to dwarf the rest, "there ceases to be a general will" (Rousseau [1762] 1968, 73).

Rousseau observed that like the Romans, "the majority of ancient governments ...had similar assemblies" (Rousseau [1762] 1968, 137). Rousseau believed that subsequent ratification by the populace at large was not a problem. Instead, he claimed that this had actually been a benefit in both Rome and Switzerland for it allowed for people to become better informed before voting (Rousseau [1762] 1968, 165).

Rousseau provides us with a theoretical framework for democratic governance. While not in any sense the definitive model for democratic organization, Rousseau does at least offer, in very broad strokes, the main characteristics of one version of a democratic participatory model.

The political domination of Switzerland and Rhaetia by the French at the opening of the nineteenth century, following their military invasion, resulted in an immediate assault on and marginalization of the centuries-old alpine forms of democratic governance. Jean-Jacques Rousseau was indubitably the political theorist *par excellence* who most clearly organized a body of political theory precisely around these democratic practices. Yet this wealth of experience in democratic governance was all but ignored as thinkers of the Enlightenment claimed to be seeking forms of democratic governance. Rousseau, for his part, was so badly misinterpreted for a century and a half, and democracy was so poorly understood that even many democrats could not understand him, Thomas Paine among them (Keane 1995, 118). Rousseau was dismissed as either confused or contradictory until reinterpretations began to appear at the beginning of the twentieth century (Gay 1963 [1954], 17).<sup>42</sup> From that time on, there has been a minimal opening in academic circles to accept that perhaps Rousseau was something else. But it has only been an opening.

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<sup>42</sup> Such reinterpretation includes Gustave Lanson's *Histoire de la Littérature Française*, (Paris: 1903), E.H. Wright's *The Meaning of Rousseau* (London: 1929) and finally Ernst Cassirer's *La Question de Jean-Jacques Rousseau* (Paris: 1932) (Gay 1963, p17).

## **B. REPRESENTATIVE DEMOCRACY**

As democratic theory evolved in the eighteenth and nineteenth centuries, why were the alpine democratic forms of governance that had evolved and flourished over half a millennia in the very heart of Europe simply ignored? Why did Rousseau's contributions not become more central to the emerging democratic theory of the eighteenth and nineteenth centuries? It was certainly not because such theory was unarticulated and unavailable. Perhaps in reviewing the evolution of political theory regarding representative democracy, we can gain some insight as to why this may have been the case. We will return to this in the next chapter, but first let us explore the notions of democracy as advanced by liberal democratic theorists and best articulated in the early years, first by James Mill and then more thoroughly by his son, John Stuart Mill.

There are few political theorists before the twentieth century who explicitly advocated forms of "representative democracy." In the days before it became respectable to speak of representative democracy, the major political theorist to advocate this new form of governance, James Mill, spoke instead of "representative government." This analytic category brings together all those forms of governance in which there is some form of "representation," those chosen by election as well as those named by an autocrat.

## 1. JAMES MILL

No other early political theorist is more widely cited in explaining the growth of the concept of "representative government" than James Mill. In his *Essay on Government*, first published in 1820, James Mill articulated political views, derived from Jeremy Bentham's utilitarianism, that Mill referred to as representative government, whereby presumably each citizen would be free to best pursue his own self-interests. In promoting forms of representative government that restrict representation to the elite, James Mill grappled unsuccessfully with the issue of how to ensure that representation would not be abused to promote individual, private interests.

Mill mentions, but dismisses without serious consideration, a fundamental mechanism that all participatory democracies in the past found necessary to employ, that of punishment of authorities who abuse their power: "It is easy, however, to see that punishment could not be effectually applied" (James Mill [1820] 1955, 71). That is, power was not to be seriously challenged. Such mechanisms, we have already seen, were crucial to democratic regimes of the past if abuse of power was actually to be challenged and power ultimately democratized; be this by means of *euthynai* or *graphes* in Athenian assemblies or by *Fahnlilupfe* in Switzerland. It is not clear that what is referred to as representative government or representative democracy seeks or has ever sought such democratic means of accountability. Participatory democracy, however, by its nature works to create a more egalitarian power structure. Mill, with his preference for reform,

effectively abandoned the practices of democracy in favour of those of "representative government."

When referring to universal suffrage, or at least suffrage of all adults over a certain age, James Mill, in spite of being considered a "radical" among liberal democrats of his day, nonetheless rejected giving the vote to women as no more desirable than giving it to children, maintaining that these are "individuals whose interests are indisputably included in those of other individuals" (James Mill [1820] 1955, 73-4). Furthermore, he dismissed the idea that men under forty need a voice of their own since he felt that their fathers would speak for their interests ([1820] 1955, 75).

Representative government, for James Mill, involved the male head of the household representing all family members in selecting yet others to represent him. Representative democracy was reduced to allowing a few male voices to be selected by other middle-aged or elder males, thereby reproducing the patriarchal power structure. For Heide Wunder, this process of extending the vote to a larger number of elite males resulted not in democratic rights for women, but in a **worsening** of their situation, confining their influence formally to the home. After tracing the role of women in Germanic-speaking countries throughout the Middle Ages, Wunder then concludes:

It was only in the nineteenth century, when women, by virtue of their gender, were excluded from the new forms of political representation legitimated by election, that family and household became a sphere of "private" - in the sense of non-public - authority. (1998, 203)

The mid-millennium period of feudal Europe and despotic monarchies seems to have been both a new height of patriarchal rule and of European inhumanity. The witch hunts of the 15th-18th centuries, following Pope Innocent VIII's denunciation of witchcraft as the work of the devil, apparently resulted in the murder of untold numbers of women, who were accused of being witches. Some claim that the "greatest creativity of the period" seems to have been directed towards the invention of sophisticated techniques of torture (Gimbutas 1989, 319), although most patriarchal accounts of this period of history simply ignore these issues. This was the last major assault on the remaining vestiges of a disappearing matristic heritage. It does not seem that these women's husbands or fathers represented them very effectively.

## **2. JOHN STUART MILL ON REPRESENTATIVE DEMOCRACY**

It would be James Mill's son, John Stuart Mill, who would attempt the most sophisticated effort to bring together the concepts of democracy and representative government. In his *Reflections on Representative Government*,<sup>43</sup> written in 1861, we find a clear defense of representative government as democratic government. John Stuart Mill's clearest articulation of his position on representative government vis-a-vis direct democracy can be found in the conclusion of the third chapter, which is entitled "That the Ideally Best Form of Government is Representative Government":

From these accumulated considerations it is evident that the only government which can fully satisfy all the exigencies of the social state is

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<sup>43</sup> Alternatively referred to as *Considerations on Representative Government*, *Reflections on Representative Government*, and simply *Representative Government*.



one in which the whole people participate; that any participation, even the smallest public function, is useful; that the participation should everywhere be as great as the general degree of improvement of the community will allow; and that nothing less can be ultimately desirable than the admission of all to a share in the sovereign power of the state. But since all cannot, in a community exceeding a single small town, participate personally in any but some very minor portions of the public business, it follows that the ideal type of a perfect government must be representative. (J.S. Mill [1861] 1972, 234)

For our purposes, this is a key paragraph, through which the core of J. S. Mill's views on democracy may be analyzed. There are four relevant points in this quote which leap out for contestation: i) Is it true that "all cannot...participate personally in any but some very minor portions of the public business"? ii) Is "any participation, even the smallest public function" actually better than nothing? iii) What is implied by "as the general degree of improvement of the community will allow"? and iv) Is representative government actually "the ideal type of a perfect government"? Let us review the most important one for our purposes first: the claim that all cannot participate in any but the most minimal forms of governance, a claim that rationalizes the shift from participatory to representative forms of governance.

Remarkably, throughout the chapter's seventeen pages J.S. Mill cited only examples of participatory forms of governance, yet he was attempting to justify representative ones.

There is no difficulty in showing that the ideally best form of government is that in which the sovereignty, or supreme controlling power in the last resort, is vested in the entire aggregate of the community; every citizen not only having a voice in the exercise of that ultimate sovereignty, but being, at least occasionally, called on to take an actual part in the government, by the personal discharge of some public function, local or general. (J.S. Mill, [1861] 1972, p223)

Direct democracy and representative democracy are radically different concepts. The Classical Greeks did not have representative democracy as we know it today. Instances where a smaller body governed over the larger polity were considered to be elitist forms of governance, *contrasted* with democracy, not equated to it. The chapter actually provides a better justification for direct democracy than it does for representative democracy, apart from the sentence that assumes "(b)ut since all cannot,...". Mill writes that:

Notwithstanding the defects of the social system and moral ideas of antiquity, the practice of the dicastery and the *ecclesia* raised the intellectual standard of an average Athenian citizen far beyond anything of which there is yet an example in any other mass of men, ancient or modern. (Mill [1861] 1972, 233)

In spite of invoking the transformative attributes of Athenian democracy, Mill has simply conflated participatory and representative forms of governance without a word of justification for doing so. He appeals to an allegedly incontrovertible criterion of excessive numbers preventing participatory governance. Mill fails to investigate any attempts at resolving this problem. How did people who struggled for and achieved self-governance accommodate more than "a single small town"? Is this not a question worth giving serious consideration?

J.S. Mill even cites as the "first principle of democracy, representation in proportion to numbers." (J.S. Mill, 1972, p281). Mill did not present this as a principle of representative government, but of "democracy." Mill's argument for representative democracy over direct democracy ultimately seems to pivot on two concerns: the number

of citizens involved and the ability of "common" people to govern themselves. He promotes an elitist vision of governance, with greater affinity to the politics of Aristotle than Solon, constantly citing the lower intelligence and lesser abilities of the working classes (J.S. Mill [1861] 1972, 207, 287, 299, 303, 309, 382). Mill's views were deeply embedded within a worldview totally divorced from any first-hand association or acknowledgement of the intelligence, creativity, resourcefulness and compassion of the more impoverished and down-trodden popular sectors of society that made up the majority: workers, peasants, artisans, unemployed and unemployable.

As we have seen, there was a legacy of "common" people governing themselves over centuries and, in doing so, developing innovations to allow participatory governance to be extended to a national level as well. Some of these continued during Mill's lifetime. Certainly this was the situation in parts of Switzerland. This "oversight" is all that more surprising when we note that he did indeed make reference to Switzerland's democratic traditions, albeit in a limited manner. He listed instances of democratic governance in the Greek and Italian city-states and the free towns of Flanders and Germany (J.S. Mill [1861] 1972, 226). He then grouped together Switzerland, Holland and England and contrasted them collectively with Austria and pre-revolutionary France, without further comment, thereby lumping together radically different experiences. Mill mentions Switzerland on three other occasions in this work, but only incidentally.<sup>44</sup> Surely the

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<sup>44</sup> One occasion was to note the multi-cultural qualities of Switzerland (Mill 1972, 391); a second time, in a footnote, claiming that Swiss political theorists "led the way" in promoting *representative* democracy without a mention of any of their participatory activities (Mill 1972, 298); a third cited the Swiss Confederation as an example of the incorrect way to organize a federal state, contrasting it to the United States (Mill 1972, 399-400).

Swiss experience would have provided an excellent case study to explore in depth. But Mill makes no reference to it.

As for the other three questions raised, first, is "any participation, even the smallest public function," actually useful? This question alone could trigger an extensive independent study. To be brief, however, personal experience of being called to take part in what could best be described as "participatory window-dressing" (as has been corroborated by others' studies, Berry et al 1993, 22, 34, 42, 51) suggests that if this minimal involvement occurred in a system of "representative government" and the participation did not result in action, then it may well be felt to be not meaningful and could instead leave citizens disillusioned and unwilling to participate further. In a direct democracy, where discussion results in collective action, such an experience would be different, but in a representative democracy, if the forms were ones of controlled and limited participation, this could instead have a negative impact rather than be "useful." It is not merely participation that matters but *meaningful* participation, participation that ultimately influences or determines actions undertaken.

Is it not profoundly inconsistent for Mill to begin the paragraph stating that "any participation, even the smallest public function" is useful, yet end the paragraph claiming that "since all cannot... participate personally in any but some very minor portions of the public business," participatory democracy should be abandoned in favour of representative government?

The second issue "...that the participation should everywhere be as great as the general degree of improvement of the community will allow" is a statement which presupposes that there is a limit to the amount of public participation. It would merely be a question of deciding where to draw the limit. But who would designate such a limit and determine, under what criteria, how much participation is to be allowed? If it were not the adult community as a whole, then there are inevitably dangers that this be used as an exclusionary mechanism that reserves privilege. Rather than limiting public participation, democratic governance requires a commitment to be ever vigilant seeking to extend, not limit, participation in democratic forms of governance.

Finally, is representative government actually "the ideal type of perfect government"? After having argued that participatory democracy was the optimum or ideal, Mill then seems to advocate "representative government" as a secondary option, a compromise, allegedly more realizable and pragmatic form of governance, "since all cannot" participate. This hardly justifies labeling representative government the "ideal type of perfect government" unless after collapsing "participatory" into "representative," we now also consider compromises to be ideals.

Mill offers the following opinion when attempting to explain the "tyranny of the majority" and the need for proportional representation:

Two very different ideas are usually confounded under the name democracy. The pure idea of democracy, according to its definition, is the government of the whole people by the whole people, equally represented. Democracy as commonly conceived and hitherto practiced is the government of the whole people, by a mere majority of the people, exclusively represented. The former is synonymous with the equality of

all citizens; the latter, strangely confounded with it, is government of privilege, in favour of the numerical majority, who alone possess practically any voice in the State. This is the inevitable consequence of the manner in which the votes are now taken, to the complete disenfranchisement of minorities. (J.S. Mill [1861] 1972, 277)

In analyzing this comparison, we find that in the former instance, Mill claims that the so-called pure idea of democracy "according to its definition, is the government of the whole people by the whole people, equally represented." Mill adds the phrase "equally represented" to what otherwise is a traditional definition of democracy. The addition creates a radical redefinition. Democracy has been redefined by Mill to consist only of forms of representative government, even in its "pure form." The so-called "pure" definition of democracy has, of course, never included the concept of representation at all.

Representative government would presumably include any form of governance, with the single criterion that there exists also a body of representatives to provide input. The participation of the towns' representatives in the territorial Diets since the early fifteenth century in the Holy Roman Empire under the Habsburgs, even though the Diets were only convened at the pleasure of the prince (Brunner 1084, 325, 358), would qualify under Mill's criteria. But these were not even remotely democratic governments. They may have allowed for the expression of some concerns, if asked about these, but this is far from being empowered to make decisions. A contemporary example of a government that was democratic at the time of these Diets would, of course, be the neighbouring

Rhaetian Freestate. But to mention the Freestate would have undermined, not substantiated, Mill's positions on representative democracy.

There is no historical precedent in the ancient world for the notion of representative democracy (Wood 1996, 122). In the Aristotelian view of monarchical, oligarchical or democratic governance, "representative government" would simply be considered as another form of oligarchical rule. There were either elected forms of oligarchical governance or democratic forms employing such mechanisms as the lot. "Representative government" and "democracy," therefore, were contrasting forms of government; they were certainly never equated with one another. As German, British and other experiences in the middle of the second millennium confirmed, representative governments could even be monarchies.

Mill explains how first-past-the-post systems of election in representative democracies typically leave a minority with no representation at all. Mill argues that if there is no representation of the minority, as provided by proportional representation, "there is not equal government, but a government of inequality and privilege." (J.S. Mill [1861] 1972, 278) As even Mill recognized, for representative government to function more democratically, it requires a series of corrective measures - measures such as proportional representation, which in Canada, for example, **still** does not exist. Even Mill acknowledged that without proportional representation, no electoral system could even appear to be democratic.

While it would be difficult to disagree with Mill's assertion that "(d)emocracy as commonly conceived and hitherto practiced" is indeed a "government of privilege" that results in a "complete disenfranchisement of minorities," there is another even more basic comparison to be made. It is the concept of democracy as the governance "of the people, by the people," **without** representation, although employing the delegation of authority when necessary and referenda ratification, that needs to be compared to Mill's notion of representative government. The former is democratic; the latter is not. Mill's comment on the "tyranny of the majority" could be more appropriately applied here: "The former is synonymous with the equality of all citizens; the latter, strangely confounded with it, is government of privilege...."

It is important to make clear that this review makes no claim to assess all of Mill's contributions to democratic theory nor even to opine if Mill is a democrat or not. Other writings by Mill, seemingly heavily influenced by his wife, Harriet Taylor, present more progressive political positions on various issues.<sup>45</sup> These include his support for workers' cooperatives, women being extended the vote and even Mill's support for communism<sup>46</sup> (J.S. Mill [1861] 1972, 225). The examination of Mill's articulation of an argument for representative democracy is not intended to vilify Mill, but merely to examine the most articulate and early explanations of why it is that "representative democracy" is "democratic" in the first place. This is absolutely critical since it marks the beginning of a process that first establishes representative democracy as a viable concept, then

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<sup>45</sup> See Mill's dedication to his deceased wife in "On Liberty," "To the beloved and deplored memory of her who was the inspirer, and in part the author, of all that is best in my writing...Like all that I have written for many years, it belongs as much to her as to me." (J.S. Mill 1972 [1859], 69)

<sup>46</sup> "Communism is not only practicable, but the **only** defensible form of society" (emphasis added, J.S. Mill 1972 [1861], 225).



eventually works to entrench this electoral form of liberal governance, usurping the term “democracy” entirely.

### **C. CONCLUSION**

Liberal democratic political theory, which argued for the legitimacy of representative democracy, actually distorted its claims without being able to make a serious claim to democratic relations for a so-called representative government. How representative that "representative government" is remains to be examined. Some elements of the arguments advanced by John Stuart Mill for representative democracy may have been radical among the conservative elite politicians of eighteenth century Britain, but his arguments to substantiate representative democracy as being democratic are flawed. While John Stuart Mill has more often been associated with democracy than has Jean-Jacques Rousseau, it was in fact the latter who was the more democratic of the two. The unfortunate, profound silence around the democratic nature of Swiss and Rhaetian governance has contributed to this widespread misconception.

## **CHAPTER 7**

### **THE EARLIEST SURVIVING DEMOCRATIC THEORY**

Chapter Seven seeks to locate the earliest surviving body of democratic theory. It then reviews how it was that this clear body of theory came to be so misunderstood by its readers over several centuries and why it did not stimulate a move towards greater democratic practice. As well the chapter reviews from where western political theory emerged in the first place.

#### **A. POST-CLASSICAL EARLY DEMOCRATIC THEORY**

After the collapse of Classical Greece and more definitively with the fall of Imperial Rome, democracy seems to have fallen dormant as a political concept within European ideological debate. As a theory with historical roots and examples, it seems to have gone into hibernation throughout the first millennium after Christ. It did not, however, wither and die as a practice, only as a political theory; renewed theory would only come from struggles to attain new forms of democratic practice. New efforts arose as we saw above, based on human need and human ingenuity, not on theoretical positions. Although theoreticians can be helpful in suggesting direction, it is lived experience that stimulates the demand for democracy. Theory evolves as an integral part of attempting to implement the practice. Theory and practice are intimately intertwined. Only on rare occasions, however, has this been documented in writing that has survived.

The proclamation of the Rhaetian Freestate to be a democracy in 1618 has been forgotten, even by democrats who may have been at least curious over historical developments of democracy in Europe. It is conspicuously absent in the formal accounts of the evolution of democracy. Yet it is a crowning moment in one of only a few democratic processes to mature in the millennia-long struggle for democratic governance. It was a milepost in the lengthy tradition of Alpine democracy, which for its part is the longest documented instance of democratic governance. It was also the first nation-state in the second millennium to declare itself a democracy. Yet not a word is known to have been written to that effect until recent decades, and almost no acknowledgment has been given to even that. The monumental example offered by the Swiss/ Rhaetian experience has yet to capture the imagination or interest of any significant democratic movement elsewhere. It was largely ignored during the centuries of formation of current so-called democratic theory, under the hegemony of those proclaiming representative forms of government to be democratic. Advocates of representative government might not be inclined to celebrate 1618 since that would only point towards one of the experiences that undermines their claims and exposes them as hollow.

The democratic Rhaetia Freestate or Swiss Confederacy prior to the nineteenth century were excellent examples of democratic nations. Yet they were never raised as such by *any* of the liberal democratic theorists who preferred to identify forms of representative government with democratic governance, especially if electoral. Two questions arise here. First, how did the resurgence of democratic theory occur? Second,

what happened to it? What is the connection between representative government and democratic governance?

## **B. ARAB ROOTS TO EUROPEAN POLITICAL THOUGHT**

In seeking the earliest surviving articulation of democratic theory, as well as trying to trace how the current forms of political representation came into being, it is important to lay out the context in which these concepts arose. The intellectual context for the evolution of European political thought in the second millennium was provided by the re-introduction to Europe of Greek Classics that had long been unavailable as well as a flood of writings by Arabs that were also translated into Latin, stimulating a wave of thinking and writing in Europe on issues that had already been deeply analyzed in the Arab world.

The volume of new scholastic material that became available in Europe through translations from Arabic greatly increased in the mid-eleventh century. The content of these initial translations was predominantly scientific, but by the second half of the twelfth century, the translations were largely of philosophical and religious writings (Luscombe 1997, 66). A few of these became available in the Greek original and were translated directly (Copleston 1972, 153), largely from texts acquired during the Christian conquest and sacking of Constantinople in 1204 (Gilby 1958, 80). This flood of translations "splits the history of medieval thought into two periods," with the early thirteenth century being the dividing line (Luscombe 1997, 74). These translations

provided the ground for later European writings and indeed the emergence of entire traditions of European thought (Gracia 1998, 452).

One logical starting point for our enquiry would be the wave of translations from Arabic into Latin that began to occur shortly into the second millennium, for it is from here that European intellectual thought emerged in the second millennium. Walter Ullmann points out that the very term "politics" re-emerged in the thirteenth century, "never to disappear again" (Ullmann 1966, 127). The concept of "politics" dates back at least to Classical Greece, as is evident from Aristotle's writings. Antonio Gramsci considered that the first political theorist to describe "politics" in the modern sense was a Paduan named Marsilius (Gramsci 1991, 377).

A central factor in stimulating political thought in the thirteenth century was William of Moerbeke's flawed translation of Aristotle's *Politics*, making it available in Latin for the first time since the fall of the Roman Empire (Sinclair 1982, 16). The terms "politics" (as the capacity of a citizen to take part in public affairs of the state) and "citizen" (used since the time of the Roman Empire but only in the Italian city-states) entered scholastic usage in medieval Europe during this century (Ullmann 1966, 119-20). Other texts available in the thirteenth century, however, which discuss political and philosophical issues, were almost all by Arab philosophers.

The impact of translations and commentaries by Arab scholars can hardly be overstated. It is as though all that would become "European" political thought and

philosophy was shaped by its roots in the Arab world. As John Marenbon wrote in his introduction to *Medieval Philosophy* (1998), although significantly presented as a parenthetical observation: "...(T)he importance of works in Arabic for medieval philosophy should make historians ask how Western 'Western philosophy' is" (Marenbon 1998, 2). But Eurocentrism seems for the most part to have relegated these enormous contributions, in those instances that do acknowledge this connection, to little more than accusations of "contamination" of the Classics (Knowles 1962, 194).

To offer some idea of the enormous gulf between the intellectual development of the European and Arab worlds at this time, a single comparative example should suffice. The monastery of St. Gall in Switzerland with one the largest libraries in central and northern Europe in the tenth century had some six hundred hand-written volumes, while at the same time just one of the seventy libraries in the Moslem city of Cordoba had more than 400,000 volumes (Hillenbrand 1992, 120-1). Carl Stephenson maintains that between 850 and 1050 "there was only one remarkable scholar in western Europe - Pope Sylvester II, better known as Gerbert" (1935, 415), whose most significant contribution seems to have been the introduction to Europe via the Arab world of a crude form of abacus (Stephenson 1935, 418). Stephenson, as is common, does not even consider Moslem Cordoba to be part of Europe.

European thought, as it evolved in the second millennium, was built upon foundations laid by earlier generations of Arab scholars, in part through their interpretation and discussion of the Greek Classics. But the Arab intellectuals gave to

Europe much more than merely a translation of the Classical Greeks and the re-introduction of lost Roman writings. For centuries, Arab thought and writings had flourished in the Islamic world, reflecting, among other things, upon these Greek and Latin Classics (Leaman 1988, 164). Of the Moslem intellectual giants, there are three who stand out as having made huge contributions to the subsequent development of thought in Europe, independent of their contributions to the Arab world: Al-farabi in the tenth century (Copleston 1972, 108), Avicenna (Ibn Sina) in the eleventh century and Averroes (Ibn Rushd) in the twelfth (Luscombe 1997, 64). All three considered people to be political beings, who needed to live in political association and who were part of the state (Rosenthal [1958] 1962, 158). That is, this worldview understands civil society and the state to be blended into one and the same sphere.

Philosophy in the Arab world had become firmly established as a discipline, when Abbassi Caliph al-Ma'mum, ruler of the Moslem empire between 813 and 833, opened a school in Baghdad for the study and translation of Greek scientific and philosophical literature into Arabic, much of which passed from one to the other by way of a Syriac<sup>47</sup> translation (Leff 1975; 142-3). Among the famed scholars at this Baghdad institute was Al-farabi (875-950), who drew the first known metaphysical distinction between essence and existence - a distinction that would later become pivotal for Christian as well as Moslem theology (Knowles 1962, 196). His ideas were clearly articulated and elaborated upon by Avicenna (980-1037), who taught at the Baghdad school a century later. It was Avicenna, in building on Al-farabi, who provided much of the basic metaphysical and

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<sup>47</sup> Syriac was an ancient Aramaic language spoken in Syria between the third and thirteenth centuries. Aramaic evolved its own alphabet as had the Canaanite branch, the Greeks, Etruscans or the Romans (Diringer 1968, 134-7).

theological doctrine of Christianity, including that of "creation," so fundamental for medieval and even some modern Christian thought (Maurer [1962] 1982, 94-7).

Philosopher, renowned physician, mathematician and accomplished scientist, Avicenna was the most widely read Arab author in Europe (Leff 1975, 148).

Averroes, one of the greatest of the Moslem philosophers following Avicenna, was born in 1126 in Moslem Cordoba, in what would later become Spain. From the tenth century until it was conquered by Christians two centuries later, Moslem Cordoba dominated European "civilization" (Maurer [1962] 1982, 94); by the tenth century it was the largest city in Europe, with a probable population of some 300,000 people (Hillenbrand 1992, 119). It was in Moslem Cordoba as well that Jewish philosophy reached its most dynamic height (Knowles 1962, 202), with most academic Jews writing in Arabic (Copleston 1972, 105) as a result of the relative liberty that Jews enjoyed in Islamic societies compared to Christian ones (Wasserstein 1985, 191).

Among Averroes' contributions was the most systematized guide available for the interpretation of Aristotle, widely used in Europe through the following two centuries and well into the Renaissance (Maurer [1962] 1982, 100). Averroes' effort to demarcate between reason and faith had a fundamental impact on future medieval European thought, including that of Thomas Aquinas (Leff 1975, 156). Ibn Rushd (Averroes) is also important for having advocated an unusual degree of **freedom of speech** (Ivry 1998, 56), making him a key figure in establishing this tradition. His political and ecclesiastical views influenced a school of thought in Europe that emerged in the twelfth century.



Known as the Latin Averroists, they advanced a purely secular view of the world and its governance (Gilby 1958, 80-1). Averroes was widely read among European jurists for his legal writings, among European physicians for his medical knowledge, among European scientists for his scientific writings, and among philosophers for his interpretation of the role of ideology held by those in power (Urvoy 1991, 21-3, 46-50, 109). It is fortunate that Averroes' writings were as popular as they were in Europe for, unique among Arab scholars, he was preserved in European libraries, while he was later shunned in the Islamic world (Arnaldez 2000, 120) until the nineteenth century (Leaman 1988, 177; Colville 1999, xix). Averroes challenged the view that one must isolate oneself from the community to attain perfection (as advanced by the first acknowledged Moslem philosopher of the Arab West, Avempace or Ibn Bajja). Instead, Averroes, as had Al-farabi and Avicenna before him, held that only within the context of political association is it possible for people to reach happiness and perfection (Rosenthal [1958] 1962, 158, 175-6). It is squarely on the shoulders of Averroes that we find the writings from northern Italy two centuries later of early democratic and republican theorist Marsilius de Padua (c. 1275-1342).

The Arab intellectuals of Iberia introduced (or, for those studies with roots in Classical Greece, re-introduced) to Europe the sciences, medicine and mathematics together with such a wide range of technological innovations that it is astounding their legacy is not more widely known (Chejne 1974, 344). That it is not speaks volumes about a continuing historical silence regarding a profound, yet unacknowledged, cultural, material and intellectual indebtedness. The Arabs introduced to Europe many important

innovations. Some were as basic as paper, glass, the concept of zero or the use of Arabic numerals; others were as complex as arched bridges or water-wheels for irrigation (Hillenbrand 1992, 118-9) or such instruments as the "astrolabe," used both as a navigational sextant and a clock, without which neither the Portuguese, the Spanish nor the Genoese Cristobal Colon (Christopher Columbus) could have ventured far by sea. The astrolabe, zero and Arabic numerals are considered to have been introduced to northern Europe early in the twelfth century by Adelard of Bath on his return from the Arab world (Stephenson 1935, 433-4).

Universities as they emerged in Europe were modeled on institutions attached to mosques in Arab countries. Although established around 1170 (Innis 1951, 20), the University of Paris, offering arts and theology (Haren 1992, 137), received the first charter for a Christian university in Europe at the beginning of the thirteenth century (Maurer [1962] 1982, 110), although the university at Bologna, offering law (Haren 1992, 137) is shortly afterwards claimed to have been the first "fully-fledged university" in existence (Knowles 1962, 153-5). The extreme differences in the political culture of France and the Italian city-states are reflected in the former being run by the chancellor of Notre Dame cathedral school, while the latter, by the mid-thirteenth century, was student-controlled (Haren 1992, 139). Three centuries before either, however, there was already a much greater range of studies in Moslem Cordoba: philosophy, logic (Edwards 1982, 176), language, history, writing, medicine, geography, mathematics, poetry, astronomy, botany, chemistry, physics and metaphysics (Chejne 1974, 162, 344).

### C. MARSILIUS DE PADUA

This is the historical and intellectual context that shaped Europe in the fourteenth century when Marsilius de Padua<sup>48</sup> wrote about democratic governance. His writings, as social critique, had an impact over the next few centuries that Marsilian scholar and translator, Alan Gewirth has compared to that of Karl Marx in the twentieth century (Vol. II, xix). Gewirth's revised translation (1956) of Marsilius' major text, *Defensor Pacis*<sup>49</sup> (1324), presents Marsilius (also known as Marsiglio) in a new light: as an advocate of *democratic* governance, rather than of *representative* governance, as he had been portrayed for centuries (Gewirth 1951, 182-96).

Having been discovered to be its author, Marsilius was excommunicated two years after releasing the text in 1324 (Gewirth 1951, Vol. I, 21). This was merely the first of numerous times over the following centuries that the church hierarchy would denounce the work. It was Marsilius and his writings that would be blamed when church reformers such as John Wyclif or Martin Luther were excommunicated in the 16<sup>th</sup> century (Emerton 1920, 79-80; Gewirth 1956, II, 303, footnote 5). Marsilius had provided the earliest theoretical foundations for the Reformation, grounding his ecclesiastical appeals in the thirteenth chapter of St. Paul's Epistle to the Romans and calling for a separation of

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<sup>48</sup> Also translated as Marsiglio of Padua. The terms will be used interchangeably.

<sup>49</sup> Known in English as *The Defender of Peace*. The names will be used interchangeably.

church and state (Skinner 1978, Vol. I, 19). His views on church affairs occupy the second (and longest) of the three discourses in his 1324 work, *Defensor Pacis*.

## 1. REARTICULATING DEMOCRATIC IDEALS

Marsilius was an early proponent of communal, republican liberty as detailed in the first discourse (Nederman 1996, 26). He provided the earliest known articulation of the theoretical foundations and arguments for democratic governance, making his texts the earliest surviving expressions of democratic theory.

Informed by the experience of the Italian city-states and the church's continual interventions into the affairs of state (Reeves 1965, 103), following Averroes, Marsilius not only called for separation of church and state (Leff 1975, 302), but for the subordination of the church to the state in matters of law (Daly 1962, 23). Indeed the rule of law was fundamental for Marsilius (Rubinstein 1965, 72). No ruler was to violate the rule of law with impunity (Marsilius [1324] 1956, I.XI.4-8, 41-3). What was more remarkable, however, was that he also called for subordination of the state (as well as the church) to the will of the assembly of the people. His writings eventually became highly influential in contexts, both ecclesiastic and secular.

Marsilius's insistence on democratic governance was accompanied by his insistence on sovereignty for a polity. This sovereignty would be first and foremost from the Christian Church. Many Italian city-states had a history of sovereignty, in that they

owed their allegiance to no other polity or authority. But this is not, of course, the same as democratic governance. A sovereign city-state may be ruled by a monarch, a tyrant, a group of oligarchs, or democratically by the people. Marsilius raised the issue of sovereignty when he challenged the rule of the Christian Church or the control of an Empire; but he raised the issues of democracy when he advanced both the effectiveness and the justice of democratic forms of governance.

As did most who wrote during that period, Marsilius invoked the theoretical framework and writings of Aristotle, which he read through the eyes and interpretations of Averroes, earning him the characterization of being an Averroist (Gewirth 1951, I, 42). Although Marsilius never quoted Averroes directly, it is Averroes' interpretation of Aristotle that Marsilius used. John of Paris (1250-1304), shortly before Marsilius, did quote Averroes: "The king exists by the will of the people, ..." (Blythe 1997, 148), revealing in Averroes some of the fundamental tenets of a democratic political framework from which Marsilius would develop his own.

In *Defensor Pacis*, Marsilius referred to "civil community" as arising in the earliest community of humans, but when "things...were brought to full development by men's reason and experience, ...there was established the perfect community, called the state..." ([1324] 1956, I.III.5, 11-2; also I.III.2-3, 10; I.IV.4-5, 14). But Marsilius also called for the separation of the state from civil society (although he never used that term) when he called for a separation of church and state ([1324] 1956, II.XXX.4, 419-20). Marsilius advances arguments in support of all the apostles being equal in power in

accordance with the original organization of the church (Sigmund 1963, 91). For Marsilius, Jesus Christ had clearly ordained that neither the church nor any of its officials should ever exercise "rulership or coercive judgment or jurisdiction over any priest or non-priest, ruler, community, group or individual of whatever condition" (Marsilius [1324] 1956, II.IV.1, 113). The church was to remain apart from the state, solidly anchored in civil society; and the members of civil society, through the political sphere by means of the assembly, were to assert popular sovereignty over the state. This "popular sovereignty" was to be exercised by the people in assembly approving or rejecting all the laws as well as any ruler or any action that ruler may take thereby exercising the "unlimited power" of the people (Gewirth 1956, II, lix; I, 36).

Marsilius is very clear in maintaining that only "through election" by an assembly of the whole can a ruler assume the "authority" to rule (Marsilius [1324] 1956, I.XV.1). Election by an assembly (although typically not of the whole community) had been the practice throughout the northern city-states in the Italian peninsula since the twelfth century; the earliest of these to elect their consul each year was Pisa, which had been doing so since 1085 (Skinner 1978, I, 3-4). Eventually consuls were replaced by the practice of electing a *Podesta`* or "Captain of the People" (Rubinstein 1965, 63), initially a citizen of another city who functioned as the top administrative and judicial official in the role of a salaried officer, not a ruler; he enjoyed the guidance of both a large and small council, the former up to six hundred strong (Skinner 1978, I, 3-4). In the two centuries before Marsilius wrote, the power relations between the two shifted, and the *podesta* became a *Signore*, a ruler in his own right. He would later be "allowed" by the

assembly to assume office for longer than, and under conditions that exceeded those, allowed by the statutes of the city-states. Then followed the transfer of power to his heirs, as always by means of election, but now election was a formal ritual rather than a genuine choice (Rubinstein 1965, 63).

By the time Marsilius wrote, *Signori* had already established an autocratic and hereditary rule in most of the northern Italian city-states (Rubinstein 1965, 48). For Marsilius, this rule was intolerable as he believed decision-making by the assembly of the people can never be relegated unconditionally to any ruler. Marsilius believed that after a ruler came to power, he remained accountable to the people: "...it pertains to the legislator to correct governments or to change them completely, just as to establish them" ([1324] 1956, I.XVIII.1, 87). When Ludwig of Bavaria defied Pope John XXII in not seeking Papal Confirmation of his crowning as Emperor, Marsilius supported him and acted as Ludwig's "intellectual guide," resulting in Marsilius' exile to Bavaria after 1328 following Ludwig's abortive attempt to rule Rome (Gewirth 1951, 22).

Marsilius' was likely influenced by Averroes' interpretation of Aristotle (Gewirth 1956, II, 438-442), as was common during the time Marsilius writes, but Marsiglio's views also clearly resonate with his own political experience. His views are certainly not an effort to merely reconstruct earlier Athenian democracy, which held no clear separation between the legislature and the executive and of which Marsilius likely knew little beyond the distorted interpretations offered by Aristotle or Plato.

Marsilius' reconciliation of his democratic views with those of the anti-democratic Aristotle required a series of shifts. To say democracy was self-governance, where the people rule, it becomes critical to understand what is meant by "the people." For one, Marsilius defined the "people" more inclusively than did Aristotle by including the elites as well as the popular sectors (Gewirth 1951, I, 180), echoing the different interpretations in Classical Greece between democrats and aristocrats. For another, he drew only from Aristotle's brief passages that defended democracy and ignored the more extensive ones that critiqued it (Gewirth 1951, I, 196). Finally, William of Moerbeke's translation of *Politics* concealed the core of Aristotle's elitism by having mistakenly rendered Aristotle's term for "property-qualifications" with the radically different term "honour" (Gewirth 1951, I, 180fn, 199) or "honour-class" for those who, for Aristotle, were most eligible to participate in governance (Blythe 1992, 198).

In large part owing to Aristotle, the term "democracy" came to carry predominantly negative connotations that were unquestioned even by those who advocated governance that in essence, if not in name, was democratic. Democracy was typically considered to be an undesirable form of government throughout the Middle Ages, indeed until the late eighteenth century. The American and French Revolutions played no small part in legitimizing the term under governance that was allegedly representative in nature, not democratic, yet which presented itself as "democratic" because the representatives were elected. But it was the French Revolution that changed the term "democracy" from one with exclusively negative connotations to one of praise (Saxonhouse 1992, 12). Previously democracy was dismissed with the claim that it "is



depraved because it considers the interests of the lower classes to the exclusion of others" (Blythe 1992, 174). On other occasions, it was dismissed as "mob rule," resonating with the same accusations emerging from the oligarchy in Athens. In the writings of Euripides, Herodotus and Aristotle, democracy was attacked by being equated with mob rule. But there is only one instance of the Athenian assembly acting as a mob that was clearly documented and survived - in 406, immediately before the defeat of Athens in the Peloponnesian War. Enraged, the *demos* acted illegally, putting on trial, condemning and executing six of the generals responsible for conducting the tragic war; only two generals survived, as they were not present. The assembly later acknowledged its error and charged those who had instigated the actions. This is considered to have been clearly atypical (Yunis 1996, 43-4), yet opponents of democracy continued to make an unsubstantiated equation of democracy with "mob rule".

For most of the second millennium, opinions on democracy ranged from the views of Plato to those of Aristotle, neither of whom were democrats (Strauss 1996, 318). The very term "democracy" had come to refer to all that was wrong and problematic with such a form of governance. Even Marsilius, clearly a democrat in his beliefs, rejected the term because it supposedly only empowered the lowest class of citizens.

Democracy... is a government in which the masses (*vulgus*) or the multitude of the needy establish the government and rule alone, apart from the will or consent of the other citizens and not entirely for the common benefit according to proper proportion. ([1324] I.VIII.3, 28)

Marsilius' approach of incorporating all elements of society into the assembly served to demonstrate what democratic theory actually referred to as opposed to presenting a caricature of democracy as did Aristotle.

## 2. REPRESENTATION? LIMITS TO INCLUSION IN GOVERNANCE?

Although Marsilius claims that it must be the whole people who decide matters, he also often, but not always, qualifies his numerous references to "the whole people" with "or the weightier part thereof" (Marsilius [1324] 1956, I.XV.1-2, 61-2). This practice has given rise to considerable debate over interpretation of this last phrase. For some, this implied simply majority rule (Luscombe 1997, 175; Ullmann 1966, 138; Emerton 1920, 25-6). For others, it meant forms of representation (Condren 1980a, 607; Quillet 1988, 558, 565; Copleston 1972, 312); indeed Condren even interprets Gewirth as finding representative democracy in Marsilius (Condren 1980b, 303). Let us examine Marsiglio's writings to assess whether there is any merit to either of these two interpretations.

The roots of both interpretations seem to derive from early inaccurate translations before the English term "the weightier part thereof" was adopted for the original *pars valentior*, a term not used in medieval writings before Marsiglio and when used afterwards always appears with a clear Marsilian influence (Gewirth 1951, I, 182-4). It was first interpreted with emphasis on numerical differences, leading to "majority rule" interpretations (Blythe 1992, 193-4); then later with emphasis on qualitative differences (Gewirth 1951, I, 182-3), leading to interpretations of "representation."

Marsilius' first attempt to spell out to what he is referring when he uses the term "the weightier part thereof" is in Chapter XII of the first discourse:

...(T)he whole body of the citizens, or the weightier part thereof, which represents that whole body; since it is difficult or impossible for all persons to agree upon one decision, because some men have a deformed nature, disagreeing with the common decision through singular malice or ignorance. The common benefit should not, however, be impeded or neglected because of unreasonable protest or opposition of these men. The authority to make or establish laws, therefore, belongs only to the whole body of citizens or to the weightier part thereof. ([1324] 1956, I.XII.5, 46)

This would seem to more likely have been a form of modified consensus than of majority rule. As Majorie Reeves maintains in her discussion of Marsilius, "simple majority opinion... would be out of keeping with the whole medieval way of thinking in terms of group opinion, especially strong among civic communities" (1965, 97). Indeed Marsiglian scholar Cary J. Nederman describes Marsilius as "a theorist of virtual public consensus regarding matters of common concern" (1995, 75). The practice of communal organizations during the time of Marsiglio was to seek consensus on matters that were of great importance, although a majority vote increasingly seems to have sufficed for lesser affairs in many regions and cultures.

Although in later works he provides greater clarity, *Defensor Pacis* for its part also seems reasonably clear on the matter (Chapter XIII):

...(A)lthough the laws can be better made by the wise than by the less learned, it is not therefore to be concluded that they are better made by the wise alone than by the entire multitude of citizens, in which the wise are included. For the assembled multitude of all these can discern and desire the common justice and benefit to a greater extent than can any part of that multitude taken separately, however prudent that part may be. ([1324] 1956, I.XIII.6, 53)

Thus, reason for Marsiglio is paramount in determining an outcome; he believed with open discussion rationality would prevail and the reasoning would be transparent. He is also very clear that decisions were to be made "by the entire multitude of citizens."

What then of the "representation" that Marsiglio attributes to the experts elected to draw up proposed legislation? It is one of only two references to representation made in either volume of the text that does not refer to internal matters of the church; these latter are reviewed below, while both political uses are discussed here. Marsilius describes these experts as "representing the position and authority of the whole body of the citizens" (Marsilius [1324], I.XIII.8, 54-5) in the task of drafting legislation. What is crucial, however, is that the draft laws proposed by this elected group require revision and approval by the assembly of the whole. This is not an instance of a body being elected to decide on behalf of the whole. Rather this group has been mandated to attempt to represent the opinions of the whole in draft proposals to be brought before the assembly of the whole.

...(S)o that if any citizen thinks that something should be added, subtracted, changed, or completely rejected, he can say so.... For...the less learned citizens can sometimes perceive something which must be corrected in a proposed law even though they could not have discovered the law itself. ([1324], I.XIII.8, 55)

The other non-ecclesiastical reference to representation is where Marsilius says that the weightier part thereof "represents" the whole body of citizens. Here "represents" is understood, as Marsilius goes on to clarify, to mean "assumed to be the same thing..." as in "...the whole body of citizens or by the weightier part thereof, which is assumed to

be the same thing..." ([1324] 1956, I.XII.5, 46). As Gewirth writes: "(T)he weightier part, far from being elected by the whole body of citizens, rather *is* almost the whole body in the literal numerical sense" (1951, I, 189). Neither of these meanings is consistent with "representation" as employed in representative governance.

Gewirth considers that the Paduan was likely referring specifically to the self-exclusion of the priests and the *magnates* (feudal lords and extremely wealthy families) when he employed the term "weightier part thereof." He considers this likely given the routine refusal of both these powerful groups to obey the decisions of the city-state and its more numerous popular members. Gewirth refers to this refusal as "class warfare" (1956, II, 28-9, 187).

### 3. *DEFENSOR MINOR*

Marsilius defines membership in a community on the basis of one's function or role in society but, amazingly, without being exclusionary nor ranking these roles in a hierarchy (Nederman 1995, 55). In this, he differs significantly from Aristotle, who not only categorizes citizens into a hierarchy but makes claims of "natural slavery" (Gewirth 1951, I, 177-9; Aristotle [c.323 BC] 1982, 1254a17-1255a3, 66-9). In Marsilius' later *Defensor Minor* (1341), he claims to expand upon his earlier writings. Conal Condren claims, without explanation, that Marsilius considered his later work to be a "modification of his too idealistic *Defensor Pacis*" (1985, 195), but Nederman, in the introduction to his English translation, clarifies that the latter work does not signal a re-

orientation from the former but is instead a reply to the critics of his earlier work (1995, xviii, xix), while the specificity of the latter text allows for the clarification of some earlier ambiguities (Nederman 1995, xx). And clarify it does. Unique to his time, regarding the lower ranking classes, Marsilius writes:

...(T)he power and authority to correct rulers who are negligent or irresponsible in performing their duties by restraining them, ...under no circumstances...pertain(s) to the priests, but instead to the men of prudence [*prudentes*] or learned teachers, indeed preferably to the workmen or craftsmen or the rest of the labourers [*mechanicis*]. (Marsilius, [1341], II.7, 6)

The privileging of "the workmen or craftsmen or the rest of the labourers" over others of higher social status, such as learned teachers and priests, when challenging a ruler, speaks volumes of Marsilius' worldview. The need for inclusion of all the people, and not merely "the wise," in the process of governance reflects a profound commitment to democratic values. Coupled with the position articulated above, it is difficult to not conclude that Marsilius is indeed an early democrat. These statements testify not only to his promoting of popular sovereignty but to the nature and depth of Marsilius' democratic inclusiveness. Gewirth acknowledges the central role Marsiglio holds in the renewed articulation of democratic theory (Gewirth 1951, I, 183, 225, 306).

Marsilius notes that often a multitude can perform actions which the same people operating as individuals could never achieve.

For it does not follow that if each person cannot haul a boat apart from others, or perform some other similar action, this same action cannot be performed by a multitude of persons joined together. So likewise or analogously, a multitude of the faithful is joined together in a council. For by each one listening to the others, their minds are reciprocally stimulated to the consideration of that truth at which not one of them would arrive if

he (sic) existed apart or separately from the others. ([1341] 1993, XII.5, 42)

This is an exceptionally early reflection on the essential role of discursively-formed rationality in democratic governance.

#### **4. MARSILIUS AND THE CHRISTIAN CHURCH**

By Marsilius's time, the power of the Christian Church, having dominated both the state and civil society for a millennium, must have been absolutely overwhelming. Marsilius sought not only to dismantle this power over the state, but also to democratize relations within the church itself. When the Christian Church became an institutionalized order by the end of the second century AD and evolved a hierarchical system of offices, internal dissensions inevitably emerged (Wolin 1996, 106-9). The Church had become political in its appointments, its bureaucracy and its distribution of wealth and honours (Wolin 1996, 114-5). Whereas early Christian leaders based their claims to superiority on grounds that their actions were in imitation of Christ, later their rationale became what Wolin refers to as "the fiction of representativeness" (Wolin 1996, 111).

An older medieval usage of "representation" referred to personification, wherein some individual was called upon to stand in for an institution or collective. This was not the same as what Francis Oakley describes as the newer concept of "representation as delegation" (1999, 62) or, more accurately, representation that attempts to present itself as delegation. As we saw above, however, there are various usages of the term "representation" beyond merely these two. As we saw in Chapter 5, there is a

tremendous political difference between representation and delegation in terms of governance.

Marsiglio pushes for democratizing relations within the church by means of calling assemblies of all Christians to determine the major policies and decisions, but he also allows that merely a council of the representatives of all Christians could be empowered to decide for the whole. It would either be "the general council of all faithful Christians or of those who stand in place [*vicem repraesentant*] of all faithful Christians" ([1341] 1993, 21). Later in the same work, Marsiglio writes: "...(I)t may be supposed that the general council of the faithful mentioned above is to represent [*representare*] the congregation in a similar and valid manner" ([1341] 1993, 42).

These two usages by Marsilius of "representation" in ecclesiastical governance are interesting ones. These instances simply allow that if the council of the whole of all Christian believers so wishes, it may choose a lesser group to carry out its affairs; in no way does it imply any loss of sovereignty for the whole were they to wish to exert this at any time. Although these examples refer only to the internal affairs of the church, yet even here the assembly of the whole always remains sovereign and able to assert its will when it so pleases.

The city of Padua is located in Lombardy, the original centre of communal liberties in the Italian peninsula; by the time of Marsilius, the city had come to be the dominant Lombard republic (Skinner 1978, I, 18). After regaining its communal



government in 1256, Padua found itself in a major conflict with the church ten years later over the church's refusal to pay taxes. In the following decades, tensions escalated between the church and communes in most of the Italian city-states (Skinner 1978, I, 15-6). This is part of the context that gave shape to the concerns of Marsilius expressed in his writing.

As with his arguments for democratic governance in society at large, Marsilius insists that all important matters of the church be decided by an assembly of all Christians. Marsiglio elaborates both an argument based on the Bible and one based merely on logic; for the latter, he follows the same reasoning as he does to substantiate the need for democratic authorization of laws by an assembly of the people (Marsilius [1324], II.XVII.10-15, 260-4).

Although the early Christian church was unable to do so because of the hostile attitudes of the ruling forces towards them ([1324], II.XVII.15, 264), Marsilius attempts to demonstrate that the principal authority for all major decisions within the church should belong only to a council composed of all Christians or those "granted such authority by the whole body of Christian believers" ([1324], II.XX.2-14, 280). They were "to assemble at a place which is most convenient according to the decision of the majority of them" ([1324], II.XX.2-14, 286). Marsilius maintains that it is the entire body of Christian believers and not merely the clergy, much less the pope or his council, who ought to make all the major decisions within the church: excommunication; filling

all major positions within the church, including pope; economic decisions; and enforcement of decisions (Gewirth 1956, II, xxvii).

This notion provided significant support for the conciliar movement since it offered not only the grounds for the subordination of the pope to the council but of the council to all believers (Gewirth 1951, I, 286). The conciliar movement itself had its earliest roots in a tradition of councils that emerged in the third, fourth and fifth centuries (Black 1980, 213). But it was not until John of Paris, Gulielmus Durandus the Younger (Bishop of Mende in France), William of Ockham and Marsilius provided the articulation, together with the 1378-1415 schism resulting from the cardinals naming two different popes at Rome and at Avignon, that a growing number within the church began to view the conciliar option as a necessity (Sigmund 1963, 99).

The reference above to determination of the location by a majority vote is not an indication that this would be the norm by which decisions would regularly be made. Indeed this is the only mention of majority vote. It occurs under unique circumstances because it calls for resolving an issue (the location) before an assembly even convenes. Consensus cannot yet be formed discursively, since people are not yet assembled together. This is a most unusual set of circumstances under which to try to make a democratic decision and deserves to be seen as such and not taken as a norm for decision-making in other contexts. Marsiglio typically assumes decisions would be made by assemblies of the whole people.

Majority voting, for its part, while uncommon in medieval Europe, is thought to have been introduced into the practices within the church's councils of clergy after its previously widespread acceptance in university governance for administrative matters (Black 1980, 219, 222). Practices of representation spread to other parts of Europe through the Church, providing an ecclesiastical example and a context within which the notion of political representation could later blossom (Brady 1997, 322). Significantly, this ecclesiastical tradition did not include the election of those representatives (Canning 1988, 366). Although the conciliar movement within the European Christian church would have disseminated these practices of representation throughout the continent, they did not originate them; their secular use predated their practice within the church (Canning 1988, 221).

Marsiglio's promotion of democratic norms in the form of allowing all Christian believers to participate in making all major church decisions within what had become a very hierarchical and authoritarian ecclesiastical institution was perceived as an extremely radical position. This was an attempt to democratize a highly undemocratic institution. In response to Marsiglio's call for direct participation of all Christians in decision-making, the church, after centuries of struggle, eventually split through the Reformation. Some sectors settled for some limited forms of representation, although certainly not the reforms Marsilius outlined.

While the move (albeit over centuries) from authoritarian control to limited forms of representative governance within the church may have been a positive shift, the shift

of society to representative governance from one of grassroots assemblies would have been anything but positive. This was particularly true for Italian city-states such as Padua, which had enjoyed a century of participatory governance before being subjected to local despotic rulers legitimated through representative government, while democrats struggled to reclaim and expand rather than restrict such participation. Indeed, as seen above, Marsiglio is clear that decisions regarding governance of society as a whole are to be made "by the entire multitude of citizens."

## 5. MARSILIUS AS DEMOCRATIC THEORIST

It seems, as Nederman writes, that Marsiglio indeed "rejects in principle majoritarian and representative doctrines of political decision making" (1995, 75). According to Nederman, by denying an "independent role for representatives, the *Defensor Pacis* rejects an important feature of the modern idea of political representation" (1995, 88). It is not, however, merely an "important feature"; the "independent role" of representation is the central feature which distinguishes **representation** from **delegation**, with the latter's accountability and limited authority.

"Every citizen must be free," writes Marsilius "and not undergo another's despotism..." ([1324], I.XII.6, 47). If all citizens were to make the laws, then all would most likely observe them.

The authority to make law belongs only to those men whose making of it will cause the law to be better observed or observed at all. Only the whole body of the citizens are such men (sic). ([1324], I.XII.6, 47)

It is Marsilius then who offers us the earliest known "systematic statement of the popular basis of authority," writes Ewert Lewis in 1954 ([1954] 1974, 159) and reiterates Francis Oakley in 1999 (114). In doing so, Marsilius challenged the dominant views on popular sovereignty, expounded most clearly by Thomas Aquinas, who maintained that citizens alienated their original sovereignty rather than delegating it in the act of constituting political society (Skinner 1978, Vol.I, 62). These views of sovereignty as alienated would later be resurrected by Thomas Hobbes and others. They are highly disempowering views that remove with one fell swoop any rights or sovereignty that a people may have once enjoyed. The perspective Marsiglio articulates is considered to have been unique in medieval thought (Skinner 1978, Vol.I, 20; Reeves, 101). In fourteenth century writings, Marsilius alone maintains that the people were absolutely sovereign in determining their laws and their government (Blythe 1992, 189).

Nederman makes the case that Marsiglio's notion of personal liberty pertains to the private domain; he argues in favour of tolerance, stating that all activities that do "not impinge on the intercommunication of functions among the parts of the community, and hence do not disturb the public peace, are to be tolerated" (Nederman 1996, 30). These are themes that will arise time and again in future discussions of democratic theory: tolerance, freedom and personal liberty.

## 6. MARSILIUS AS A MODERN CONSTITUTIONALIST?

Quentin Skinner describes Marsilius' theory of popular sovereignty, together with that of Bartolus of Saxoferrato,<sup>50</sup> as playing a "major role in shaping the most radical version of early modern constitutionalism" (Skinner 1978, Vol. 1, 65).

Constitutionalism? Certainly a ruler would be bound by laws drafted by the assemblies and a constitution could well be employed; but "modern constitutionalism" presupposes constitutions for forms of representative government. It is not altogether clear what constitutions for modern participatory democracies would look like, but there is no reason to assume that they would work and look anything like those of representative government. (They could, for example, simply be an articulation of democratic principles as principles.) Marsilius is referring to popular sovereignty and democratic governance as inalienable rights of a people no matter what any text may state, constitutions included; perhaps even a constitution may be challenged under Marsiglian norms by the people assembled. While Skinner's statement above may even in some ways be true, it is made from a perspective that assumes modern constitutionality (and its presuppositions) to be the norm and the assumed vantage point from which to view other issues.

Alternatively, we could locate ourselves, to the degree possible, within the perspective of the communal world of medieval times crudely sketched above, that is, within the world in which Marsiglio lived and wrote. Were we to do so, we would find a

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<sup>50</sup> Saxoferrato was a mid-fourteenth century jurist, considered by Skinner both to have been perhaps the most original jurist of the Middle Ages and to have held similar views to Marsilius (Skinner 1978, I, 9-12, 61-5; II, 132)

quite different set of concerns and conclusions. Rather than emphasizing the connection to and therefore implied continuity from Marsiglio's views to those of modern constitutionality and its representative governments, from the communal perspective, the popular, participatory forms of democratic governance that Marsiglio advocates stand out as **opposed** to representative government, not as a precursor of it, no matter how radical a variant.

Skinner's confusion seems to lie in his understanding, following Ullmann, of an affinity between the political theories of Marsilius and Bartolus (1978, I, 62-5). Bartolus indeed mapped out a clear form of electoral government, giving an independent role to "representatives." It began with a *Parlamentum* that was elected by "all," and which in turn would elect a smaller body or council; the council then would meet to govern when called by the supreme magistrate. This council could also appoint any officials needed (Skinner 1978, I, 64). The system envisioned by Bartolus is clearly one of what today is referred to as representative government.

This, however, is not the case for Marsilius. Indeed Marsilius goes to great pains to describe characteristics which are explicitly inclusive and participatory and not representative in nature. Yet the only citation Skinner offers here is the same passage referred to above where the experts elected by the assembly to draft proposed legislation are referred to as "representing the position and authority of the whole body of the citizens" (Marsilius [1324], I.XIII.8, 55).

Marsilius clarifies in the same sentence that the assembly may either re-affirm the same legal experts or select others to then alter the proposed legislation as instructed by the assembly of the whole. But even then these experts may be either instructed to:

...approve or disapprove in whole or in part the aforementioned standards which had been investigated and proposed, or else, if it so wishes, the whole body of the citizens or the weightier part thereof will do this same thing by itself. (Marsilius, [1324], I.XIII.8, 55)

The selection of specific functionaries for a given task by an open assembly is a democratic norm that has been at the heart of democratic practice throughout the past. This is not at issue. That Marsilius offers the possibility that an assembly may decide to allow final approval of proposed legislation to occur by a small body of elected experts after the proposed legislation has been reviewed and debated by an assembly of the whole and the experts have been instructed as to how to modify the legislation is **not** an example of political representation in the same sense as a parliament or congress that is elected to propose, debate and decide on behalf of others. These latter "representative" bodies assume authority **instead** of an assembly. Rather than being under the assembly's control, they usurp the assembly's authority.

Indeed Padua was already governed by a Great Council that elected the city's ruler at the time Marsilius was writing (Blythe 1992, 170-1). The assembly Marsiglio envisioned, however, would continue to meet and could at any time reverse its approval if matters were no longer to their liking, for the whole people possess the *inalienable* right to make their own laws and determine their own ruler. Skinner is on extremely shaky



ground in attempting to convert the Paduan into an advocate of representative government or modern constitutionality. The arguments simply do not hold. Indeed it would seem more likely that it was precisely to avoid the pitfalls of representative forms of governance that Marsilius repeatedly calls for assemblies of "the whole people." Yet Skinner is a scholar of integrity; how could he come to such conclusions? This issue may become clearer after reviewing below what we know of the use made of Marsilius in the intervening centuries.

Although Skinner deals in depth with Marsilius and appears meticulous in some matters, as is unfortunately all too common for Anglophone scholars, never once in either volume of *The Foundations of Modern Political Thought* does he mention a single Arab scholar nor attribute to them a single contribution to European thought. This happened in spite of his having elaborated the positions of numerous early medieval philosophers whose indebtedness to Arab scholars was considerable, Thomas Aquinas and Marsilius among them. It is as though Marsilius and others developed their thought, with a mixture of originality and experience in local political governance, while remaining academically indebted only to the writings of Europeans, be they Classical or contemporary. This is indeed a major blindspot in Skinner.

Alan Gewirth (writing decades before Skinner) is one of the very few to acknowledge Marsilius' indebtedness at least to Averroes, identifying Marsilius as the earliest political Averroist besides John of Jandun and Averroes himself (Gewirth 1956, II, 440-2). Gordon A. Leff, for his part, acknowledges Aquinas' reliance in building on

Averroes' views (1975, 156-7, 162) but limits his comments on Marsilius' indebtedness to a lone statement on ecclesiastic matters, that the separation of powers between the church and state advocated by Marsilius, as well as Dante Alighieri and William of Ockham, is often attributed to Averroes (1975, 302).

Sheldon Wolin, for his part, in his extensive treatment, *Politics and Vision, Continuity and Innovation in Western Political Thought*, makes note of Marsilius's role in ending "the alliance between religious and political thought," then dismisses him.

Yet Marsilius, for all of his radicalism, still retains strong traces of the mediaeval outlook, and it is to the sixteenth century that we must turn in order to discover a **revolution in political thought** comparable to, and reflective of, what had occurred on the actual plane of political organization (emphasis added, Wolin 1996, 142).

How much more of a revolution in political thought can there be than to advance genuinely democratic political theory?

## 7. MARSILIUS LOST; MARSILIUS FOUND

Early in the twentieth century, Ephraim Emerton (1920) writes in his doctoral dissertation that Marsilius, "whose influence was felt throughout the whole period of two hundred years between the appearance of the *Defensor Pacis* and the advent of Martin Luther, vanishes from contemporary notice as completely as if he had never put pen to paper" (Emerton 1920, 20). Although Emerton has been cited as one of only a handful of academic sources to have written on Marsiglio in the early part of the twentieth century, it seems he has yet to be taken to task for this significant overstatement. Shortly before the end of that two hundred years in 1517, Marsilius' major text was printed for the first

time in Latin with at least eighty-five copies circulating throughout Europe (Copleston 1972, 309). Although *Defensor Pacis* had already been translated into both French and Italian by 1363 (Condren 1985, 263; Gewirth 1956, II, xii), it only made its way into English in 1535 (Piaia 1977, 143; Gewirth 1956, I, 195, footnote 109), while the second and third discourses were rendered into German and printed ten years later (Gewirth 1956, II, xii). Then in 1592, there was another printing of the original Latin text in Frankfurt (Condren 1985, 266).

The translation in 1535 of *Defensor Pacis* was the only English translation of Marsilius ever made before the twentieth century (McIlwain 1968; 297, footnote 1). It was done for King Henry VIII by William Marshall, but it was published with sections deleted that referred to the people's sovereignty, elections and their right to change rulers. The censored sections were I.IX.6-11; I.XV.1-5; I.XVI.11-25; and I.XVIII.1-7 (Gewirth 1951, I, 301, footnote 47). This translation, financed by Thomas Cromwell, was considered at the time to have been a major undertaking; it resulted in twenty-four copies being printed and disseminated throughout the country (Condren 1985, 264).

In the following century, Marsiglio was quoted several times in England alone. Those citing Marsilius favourably included George Lawson (Condren 1980, 599, 615), as well as John Calvin (Condren 1980, 617), John Jewel in *An Apology for the Church of England* (Jewel, 37b<sup>51</sup>; Jewel, 74-5), Daniel Price in *The Defender of Truth* (Oxford, 1610), William Tyndale in his *Works* (1573), an anonymous work published in Paris in

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<sup>51</sup> The original has two consecutive pages enumerated "37"; this is the second "37"; thus my arbitrary usage of "37b". As the pages are enumerated only on one side, there are actually twice as many pages as the page numbers would indicate. The page cited actually is the 74th page of the text.

1612, entitled *De Ecclesiastica Potestate* (Condren 1980, 597; 617) and Thomas Starkey (Le Van Baumer, 191-2). Johannes Althusius in his *Politica Methodice Digesta*, mentions Marsiglio once in passing (XXVIII.32, 265). But only Lawson and Starkey refer to Marsilius' political rather than his ecclesiastical beliefs.

It is not surprising that there was confusion in later centuries as a result of translations that were false renditions of Marsilius' original. In William Marshall's 1535 translation, *The Defence of Peace, Translated out of Latyne*, Marshall includes an editor's note in the section where Marsilius specifies that citizens alone have the authority to legislate: "Only the whole body of the citizens are such men" (I.XII.6, 47-8). Rather than simply failing to translate this comment as he did with others, in this instance Marshall opted instead to include it, but to add an editor's note. The editor's note curiously reads, "In all this longe tale he speaketh not of the rascall multytude, but of the parlyment" (Marshall, 1535, as quoted in Gewirth 1951, I, 195, footnote 109). He translates the term for *vulgas* or "common people" as "the commune sort or rascall" (Marshall 1535, in Gewirth 1951, I.V, fol. 14v) or as "rascall communes" (Marshall 1535, in Gewirth 1956, I.VIII, fol. 20r). Thus in Marshall's English translation of *Defender of the Peace*, not only is Marsilius' view of the right of the people to recall a monarch silenced, but of greater enduring concern, Marsilius is presented as a proponent not of democracy but instead of representative government. The alternative form of local governance, the commune, the real model of Marsilius' democratic views, is instead repeatedly identified and delegitimized with the value-laden term "rascal."

Marsiglian scholar Gregorio Giaia maintains that all the translations and publications of *Defensor Pacis* prior to the 1592 Frankfurt edition are inaccurate and/or incomplete except for the 1517 Basil edition. It is the earliest appearance in print of Marsiglio's text (Le Van Baumer 1936, 191). Although it is unknown how many were originally published, a remarkable seventy-seven copies of the Basil edition are still in existence today. They can be found throughout a dozen European countries, with four of them in the USA (Piaia 1977, 421-35), while a further four copies were destroyed in the Second World War (Piaia 1977, 421). This suggests that access to Marsilius' major work in its original form was available throughout much of Europe over the last half millennium, even though the more widely-read vernacular versions may have offered distorted translations.

George Lawson, a seventeenth century political theorist best known as Thomas Hobbes' most fierce and competent critic, quotes the Paduan but misinterprets him (Bowles 1969, 86-7, 96, 204-5). His confusion derived from his reading of the term *valentior pars* (the greater part thereof) leading Lawson also to interpret Marsilius as an advocate of representative governance. This misinterpretation is unfortunately also shared by Conal Condren in the late twentieth century. Referring to Lawson and Marsilius, Condren writes,

Further, in both writers, the weightier part can represent and effectively be regarded as the same thing as the larger whole. In Marsilius the potential equation is explicit, succinct and underlined by the frequent pairing of the expression *valentior pars* and *legislator humanus*. (1980, 607)

Condren seems not to appreciate that if the legislative body for Marsilius actually consisted of the entire population of citizens, then this pairing fails to imply representation at all. Referring to Marsilius, Lawson writes in his *Politica Sacra et Civilis*: "Yet he grants that the Laws may be made *per valentio rem parsem*, or their Trustees and that what is done by them, is done by all" ([1660],<sup>52</sup> 340; as quoted in Condren 1980, 607). Nowhere in *Defensor Pacis*, to which Lawson refers, does Marsilius ever make this claim, although Marshall's mistranslation does indeed make this claim.

Franklin Le Van Baumer claims that the same is true for Thomas Starkey, chaplain to King Henry VIII, who seemingly uses *Defensor Pacis* as his source for elaborating a theory of constitutional government and limited monarchy (Le Van Baumer 1936, 192). Although Thomas Starkey was familiar with William Marshall's 1535 translation before it was published, in Starkey's case, Le Van Baumer is convinced he also read the original since Starkey, in his *Dialogue and Exhortation*, refers to the content of some of the passages that Marshall censored (Le Van Baumer 1936, 191). Nonetheless Starkey's interpretation of Marsilius is as an advocate of representative governance.

Here we have Thomas Starkey in the sixteenth century and George Lawson in the seventeenth century both misinterpreting Marsiglio and presenting him as an advocate of representative government. To our knowledge, both were uncontested. Both

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<sup>52</sup> There is some confusion regarding the actual date of writing of the *Politica*, since the first copy was destroyed by the government censor when Lawson sent it for publication (Bowles 1969, 86-7).

commentators treat Marsilius de Padua not as an unknown figure but as a very well known within scholarly circles, as will be seen below. Thus the earliest surviving democratic theorist seems to have had his works employed not to promote democratic governance but for the opposite ends, to justify the introduction of forms of unaccountable “representative” governance. Centuries later, the inaccuracy would eventually be clarified, but the harm had already been done by the misrepresentation, whether it was intentional or unwitting.

Since Emerson published his dissertation in 1920, Marsiglio has steadily come to be acknowledged for his original contributions to political thought and, more recently, to democratic theory. Marsilius was re-encountered, first in Europe (Previte-Orton, 1928; R. Scholz, 1932-3; A. Checcini and N. Bobbio, 1942; G. de Lagarde, 1948), then by Anglophones who re-interpret (Gewirth, 1956), debate (Wilks, 1963; Skinner 1978), and recognize that "(t)oday, Marsilius is considered to be *the* great radical political thinker of the fourteenth century..." (Blythe 1997, viii). But even in 1935, Stephenson acknowledged Marsiglio as "one of Europe's great original thinkers" (1935, 662).

Emerson is, however, quite correct in his assertion that for the most part Marsilius seems indeed to have mysteriously “vanished” from history when we consider how few people today even know his name and how fewer yet have any idea of the enormous role he played in Western political thought, specifically democratic political thought.

## **8. MARSILIUS AND THE THEORISTS OF THE ENLIGHTENMENT**

It is difficult to determine if there was a line of continuity from Marsilius to Rousseau because of Rousseau's practice of refusing to acknowledge the sources from whom he derived his inspiration. Much suggests that indeed Rousseau was familiar with Marsilius. Gewirth makes note of various instances in which the positions advanced by Marsilius are very similar to those of Rousseau (1951, I, 4-5, footnote 10, 175, 211, footnote 34).

In this failure to cite sources, Rousseau was no different from Thomas Hobbes or John Locke before him, both of whom seem to have also been well versed in Marsilius' writings and in different ways influenced by them (Condren 1980, 599-602). Lawson, in critiquing Hobbes as a legal positivist, claims that a better understanding of law could be had from Marsilius' interpretation of Aristotle: "he might with *Marsilius of Padua*, in his *Defensor Pacis, pars I. cap. 10* have observed out of him a better definition of Law..." (Condren 1980, 600). Independent of the content of the argument in which this point is raised, one discerns at least two relevant aspects of Marsilius' stature during that period. One underlying assumption was that Hobbes could learn much from Marsilius, i.e., Marsilius is referred to as a respected authority. This is true in both instances where Lawson cites Marsilius. Secondly, a familiarity with Marsiglio is simply assumed by Lawson, both for Hobbes and for his readers. He makes no effort nor sees any need to explain to whom he is referring in either of the instances where Marsilius is cited (Condren 1980, 601, 603).



Gewirth writes that even if Machiavelli, Bodin or Hobbes had not read Marsilius themselves, he would still be their "forerunner" in that he was first to advance the necessary conditions for the functioning of political authority as an important contribution to the development of the theory of sovereignty (1951, I, 310-11). Gewirth considers that no political philosopher before Marsilius displayed as great a concern as he for the conflict among citizens, and none would after him until Thomas Hobbes (1951, I, 62).

A connection between Locke and Marsilius has been assumed for a long time, but until recently, this was accepted as having been through Richard Hooker, given Hooker's citing of Marsilius in Book VII, *Of the Laws of Ecclesiastical Polity* ([1865] VII.XI.8, Oxford; II, 385, as cited in Gewirth 1951, I, 303-4). Hooker cited Marsilius in a list of seven of the best known critical theorists (Thompson 1974, 77-80).

Copleston cites both Thomas Cranmer, the first Archbishop of the Anglican Church, and Richard Hooker as having been influenced by Marsilius (Copleston 1972, 309). In the case of Cranmer, however, as was often the case elsewhere, the similarities noted are perspectives on the church, not society at large (Le Van Baumer 1936, 192).

The connection between Marsilius and Locke, rather than passing through Hooker, if it was indirect at all, seems more likely to have been through George Lawson. As copies were available, Locke as well as Cranmer may well have read Marsilius in the original. There was a copy of the 1517 Latin publication of *Defensor Pacis*, in

Canterbury as well as in the universities in London, Oxford (acquired by the university between 1605 and 1620), Edinburgh (likewise acquired by the university in the seventeenth century), and Cambridge (with five copies of this edition, each on a different campus) (Piaia 1977, 431-2).

Lawson's direct references to Marsilius are highly revealing, for they seem to assume a familiarity by all with Marsilius and his writings (Condren 1980, 601). Lawson is known to have been read by Locke for he owned and travelled abroad for two years with a copy that had been catalogued by his servant in 1689 (Bowles 1969, 86: fn1). Conal Condren believes Lawson owned a Frankfurt 1592 edition of Marsilius' major work (Condren 1985, 266). Condren, echoing A.H. Maclean in his unpublished dissertation at Cambridge University (1947), considers that to list the similarities between Lawson's *Politica* and *Defensor Pacis* would be to write an abstract of the *Politica* (1980a, 601, citing Maclean, 68-77). It was Maclean who made the earliest known observation of the similarities between Lawson's second major publication, *Politica Sacra et Civilis* and Locke's *Two Treatises* (Franklin 1978, 53, 89). Condren is convinced of and documents a convincing argument for Locke's use of Lawson, as Lawson used Marsilius (Condren 1980, 612). But as Condren, MacLean and Lawson all share a mistaken view of Marsilius as an advocate of representative government, it is a distorted view of Marsiglio's positions that they are discussing. The early theoretical arguments in defense of rudimentary views of representative government were grounded in inaccurate interpretations of Marsiglio's democratic theory.

Of all the seventeenth and eighteenth century political theorists who may have read Marsilius directly or in translation, the only one who reveals any comprehension of Marsilius, by himself penning a position that echoes the Paduan, is Rousseau. He does so at the only time that his views significantly differed from Swiss practice. In regard to the legislative assembly, both Rousseau and Marsilius saw it as an inclusive assembly of the whole, electing and controlling an executive rather than having the assembly retain tightly-held control over any executive functions as occurred in Athens. Rousseau was highly critical of Athenian democratic governance, apparently because he believed that the Athenians sought to act as executive (or "magistrate" as Rousseau calls it) as well as legislative.

When the people of Athens, for example, appointed or dismissed its leaders, awarding honours to one, inflicting penalties on another, and by a multitude of particular decrees indiscriminately exercised all the functions of an administration, then the people of Athens no longer had what is correctly understood as a general will and ceased to act as sovereign and acted instead as magistrate. (Rousseau [1762], 76)

This seems to directly reflect the views of Marsilius. It would seem likely that Rousseau got his notion of the executive elected by and continually responsible to an assembly of the whole from the writings of Marsiglio. If so, his understanding would have to have been from a direct reading of Marsilius in the original. This is highly possible since, in addition to any copies of later editions, there were at least ten copies of the 1517 Basil edition in Switzerland, where Rousseau spent his early years: Basil (3 copies); Zurich; Winterthur; Lucerne; San Gallo; Einsiedeln; Aarau (Argovia) and Geneva (Piaia 1977; 422-4).

Only Rousseau seems to have understood Marsilius correctly, yet he makes no acknowledgment of him. If this is indeed the case, this would make Rousseau the only known author of political theory before the twentieth century to have correctly interpreted Marsiglio to have been a democrat.

In the most horrendous Orwellian twist, advocates of participatory democracy who proclaimed the people's authority to be unlimited came to be condemned by their critics in the mid-twentieth century as "totalitarian." Front and centre under attack were Marsilius de Padua (Gewirth 1956, II, 257) and Jean Jacques Rousseau (Skinner 1988, 44; Gay [1954] 1963, 8; Chapman 1956, 74). J. L. Talmon even came to the ludicrous conclusion that Rousseau was responsible for giving rise to "totalitarian democracy" (1952, 43).<sup>53</sup> Such critics, besides reflecting a poor understanding of the positions of those criticized also employed an unusual meaning of totalitarian, basing their criteria on the unlimitedness of power (and its ability to overturn privileges) rather than who held power and how it was held. Typically a totalitarian regime involves power held by a relatively small, unaccountable group (Gewirth 1956, II, 311). Few would consider power held by the entire people to be "totalitarian"!

#### **D. CONCLUSION**

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<sup>53</sup> "If a constant appeal to the people as a whole and not just a small representative body, is kept up, and at the same time unanimity is postulated, there is no escape from dictatorship" (Talmon 1952, 46). A distinction needs to be made between a centralized state acting in the name of the people and a situation where the people act democratically. The former would tend to present a situation of exclusion and intolerance, while the latter would require the qualities of inclusivity.

Marsilius produced the earliest surviving coherent body of theory for both popular sovereignty and democratic governance. Amazingly, for almost half a millennium, including during the formative centuries for the emergence of representative governance and its theoretical basis, Marsilius' views were misinterpreted as justifying the new forms of representative governance as they evolved. Thus, until recently, Marsilius has been widely considered to have been an advocate of representative governance. It was not until the mid-to-late twentieth century that Marsilius, with more accurate translations available, began to be understood, at least by a few, as an advocate of direct democracy rather than representative government.

It is curious that Rousseau, the next significant democratic theorist was likewise misunderstood. In Rousseau's case, however, there is not even an issue of faulty translations, merely a consistent failure to look into the unique historical context of democratic governance from which Rousseau wrote. It was as though nothing could justify looking at the Swiss democratic practice even if it could explain what Rousseau describes. Consequently Rousseau's work remained shrouded by confusion for centuries.

Unlike advocates of representative government, both Marsilius and Rousseau promoted forms of governance that were democratic in all aspects except that they were exclusionary, at least of women. They both still failed to break with the last and deepest layer of the current structure of domination, the patriarchal assumptions sedimented into the very fibre of western society. While the forms involved and the norms articulated may well appear democratic in principle, they can, of course, only actually be fully

democratic if they are inclusive. Indeed, it requires not only that they be tolerant of inclusivity but that they be openly proactive about their inclusiveness.

Marsilius of Padua is the earliest known political theorist to advocate democratic relations, detailing how these relations would appear. Nonetheless, he was not recognized as a democrat. When he was identified as such, it was actually in a false characterization as an advocate of parliamentarianism. It has only been in the latter half of the twentieth century that Marsilius has come to be known by a select few to have been a radical democrat. But today, with accurate translations, it is difficult to deny that Marsilius' work, in substance if not name, is indeed the earliest surviving democratic theory.

## CHAPTER 8

### REPRESENTATIVE GOVERNMENT vs. PARTICIPATORY DEMOCRACY

This chapter looks at the evolution of parliamentary forms of "representative government." It examines governance in societies that claim to be "democratic" and traces the etymology of "democracy" and the ways in which the term was understood and used. It concludes with an overview of democratic theory and a review of the alternative focus on the public sphere in civil society within a democratic society; in doing so it draws a very pronounced distinction between representative and democratic government.

#### A. "DEMOCRACY" IN "ENLIGHTENED" ENGLAND

The term "democracy" appeared in England during precisely the same years that Marsilius was first translated (or mis-translated) into English. Sir Thomas Elyot claims in his *The Boke Named the Governour* (1531) that it was he who introduced the term to English usage (Elyot 1531, I, 6). It would be four years before the term appeared in Marshall's English mis-translation of Marsilius. English etymologists credit Elyot not only with introducing the term "democracy" to English but also a number of basic social and political terms, including "liberty of speech," "education," "sincerity," "magistrate," and even "society" (Richter 1995, 153). Although the term "democracy" was in Elyot's *Dictionary* of 1538, it did not appear in Richard Huloet's exhaustive *Abecedarium Anglico-Latinum* of 1552. However, by the middle of the seventeenth century the term was included in all English dictionaries.

What meaning was attached to the term "democracy" in the sixteenth and seventeenth centuries? Not surprisingly, it was often the meaning Aristotle gave it. The formal entry into Elyot's dictionary read: "Democratia: a fourme of a common welth, where the people have authoritie." Elyot thought, however, that democracy was the rule of "base and vulgar inhabitants" and that it "might well be called a monster with many heads,...never it was certain nor stable; and often times they banished or slew the best citizens..." (Elyot 1531, 6).

Since this apparently initial written usage of the term, democracy has been defined in English dictionaries as some variant of "popular government, rule or authority" (Cotgrave, 1611; Boyer, 1700; Buchanan, 1757; Sheridan, 1780; Burn, 1786). This definition has not been contested. What has been heavily contested, however, is the interpretation of the meaning of "popular." The earliest interpretations were all negative ones. Cotgrave's 1611 dictionary included the connotative, as well as the denotative meanings of "democratic" (*democratique*): "commonly mocking, geering, laughing (as old *democratique*) at erie thing; also popular." Under "*democratiquement*," Cotgrave wrote "vulgarly, popularly, commonly; also scoffingly." In the sixteenth and seventeenth centuries, "democracy" in England seems to have carried the meaning of "determined by the people," but "the people" were not held in high regard.

It is interesting that some of the very early definitions, such as that of John Florio in his 1611 English dictionary, defined "democratia" as: "a **free** state or commonwealth,



having no Prince or Superior but themselves (as Venice is) except those officers that themselves appoint" (Florio 1611, 141). Venice, in 1611, was indeed sovereign but hardly democratic. **Sovereignty** was understood from early on to be an integral part of any democracy. The term "a free state" can be found again in Kersey's *Dictionary Anglo-Britannicum* of 1708. This usage is a continuation, albeit heavily restricted, of the Arab perspective that understood democratic governance to be confined to a city as in Alfarabi's "democratic city." The notion of "freedom" for Alfarabi, however, had gone well beyond mere sovereignty. But this view seems to have become lost in feudal Europe.

The democratic city is the one in which each one of the citizens is given free rein and left alone to do whatever he likes. Its citizens are equal and their laws say that no man is in any way at all better than any other man. Its citizens are free to do whatever they like; and no one, be he one of them or an outsider, has any claim to authority unless he works to enhance their freedom....Close investigation of their situation would reveal that, in truth, there is no distinction between ruler and ruled among them. (Alfarabi, 50-1)

Venice aside, most definitions in English during the seventeenth century were similar in emphasizing the quality of "without a superior, unless such as they themselves will appoint" (Cockeram, 1623; Blount, 1656; Florio, 1611) or "whose magistrates are chosen from among and by the people (Edward Phillips, 1658; Coles, 1676). As the initial dismissive meaning assigned to democracy became more widely contested, some dictionaries opted to privilege the meaning and usage given to the term by Aristotle and Plato: "One of the three forms of government, that in which the sovereign power is lodged in the body of the people" (Sheridan, 1780; similar in Walker, 1791).

## **B. PATRIARCHY AND POLITICAL REPRESENTATION**

Marsiglio maintained that although an executive may be entrusted with daily governance, it was always the people meeting in assembly who retained the right to make the final decisions. They had authority to appoint or revoke the executive and to approve or reject legislation. However, even here Marsiglio's views must still be qualified as to their democratic nature, for they may only be viewed as democratic within the context of a certain kind of society: a patriarchal one. Was Marsiglio's assembly of the "whole" to have actually been of all the people? Even acknowledging that Marsiglio was indeed referring to participatory involvement and not to "representation," this would still not have resulted in the direct participation in decision-making of all the people who contributed to the local economy as was claimed. The norms of patriarchy are so deeply culturally imbedded that reference to "all" is unfortunately all too readily understood to mean only adults, for one; and (until recently) only men, for another.

Marsilius, as patriarchal as he may have been, was seemingly the only medieval writer who envisioned universal male adult participation in governance (Blythe 1997, 282). Yet two clear conclusions may be drawn. First, the "democracy" being advocated excluded an entire gender. In this Marsilius does not share the views of Averroes, who, like Plato, acknowledged a need to achieve a greater degree of equality for women (Averroes, 164-7) and observed how this was not practiced in Moslem society (Urvoy 1991, 113). Perhaps Christian Europe was even more patriarchal during the medieval period than was the Moslem world.

Second, it is here that we find at least one set of historical roots for the political practice of "**representation**." The male head of the household, when exercising his rights as a citizen in the public realm, in patriarchal societies, is typically considered to "represent" all members of the family. This "representation" denies a public voice to all but the family head. It is a practice that lies at the very heart of patriarchy, usurping women's rights to participate equally in the public sphere. It produces and reproduces patriarchal relations. This form of "representation" - at the level of family or household - operated as a basic norm even within those few "democratic" societies that existed under patriarchy.

## **1. MEDIEVAL THOUGHT ON REPRESENTATIVE GOVERNANCE**

It is not difficult to agree with Francis Oakley when he writes in reference to elements of our society that become naturalized and therefore invisible:

Not least of all that theory of legitimation by consent which, though it dominated European political philosophizing only from the era of Hobbes to that of Kant, has contrived so to shape our liberal democratic common sense that we are persistently tempted to take it for granted. And yet, historically speaking, it stands out as a very singular theory, the outcome of a very particular coalescence of disparate developments, one not at all to be taken for granted, one that calls urgently for historical illumination. (Oakley 1999, 98)

This theory of legitimation by consent, so often taken for granted, has been pivotal in allowing assumptions and norms to prevail that are conducive to

"representative" governance. Oakley is clear that the notion of consent was understood differently in medieval times:

...(F)ree communities, possessed at a minimum the original right to choose their rulers, perhaps also to choose the form of government under which they were to live, maybe even to participate on some sort of continuing basis in the governmental process -- those choices, however, "conditioned by the principle that authority must exist," that it was "necessary and in some sense natural to man." (Oakley 1999, 123; quoting Lewis, I, 160)

How did this shift take place?

Three clear areas of representation can be identified during the feudal period: for one, the political arena as exemplified in the royal parliaments and the city councils in city states, which we will explore below. For another, there were forms of representation within the Christian Church, discussed briefly in Chapter Seven and to which we will briefly return at the end of this section.

And finally, more fundamental yet, there was the patriarchal tradition of the male heads of households "representing" the entire family or household even in the so-called "democratic" patriarchal societies. This element of representation contributes to relations being less, not more, democratic, remembering Heide Wunder's observation that Germanic women uniformly suffered a reduction in political participation after the vote was extended to all adult men. After struggling to replace forms of representation in the political arena and in civil society with direct participation, were this to be only the participation of some (i.e., adult males), then no matter how democratic one may claim these to be, there cannot exist a situation of democratic governance. This would require the full participation of not only all classes, but all genders and presumably, all ages

(once some minimal inclusive criteria were established) as well. Thus the very concept of "representation" in a patriarchal class society is a mechanism of disenfranchisement for the majority.

## 2. FROM MEDIEVAL TO BOURGEOIS PARLIAMENTS

The Oxford Dictionary (1964) only traces the English term "representative" in reference to government back to 1628:

Holding the place of, and acting for, a larger body of persons (*esp.* the whole people) in the work of governing or legislating; pertaining to, or based upon, a system by which the people is thus represented.... (1708)

But in England, as in Spain, parliaments with representation from different regions were well established by the fourteenth century, with roots centuries earlier (Canning 1988, 354). In the case of England, parliament grew out of the inherited French practice of the king calling a general assembly of all his barons, a practice which arrived in England with the Norman conquest of 1066 (Stephenson 1935, 379, 286). This royal court would only come to be called "parliament" in the first half of the thirteenth century. The earliest English parliament that included not only barons who represented the counties but also representatives of the boroughs or cities was in 1258 (Stephenson 1935, 557-9).

As well as barons and knights, the parliaments called by King Edward I included clergy and representatives of the boroughs, selected as each city saw fit; his parliament of

1295 came to serve as the Model Parliament for future generations (Stephenson 1935, 562). In the fourteenth century, what would become the British House of Lords (of barons) was joined by a House of Commons (of knights and burgesses from the urban centres) in a parliament that would endure in that form for the next four centuries. For more than another century, however, this Parliament would only serve "to register the royal will." We do not have indications that the struggle over how representatives were chosen to have been much of a contentious issue during this century (Stephenson 1935, 616-7, 648). The fact that the *Oxford Dictionary* was unable to locate a written reference to representatives earlier than 1628 in the English language is more a reflection of the limited literature in circulation than a reflection of the period in which representative forms of government evolved. These forms clearly went back centuries earlier.

The earliest German parliaments can be traced back to the thirteenth century as well (Blickle 1997a, 42). Parliamentary forms of governance eventually spread throughout most of Europe (Blickle 1997a, 39). "Parliaments" enabled certain sectors of society to speak to those who governed. Earlier assumptions that the Spanish *Cortes* (Parliament) for example, was quasi-democratic simply because it was "representative" have recently been heavily contested and dismissed (Nicolas et al 1997, 72). Control of Italian city councils by elites had been tight since the thirteenth century (Nicolas et al 1997, 74).

The Low Countries seem to have had representative institutions even earlier than England, Germany or Spain. Flanders had political representatives as early as 1128

(Blockmans 1997, 256). In France, Phillip the Fair established the *Estates-General* as a "national representative body" early in the fourteenth century, then like royalty elsewhere, summoned it in times of crisis or whenever he wished to impose new taxes (Nicolas et al 1997, 76). Between the thirteenth and fifteenth centuries, the kings of Scotland, Sweden, England, Hungary and Poland began convening national representative bodies to seek approval for new taxes to resist foreign invasion. England, Hungary and Poland all had bicameral bodies (Ertman 1997, 25). Parliaments emerged as bodies that were allowed a voice, but always within the constraints of the established norms. This is not to be confused with decision-making. That was strictly a royal prerogative.

As for who the representatives were, initially in Spain, as in England and France, they were typically lords or knights. In the Lowlands, they were the emerging economic elite. In the fifteenth century, the representatives of the rural villages in German *diets* were still typically peasants, but by the eighteenth century they were replaced by lawyers (Blickle 1997a, 46).

As for political parties, by the very end of the seventeenth century, as the first cabinets were formed, British Members of Parliament often banded together in clubs of like-minded MPs, but little more. By the middle of the eighteenth century, party affiliation of MPs was still not clear. It would only be at the end of the eighteenth century that political parties had an organizational existence outside of parliament (Habermas 1989, 65). Of course, it was still only propertied men who had a vote in

electing members of Parliament for those positions that were elected. The earlier corruption and patronage of the monarchy continued once Parliament replaced the monarchy in making such decisions. In the words of J. G. A. Pocock:

In the course of the nineteenth century, parliamentary monarchy democratized and reformed itself, in ways which may well have entailed a restatement of the principle of oligarchy but did not involve the elimination of most of the classic and familiar forms of patronage, influence, and corruption. (1985, 87)

The principle of representation, "which found its most advanced form in parliamentary assemblies of the late Middle Ages, always involves communication from the bottom to the top" (Nicolas et al 1997, 65). It must not be overlooked that this typically occurred in the context of a rigid social hierarchy. But while representation may involve communication, it does not involve a leveling of social or political relations, never mind economic differences. The norms of "representation" are clearly not in themselves democratic.

In both the forms and the norms of governance, representative government and democracies are wildly different from one another. They are rooted in different assumptions and based on different practices. Representative governance in the last few centuries has attempted to usurp the space for democratic forms of governance, and in doing so it pits itself against these forms. Indeed, the writings of Marsiglio of Padua lead us to conclude, with Nederman, that following from the argument of the *Defensor Pacis*, the practice of political representation leads to the erosion of both community and citizenship (Nederman 1995, 93). Representative forms, therefore, can be seen as not only *undemocratic* but *anti-democratic*. To build or preserve community and democratic



citizenship, representative forms of governance need to be replaced by forms of direct participation based above all, as Marsilius argued, on a legislative assembly of the whole.

Forms of representation as evolved in Europe in the Middle Ages may once have been both effective and necessary mechanisms to accommodate the situation at hand for the dominant interests of the time. They facilitated unification and centralization under emerging princes and kings of entire regions that were often until then largely autonomous, primitively democratic, albeit patriarchal, societies organized around communal forms of land ownership. This process of formation of kingdoms later evolved into the formation of nations, which were modeled on the princely state rather than the more democratic community-based medieval village town or city (Dilcher 1997b, 217). The ignored examples of the Swiss Confederation and the Rhaetian Freestate, however, were based precisely on the latter.

The driving force for this process of political expansion came from among those who sought to establish or preserve privilege, wealth and/or power. To do so, they needed a state. Those over whom they sought to rule often insisted on forms of representation, at a minimum, in order that their concerns might be heard. This was a common response during the medieval period. Some monarchs readily offered representation to ensure that the views of all within the state-in-formation be known, although not necessarily respected, with the understanding that any effective ruler would be better served by at least knowing the concerns of his subjects.

### 3. DIFFERENT SPHERES; DIFFERENT FORMS OF GOVERNANCE

The forms of representative government that were introduced were not continuous with the earlier democratic communal forms but, instead, opposed to them. As early as 1868, the German nineteenth century pioneer in analyzing medieval political thought, Otto von Gierke had understood this.

We can see clearly that this new idea, the idea of popular representation was not in fact a continuation of the old principle which had been at work in the territorial estates, but a quite different, independent principle, by considering how the relationship of the territorial estates to the *Land* had changed. From being the fully enfranchised citizens of a territorial community [*Landesgemeinde*] based on fellowship, they had become privileged subjects united in a *corpus* [body] (sic). The idea that those who were specially favoured among subjects might represent to the ruler the interests of all the ruled had not been entirely extinguished. But in relatively few Lander were the estates conscious of such a calling, and in even fewer did they put this task higher than their immediate and actual goal, which was the maintenance and augmentation of "their special rights, freedoms and privileges." (von Gierke [1868], 818; Anthony Black 1990, 150)

Von Gierke perceived, as Walter Ullmann would a century later, two entirely distinct spheres of activity that co-existed in medieval Europe: one shaped by the power of the lord and one by the self-governing authority of the estates, with historical moments in which the values and norms of one or the other would become ascendant (von Gierke 1868, 537; Anthony Black 1990, 86). The former was hierarchical and epitomized by the king at its pinnacle, while the latter was egalitarian and derived from the commune and community life. These were two separate realms of human activity, which inevitably intersected over specific issues. Each territorial estate had its own assembly. Each was

free to negotiate agreements with the local lord or even to declare war on him (Black 1990, 88; Gierke 1868, 565). Although there were differences in values and norms between the cities and the rural areas, these were not as great as the differences between common people and the nobility. "Peace," the "common good," and "work" were positive values for commoners, but more-or-less alien concerns for the medieval nobility (Blickle 1997b, 332). Representative government resulted in an eventual extinction of these earlier communal forms of governance.

Typically theorists insist that there was no distinction in feudal society between civil society and the state (Gellner 1994, 55). One could argue that in the realm of the influence of the dominant lord or king and his state in formation, this was indeed true; here the lord ruled all. However, there existed a realm outside that control which did indeed exert its own norms and regulate its own activity. This latter realm was the realm of the commoners, the realm, one could well say, of civil society during feudal times.

Once the British Parliament, rather than the monarch, actually assumed decision-making powers during the eighteenth century, there was a definitive shift in the nature of governance. However, using Aristotle's three categories, this was not a shift from monarchy to democracy; rather it was from monarchy to a mixed form of government that was closest to oligarchical rule. What is so astounding today is the degree to which the rule of capital has successfully presented itself as something other than that, effectively managing to pass off its centralized forms of political rule as democratic. Ellen Meiksins Wood outlines clearly how Alexander Hamilton and the other U.S.

Federalists, did not merely settle for representation because the size of the USA was so large, but rather they sought a territorial extension so large that it required electoral or "representative" forms of governance understanding that election was an oligarchic, not a democratic practice (Wood 1996, 122-4).

Gerhard Dilcher argues that representation as practiced in feudal times, whether in the estates or on a city council, albeit of hundreds, can be identified as a "forerunner or prefiguration of modern representative government" (1997a, 218). Representative governments facilitated the transition from earlier monarchical institutions to bourgeois forms of governance. They demonstrate more of a continuity in the preservation of state domination over civil society than they do any form of liberation from such domination. In no sense can they be said to reflect democratic control of civil society over the state. Democratic governance is not the same as this tradition of representative government. Furthermore, it seems increasingly clear that these forms of representative government may not even be conducive to democratic governance.

### **C. A THEORETICAL FRAMEWORK FOR THE PUBLIC SPHERE OF CIVIL SOCIETY AND DEMOCRATIC GOVERNANCE**

Seeking the earliest notions regarding the differences between civil society and the state, we can now extend our search further back beyond Thomas Paine. Although Paine drew a significant distinction between civil society and the state, without engaging

this terminology, it need be said that Marsilius de Padua, although less clearly, also delineated a sphere separate from that of regular state activities. Here we have a difficulty not unlike that encountered with the term "democracy," with a distinction to be drawn between the origin of the concept and the term "civil society." Although, following Aristotle in equating the state with the city, Marsilius of Padua referred to all aspects of life of a city including farming and artisans as being "parts of the state" ([1324] 1956, I.V.1, 15), he also clearly called for a delineation between the sphere of the state's legislative, administrative, judicial and military functions and a sphere relegated to the church. Although he used the term "civil community," instead of "civil society" for both the secular and ecclesiastical elements outside the state, the concept underlying both was similar, if not the same. As with the term "democracy," Marsilius embraced the concept behind a separate "civil society" as integral to the practices of a functioning democracy, but without embracing the terms for either. What is undeniable for Marsiglio is that he assigned and confined the church to a realm, call it what one may, which was separate from what he called the government or its judicial, legislative, or military activities.

Civil society was conceived by Paine, like others, as a condition of freedom. Paine's *Common Sense*, the U.S. *Bill of Rights* and the French *Declaration of the Rights of Man and Citizen* all position society against the state, with civil society as the sole legitimizing force (Cohen and Arato 1992, 89). These are the first instances of a political philosopher calling to limit state power in favour of civil society. This contrasts with Marsilius who called for all political power to be ultimately in the hands of the people in assembly, but without limitations being imposed upon this power. Yet this would be the

state. It may actually be that there is no contradiction between the positions of the two in this regard, were the public sphere of civil society to dominate the state entirely.

A possible convergence between the positions of the two political theorists/activists is not as clearly the case, with respect to representative government. Although Paine advocated lot selection and rotation as democratic methods of determining the president, he also allowed for voting by ballot to send representatives from the thirteen colonies to a national level of governance without ensuring mechanisms of accountability and recall (Paine [1776] 1976, 96). He later openly advocated forms of "representative" government, openly calling for this as the only viable option to monarchy ([1792] 1995, 223-37). Marsilius never made such claims, although he was envisioning a much smaller polity than Paine. Although Marsilius implied a difference between state and civil society, it was not until Paine that there was a clear articulation of these differences by opposing one to the other (Paine [1776] 1976, 61). Paine believed that the more civil society is perfected, the more it would regulate its own affairs (Keane 1995, 116-7). For Marsilius, the power of the state was not alienated from the people who made up civil society; it could be seen as the political realm or indeed as the political public sphere of civil society, although he used none of this terminology.

Paine's *Common Sense* is a crucial document in the independence struggle of the United States of America; it is a publication that is credited with having shifted public opinion from two-thirds opposition to independence to overwhelming support for it within months of its publication (Kramnick 1976, 7-9). At the end of *Common Sense*,

immediately before listing the conclusions, Paine provides a significant caution, beginning the paragraph with: "In a former page I likewise mentioned the necessity of a large and equal representation; and there is no political matter which more deserves our attention." The lengthy paragraph continues with problematic examples from Pennsylvania, which "ought to warn the people at large" why they ought not to "trust power out of their own hands." The second paragraph on this topic begins, "Immediate necessity makes many things convenient, which if continued would grow into oppressions. Experience and right are different things" (Paine [1776] 1976, 110).

Paine provides the basic distinction between civil society and the state as clearly separate realms, at times opposed to one another, as well as a model which seeks to empower civil society over the state. It is clear that Paine sought this objective, even if he accepted forms of representative governance at the national level. From Hegel, we understand how civil society is historically constructed. From Marx comes the inclusion of both family and political culture in civil society. From de Tocqueville, we learn that countervailing civil associations needed to be protected from the state and to assume a role as the "independent eye of society." But above all, we have from Marsilius that the people have the inalienable right to determine their own government and to oust any ruler who does not retain the respect and support of the people. This is embodied in the rule of civil society over the state, rule by the people themselves, the inherent right of civil society to constitute itself as the state and determine its every action.

Paine's contribution was not merely the writing of useful propaganda. His writings are considered responsible for innovating an entirely new form of political discourse by appealing to the popular sectors instead of the literary elite (Foner 1976, xvi). He didn't simply speak for the rebellious element; he stimulated others to speak for themselves. In response to his *Common Sense* pamphlet, throughout the emerging new nation there was a "torrent of letters, pamphlets and broadsides on independence and the meaning of republican government" (Foner 1976, 119).

The notion of republic, like democracy, only shifted to become a positive term in the United States in 1776 (Durey 1997, 291). Its polysemic nature requires a separate work to do it justice. At one point during the Roman Empire, following centuries of stable democratic governance in some Greek polities, the word came to mean any self-governing republic, independent of which class controlled the republic; alternatively democracy was sometimes during this same period used to refer to a government that simply displayed a form of "fairness" (O'Neil 1995, 119). Different usages abound in the early United States as well. While not all could agree on the United States of America being a democracy, they could all agree upon it becoming a republic, but with different understandings of what that meant.

When the first Republican Party coalesced around Thomas Jefferson in the mid-1790s the meaning of republican differed considerably from its connotation today. In some ways, the first Republican Party was the unity of a diverse opposition to the Washington regime's elitist policies introduced by Hamilton and organized into the



Federalist Party. But above all, that Republican Party was organized, on the one hand, around active, radical, grassroots democrats, and on the other, a series of different interests that later transformed into the Democratic Party.<sup>54</sup>

The distinction in the U.S. between republican and democrat, as political systems or concepts was not as pronounced in mid-1770s as it became by the 1780s. Even Thomas Jefferson's close ally, James Madison, abandoned any pretence of supporting democracy. Madison's *Federalist Letter #10* of 1787 is an excellent example (Cooke 1961, 56-65). Madison defines a republic as "a Government in which the scheme of representation takes place" (Cooke 1961, 62). Democracies are criticized for being turbulent and unstable, as well as disrespectful of property relations. Although these views were widespread in the eighteenth century, historical facts say otherwise. Even Hannah Arendt in discussing these views of the Founding Fathers accepted without criticism, their characterization of democracy as presented by Plato and Aristotle (Arendt 1963, 225).

Subsequent efforts to introduce forms of participatory democracy in the U.S. focused on the initiative, referendum and recall (Cronin 1989, 56). Struggles to introduce initiative and referendum, for their part, occurred on three separate occasions: between 1890-1912, 1914-1940 and finally in the 1970s (Cronin 1989, 164). The first period saw the introduction of the initiative and referendum at the state-level in eighteen states by

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<sup>54</sup> By 1824 all the candidates for the presidency presented themselves as Republicans and the party as a party began to crumble. By 1840 it had withered away with most of its electoral wing later forming the Democratic Party, now pitted largely against the Whigs. Both these parties established themselves in all the states of the union by 1840, driven by an interest to elect a presidential candidate (McCormick 1989, 329-30).

1912 (and fifteen others subsequently) (Cronin 1989, 51) but failed to approve either national initiative or referendum. The second effort between 1914 and 1940 came explicitly over the issue of seeking to require a national referendum before declaring war on another nation, unless the other initiates hostilities. The movement fizzled when the Japanese bombed Pearl Harbour (Cronin 1989, 165-75). The latter emerged in response to the democratic demands that blossomed in the 1960s and unsuccessfully sought to introduce a national referendum.

Recall was first adopted locally in Los Angeles in 1902, promoted by social and political organizations of civil society, such as those in the Farmers Alliance; by 1903 the measure was approved for local politics throughout the state. Each city determined its own number of voters required to trigger a recall. Within a few years recall was adopted in numerous cities throughout the U.S. By 1912 recall had become an equal member of the triad of referendum, initiative and recall (Oberholtzer 1912, 455-59).

With the resurgence in advanced industrial societies during the 1960s of a drive arising from within civil society to create more democratic relations, we also find political theorists of that period attempting to understand the situation of democracy. A handful of such theorists grappled once again with precisely the distinction between “representative” and “democratic” governance – or “indirect democracy” and “direct democracy.” Two figures in particular in North America stand out in their early effects to address this problem: Robert A. Dahl and C.B. MacPherson.

Although the political writings of Robert A. Dahl shifted over the decades from 1956 in *A Preface to Democratic Theory*, where he describes three bodies of “democratic theory” and all three are forms of “representative government,” to 1970 in *After the Revolution*, where Dahl distinguishes between “representative” and “participatory” forms of governance. In this latter work, Dahl distinguishes “polyarchal democracy” from primary democracy (participatory democracy), referendum democracy (with a yes-no ballot) and committee democracy (for a handful of participants) (Dahl 1970, 59-103). While Dahl acknowledges and even calls for the implementation of the lot as a representative and democratic measure, he limits its usage to a potential advisory body reporting to elected officials (Dahl 1970, 149). Dahl identifies “delegation” as a critical means of allowing democratic relations to extend beyond the local, but he fails to distinguish between its usages for executive and legislative functions (Dahl 1970, 76-7). Thus “delegates” are reduced to the equivalent of “elected representatives,” as the lot was reduced to the equivalent of voting in a “representative democracy” (Dahl 1970, 71).

Canadian theorist, C.B. MacPherson, for his part, presented many of the same issues during the same period. He advanced the notion of participatory democracy, but he attempted to blend it with existing electoral government (MacPherson 1977, 97). Like Dahl, MacPherson suggests employing the democratic mechanism of “delegates” who would report to a regional level of governance as a means to link up numerous grassroots meetings, but he fails to identify any form of accountability for these “delegates” other than potentially being subject to re-election (MacPherson 1977, 109). There is no mention of sortition.

MacPherson is, however, correct in noting: "The main problem about participatory democracy is not how to run it but how to reach it" (MacPherson 1977, 98). Although MacPherson does not spell it out, this necessarily implies a process. Like Dahl (Dahl 1970, 153), MacPherson concludes it is critical to establish participatory governance at a neighbourhood level (MacPherson 1977, 103), then to proceed from there. I would agree.

Carole Pateman understood that a major function of participation, in itself necessary for a democratic society to exist, is educative - that deeper forms of democratic governance would emerge only through democratic practice - as well as having a positive, integrative effect on the community (1970, 42-3). John Dewey articulated similar views (1957, 209), where voluntary associations, as described by de Tocqueville, functioned as the building blocks of civil society, educating citizens in the needed skills of democracy (Caspray 2000, 178).

Jean Cohen and Andrew Arato (referred to by Habermas as those "who have presented the most comprehensive study on this topic," 1996, 367) call civil society "the framework *par excellence* where the tension between *is* and *ought* emerges" (emphasis in original, Cohen & Arato 1992, 95). Civil society is therefore the ideal location from which to struggle for a democratic society. Political theorist David Beetham states that those who use a three-part model see civil society as a "form of associative life that is important, not only for the health of democratic institutions, but as a site for the exercise

of democracy in its own right" (Beetham 1997, 76). John Dewey, for his part, emphasizes the intimate connection between democracy and community, rather than civil society: "Regarded as an idea, democracy is not an alternative to other principles of associated life. It is the idea of community life itself" (1927, 148).

For Dewey, democracy started in civil society, which in turn for Dewey was embodied in community. "Only when we start from a community as a fact, grasp the fact in thought so as to clarify and enhance its constituent elements, can we reach an idea of democracy which is not utopian" (Dewey 1927, 149). Essential to this process, for Dewey, was the role of communication as the vital element in building and sustaining a community (Dewey 1927, 152, 219). Identifying the enemy as corporate wealth (Caspary 2000, 176), Dewey, while rejecting state socialism, was one of the few of his time to still advocate guild socialism (Westbrook 1991, 249). Dewey believed that to create a democratic society, a Great Community needed to be built at a national level, but noted:

The Great Community, in the sense of free and full intercommunication, is conceivable. But it can never possess all the qualities which mark a local community. ([1927], 211)

In his effort to find some form of continuum between democracy and electoral government, Benjamin Barber coined the term "strong democracy" for participatory democracy "as a way of life" (1984, 139) or "as a way of living" (1984, 118). While weak or "thin democracy" (instrumental, representative, liberal democracy) either eliminates, represses or tolerates conflict, strong democracy transforms this conflict,

employing community-building approaches and mechanisms, typically consensus-building ones (Barber 1984, 117, 151 and 128-9). However, in creating a continuum, this approach allows for numerous arrangements that are not part of a democracy to claim themselves to be democratic. Jane J. Mansbridge, for her part, addresses this issue by drawing the distinctions between adversarial and cooperative forms of democratic practice in her *Beyond Adversary Democracy* (1980) in which she identifies consensus-building norms as integral to democracy.

The political public sphere of civil society in a post-capitalist society would be different, of course, from that of the hypothesized bourgeois public sphere in that it would relate entirely differently to the state. The points of intersection between civil society and the state would differ, as would the relations among people and organizations. While the bourgeois public sphere pursued a form of democracy known as representative democracy (whose democratic elements were more symbolic and elusive than real), the popular public sphere of civil society in a post-capitalist world would seek to establish a more inclusive democracy as it once existed historically and could indeed exist again, if this were so decided. In one variant suggested by Yugoslav Laslo Sekelj, the means of production would belong to the state or society, as common property, but would be managed by autonomous workers organized into a democratic council system (Sekelj, as cited in Krizan 1989, 158). Others would include local community ownership and control or workers cooperatives. Creative options of this nature are likely to abound once a society collectively undertakes to democratically determine its future. Indeed Rousseau, early Marxist and anarchist writings contain many ideas for such experiments

in radical democracy. For any form of genuine democracy, however, there necessarily must be forms of self-management.

In today's world of sophisticated information technology, democratic governance over huge regions is in some senses more easily envisioned than at any time in the past. There is nothing sacred about the size of existing polities. For democrats, there is, however, something sacred about genuinely democratic practices that embody, promote and encourage ever more democratic and participatory governance. In a world of people committed to democracy, it would seem to be the existing structured polities which need reconfiguring. Besides local or neighbourhood levels of governance, a bioregional level would seem to be necessary as well. While neighbourhood or local governance in large towns could be envisioned with large to enormous assemblies, large city or regional governance (or any polity larger than that) may require some form of delegation, as occurred in the Swiss and Rhaetian democracies. In a world that was democratic, this could be conceptualized on a global (or even an intergalactic level as the Zapatista insurgents from the Lacandona jungle humourously put it). The lessons from the Swiss are probably more insightful than any other historical example for addressing this aspect, while the Zapatistas contribute the necessary element of inclusivity.<sup>55</sup>

In terms of overlap of spheres, the public sphere of civil society in a democratic society would exist to a large degree in the same space as a significant portion of the state sphere, although most of the rest of civil society would not overlap with the state at all. Decision-making power would ultimately reside in civil society in any democratic

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<sup>55</sup> The Zapatistas will be discussed in Chapter Ten.

society, in its political public sphere. The more democratic the state, the more overlap the state would have with the public sphere; in this light the perspectives of Paine and Marsilius could be seen to converge. In the democratic assemblies of Classical Athens and the cantons of the Rhaetian Freestate, almost the entire state realm could be seen to have overlapped with the public sphere of civil society.

#### **D. CONCLUSIONS ON DEMOCRATIC THEORY**

Among European liberal democratic theorists, there seems to have been a deep-seated repugnance towards the Swiss democratic experience. For those who sought to create a strong centralized state (which from the Enlightenment on most saw as essential for modernity), pre-Napoleon Switzerland and the Rhaetian Freestate were nightmares, for both functioned perfectly well without a centralized state although decisions were, of course, not rapid. In both there was fierce opposition to the introduction of any such change, for centralized states were understood to be clearly anti-democratic.

With a centralized state, power comes to be located within the state and its apparatus rather than among the people themselves. Although the theoretical framework of advocates of "representative" government impeded these theorists from understanding this, both the Swiss Confederation and the Rhaetian Freestate were actually exemplary instances of democracy at a national level. Structured as they were, unlike centralized states, they could not easily, if at all, be used by the emerging bourgeoisie as vehicles for the promotion of their class interests. The democratic governance of both alpine societies



in the eighteenth and nineteenth centuries, instead of being seen as exemplary of democracy, was seen as anomalous. It was simply ignored and made invisible in the writings of European theorists who usurped the label of "democrats" for themselves in an expanding capitalist Europe.

The recasting by liberal democratic theory of a collective understanding of what constitutes democracy has effectively undermined a more clear understanding of democracy. Perhaps the most articulate and convincing of the nineteenth century theorists advancing representative democracy, John Stuart Mill justified his claims that representative governance was democratic by citing forms of participatory involvement in participatory democracy. Owing to a generalized lack of knowledge of the Swiss and Rhaetian experiences, the democratic core of Rousseau's writings is largely dismissed in a fog of confusion. The earliest known democratic theory that has survived - that of Marsilius of Padua - had been misinterpreted and mistranslated over the centuries in such a way as to promote representative democracy.

The liberal democratic political theorists, as varied as their views were, nonetheless shared the common underlying assumption that equated "progress" with capitalist expansion, thereby elaborating theories that promoted "democratic" political objectives not only compatible with the expansion of capital but, seemingly, even identical to it. As the bourgeoisie was viewed as the bearers of both economic and political freedoms, the connecting of freedom in the economic sphere to freedoms in the political sphere was an easy step (Beetham 1997, 82). Self-declared "democrats"

attacked any who questioned their equation of "representative governance" with "democracy." From this perspective, the key element defining "democracy" became whether officials or rulers were elected. Ignored entirely was what Classical Greeks of all political persuasions and classes knew - that election was an oligarchical and not a democratic practice because it favoured the well-to-do and privileged (Wood 1996, 124). Elections, as experience had shown Athenian citizens, could and did become tools in the hands of the aristocracy, given the social influence of some over others (Dunn 1992, 242). Representative government in the U.S. had, as Arendt observed, become oligarchic government (Arendt 1963, 269).

We have seen that representative government has claimed for centuries to be "democratic." Yet its organization and functioning are more conducive to oligarchical forms of rule in a class society. Parliamentary forms of governance evolved over centuries in feudal Europe as a form of political involvement that strengthened and complemented monarchy. When these forms of representative governments in their earliest parliamentary expressions were constituted, it was merely to create a mechanism by which to measure dissent and the potential for rebellion. When parliaments were eventually constituted through election (even if this were merely one of two chambers), this form of governance came to be considered "democratic." Forms of political "representation" in capitalist societies were based at their core on practices of patriarchal privilege, whereby the enfranchisement of the male "head" of the household actually disenfranchised the remainder. The nation-state, when it emerged in Europe, assumed a form consistent with and modeled on the traditions of the royal courts and in opposition

to the popular forms of democratic governance rooted in the communes that covered the continent.

When "democracy" finally came to be accepted as a legitimate political option for the rule of capital, so-called representative governance successfully managed to claim the mantle for itself and to identify itself as the "democratic" option. To the degree that it has been able to do so, electoral government has displaced the forms and norms of participatory democratic governance and deprived genuine or "direct" democracy even of a name by which to be identified.

A truly democratic society would not only be one which was based on popular participation at all levels in governance; it would break with the last and deepest layer of domination, the patriarchal assumptions and practices sedimented into the very fibre of our social organization. A truly democratic society would transcend patriarchy. While the forms involved and the norms articulated in Swiss or Greek governance may well be democratic in principle, they can, of course, only actually be democratic if they are inclusive.

If it were truly representation that was sought, then why would sortition not be used? Such a mechanism yields results that are representative of the diversity of citizens of a polity. Yet sortition is not only not practiced; it is not even acknowledged today to be either "democratic" or "representative." Surely a basic requirement for considering

any electoral system to be even remotely democratic is that there must be mechanisms of accountability.

One of only a handful of political theorists in the twentieth century to present sortition as a viable element for representative and democratic governance is Robert A. Dahl. Acknowledging “a proposal to introduce selection by lot will almost certainly strike most readers as bizarre, anachronistic and... well, anti-democratic,” Dahl nonetheless proposes its adoption, albeit timidly for use in “advisory councils” (Dahl 1970, 149). Why not select a Congress or constituent assembly by lot? Because, Dahl says, the work of a Congress is “formidably complex” (Dahl 1970, 150). While a step in the right direction, this approach fails to fully appreciate the dynamic quality of democratic change which is potentially, extremely revolutionary. One thing the Greek experience makes clear is that democracy requires a continuous process of modifications and refinement to improve its functioning and to optimize its democratic nature.

To cite limitations of democratic possibilities because of the existing realities of capitalist relations is to give up concede defeat of a democratic struggle before even engaging in it. If there exists a massive popular will to see democratic governance implemented, then it merely becomes a question of determining how this may be so. If the decision is made to adopt democracy at all costs, then all other factors may simply be changed in accordance, including the size of polity and all other political, economic and social relations. The development of democratic relations must be understood to exist in a dynamic context.

Typically the only form of accountability considered in a representative democracy becomes re-election, a situation that allows potential abuse of power to continue unchecked until those moments, every four years or so, when elected officials must seek re-election. Without mechanisms of accountability (especially in light of the strategic actions undertaken by vested interests, as will be seen in the following chapter), there will simply not be accountability. Thus, scrutinized from various perspectives, what is labeled "representative democracy" is neither "democratic" nor, for that matter, "representative."

The gulf between democratic governance as it was known in Classical Greece, the Swiss Confederation, or the Rhaetian Freestate, on the one hand, and electoral "representative" government in the liberal democracies, on the other, is enormous. These are two distinct forms of governance, based on different principles and resulting in entirely different outcomes for citizen participation and decision-making - aspects that define the very essence of democracy or the lack of it.

Rather than a discursively based process for determining action as democracy employs, electoral "representative" government replaces citizen involvement with elite decision-making on behalf of the population at large. Crucial decision-making power falls into the hands of those, typically no longer even accountable to their electorate, whose only justification for power over others is that they were voted into office on one occasion as the least objectionable of those candidates presented as alternatives in a

system that was neither designed nor constituted democratically. Civil society in a democratic society rules the state through its activity in the public sphere. In a capitalist or liberal "representative" government, however, the relationship is reversed: civil society is ruled by the state through capital's control over the public sphere. In the next section we will examine the potential for democratic governance in today's world and existing efforts by democrats to reclaim democracy as both a concept and a practice. As we will see in Part Four, this fundamentally discursive process seeking democratic social and political transformation has already begun.

**PART FOUR**

**DEMOCRACY TODAY**

**THE TWENTY-FIRST CENTURY: NEW HOPE FOR DEMOCRACY?**

## **PART FOUR**

### **DEMOCRACY TODAY**

#### **THE TWENTY-FIRST CENTURY: NEW HOPE FOR DEMOCRACY?**

This fourth and last section addresses the efforts to achieve democratic governance in today's world. It presents no formulaic solutions, but rather offers an understanding of the current context and its intersection with the historic struggles for democratic governance as part of a continuation of earlier experiences described above. Civil society is understood as the womb within which democratic activity is created and nurtured.

First I will identify the dominant economic and political conditions of today and their impact on the struggles for democracy. From the late 1970s onward we see the advent of a new political economy of capitalism. It is based on the preservation of the conditions necessary for even greater capital expansion and increased accumulation, in spite of what hardships this may and has inflicted on the lifeworld of civil society. This new model is neoliberalism. Closely resembling the stage of “brutal capitalism” of a century earlier, this model once again established the conditions that seem to urge civil society to seek greater forms of democratization.

In the following chapter, I will present diverse contemporary examples of communicative action, the element isolated and identified in practice as central to the struggle to establish democracy. The chapter also explores Habermas’s democratic claims for communicative action at the most basic inter-personal level and assess



Habermas overall as a potential democratic theorist. The final chapter presents the conclusions.

## CHAPTER 9

### NEOLIBERALISM: TOO MUCH DEMOCRACY?

Durito: "...(Y)ou start from the idea that *neoliberalism* is a doctrine....You think that *neoliberalism* is a capitalist doctrine to confront the economic crises that capitalism itself attributes to *populism*....Well, it turns out that *neoliberalism* is not a theory to confront or explain the crisis. It is the crisis itself made theory and economic doctrine! That is, *neoliberalism* hasn't the least coherence; it has no plans nor historic perspective." (Subcomandante Marcos, 1995)

#### A. TOO MUCH DEMOCRACY?

The contradiction between democratic political potential and capitalist economic development reached its point of rupture in the last quarter of the twentieth century when capitalism adopted neoliberalism. The myth that equates capitalism with democracy is becoming increasingly difficult to maintain in spite of legitimacy-seeking mechanisms still being employed through the mass media to promote these illusions. The ever more evident contradictions between capitalism and democratic governance, as revealed by the impacts of neoliberal policies, creates a new context that puts into question the legitimacy of the rule of capital as its ideological domination is increasingly replaced by the use of brute force.

## 1. NEOLIBERALISM

The process of change that we are undergoing is often referred to as "globalization." But in fact, the process is certainly more than merely "globalizing" anything and involves more than capitalist expansion. It embraces a new political economic model: neoliberalism. It requires restructuring at a fundamental level. Globalization itself began long before neoliberalism. Neoliberalism is merely the latest incarnation of it, this time through globalization of capital flows, allowing capital extreme mobility and anonymity. International monopoly capital had pushed both the intensive and extensive margins of the market to their limits in the drive for ever-greater levels of profit under Fordism.<sup>56</sup> When those limits were reached, it became time for a new model, one which involved the dismantling of the welfare state (Offe 1984, 149-61) and a return to the conditions of "brutal capitalism," as existed in the nineteenth century and dominated market relations until the Great Crash of 1929, which led to the implementation of a "Fordist" political economy in the first place based on Keynesian economics.

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<sup>56</sup> This refers to the saturation of the market after pushing the margins extensively, expanding across the globe and replacing earlier forms of production that still survived, as well as intensively by commodifying increasing goods and services that were previously free, such as water.

Fordism refers to the capitalist political and economic policies and practices employed prior to neoliberalism to promote mass production and consumption, Keynesian economics and the so-called welfare state.

## 2. TRILATERAL COMMISSION: "EXCESS OF DEMOCRACY"

The central organization that mapped out a new post-Fordist political economy for capitalism was the Trilateral Commission, formed from select members of the dominant capitalist states, of the largest private corporations and seemingly of civil society from Western Europe, Japan and North America. This self-appointed body first convened in 1973 and commissioned a series of studies, published in 1975 that provided the theoretical basis for the introduction of neoliberalism. The most important of these, for our purposes, is *The Crisis of Democracy*, by Michael Crozier, Samuel P. Huntington and Joji Watanuki.

In this work, Samuel P. Huntington argues that the electoral process and democratic norms in the United States during the 1960s had produced an increase in government activity but also a reduction in "governmental authority" (1975, 64). Co-author Michel Crozier observes this was a generalized phenomenon among countries of the Trilateral Commission (1975, 161-4). Huntington measures "government activity" by the amount of money spent (Huntington 1975, 65). He follows Daniel Bell in replacing what Huntington called the "Marxist analysis of the inevitable collapse" of capitalism resulting from cycles of over-production with a comparable crisis which was allegedly "a product of democratic politics" (Huntington 1975, 73). This crisis is attributed to growing public expenses for services to civil society, accompanied by reduced respect for undemocratic rule. Huntington cites surveys in 1972 that indicated fifty-three percent of U.S. citizens believed that the U.S. government was "run by a few big interests looking

out for themselves" as compared to only seventeen percent fifteen years earlier (1975, 78). Likewise, Huntington cites evidence that sixty-one percent of U.S. citizens by 1973 considered that their opinion "doesn't count much any more" in influencing their government, compared to only thirty-seven percent seven years earlier (1975, 82); moreover, in 1973, fifty-four percent of college youth and forty-five percent of non-college youth believed that "big business needed to be reformed or eliminated" (1975, 87-8).

This line of reasoning eventually leads Huntington to claim that the alleged problems of governance at that time (1975) "stem from an **excess of democracy**" (113). He therefore advocates reversing the decline in presidential power (1975, 102) and creating a more powerful centralized political authority. Huntington claims that:

A university where teaching appointments are subject to approval by students may be a more democratic university but it is not likely to be a better university. In similar fashion, armies in which the commands of officers have been subject to veto by the collective wisdom of their subordinates have almost invariably come to disaster on the battlefield. (1975, 114)

Huntington fails, however, to offer any examples of where these claims are true. Although it is unclear that there are necessarily any negative effects when students exercise veto power over faculty hiring at any institution, many would argue that indeed student approval for hiring of faculty does produce a better university. As well, we know that in Classical Athens, in the Swiss republic and in the Rhetian Freestate, precisely the rank-and-file control of the officers was a democratic as well as a well-functioning mechanism. All three of these examples resulted in very effective military forces, indeed

in all cases, indisputably producing the strongest of all regional armies. Of course, the soldiers did not have a veto on the battlefield, but what army did? Huntington fails to inform us if there ever was such a case. He is battling a straw figure.

In the book's conclusion, the authors' lone refreshing comment is an acknowledgement that during the 1970s there was no "significant social or political group" that posed any serious threat to democratic institutions, at least in any of the countries of the Trilateral Commission (Crozier et al. 1975, 159). In spite of this, the Commission deemed radical change was necessary.

Regretting the loss of the balancing influences of the socialization provided previously by family, church, school and the military, the authors write:

... (T)he pervasive spirit of democracy may pose an intrinsic threat and undermine all forms of association, weakening the social bonds that hold together family, enterprise and community. Every social organization requires, in some measure, inequalities in authority and distinctions in function. (Crozier et al. 1975, 162)

Lumping the three (enterprise, family and community) together only confuses matters, for they belong to different spheres (economy and civil society) and thereby possess different internal organizing logics. Our historical examples found the opposite of the Trilateral authors' position to be true, with a healthy democracy strengthening at least the social bonds of the community and, possibly, those of the family.

The claim, however, that every social organization requires inequalities in authority only makes an argument for authoritarianism. It fails to consider reasons why

any resulting inequalities may have been created. The situation where an assembly empowers some of its members to undertake a task is radically different from a military dictator (or any other functionary working for the interests of capital) who imposes his rule.

Embedded within the confusion between electoral governments and democracies, the authors commissioned by the Trilateral Commission bemoaned the loss of control over society wielded by political parties, claiming that it was these political parties that "made democratic government possible" (Crozier et al. 1975, 166). This rationalization made possible a shift of power to a different political context, but it did not itself create it. It is neoliberal policies that have done that. As power relations have changed, corporations have increasingly gained control of the public sphere and the state. The text of Crozier, Huntington and Watanuki was only one of a dozen initial books presenting the Trilateral Commission's support for a neoliberal model that within ten years would be implemented throughout the capitalist world of the south. This text is, however, the most honest of the Trilateral Commission's publications in explaining the true ideological and political dimensions of neoliberalism. Today this text is likely embarrassing to some neoliberals since its views run counter to neoliberal rhetoric.

This claim that popular participation in governance produces "an excess of democracy" which needs to be avoided is not a new position in U.S. politics. Indeed the argument goes all the way back to the American Revolution when the form of government that the new republic was to assume was hotly debated. The earliest

expressions of these sentiments from within the new U.S. federal government came from Alexander Hamilton, one of only two senior secretaries to George Washington, elected the first U.S. president in 1788, the other secretary being Thomas Jefferson. Hamilton is distinguished, as Bertrand Russell calls it, for promoting corruption (Russell 2001 [1932], 270) as well as promoting policies that favoured the elites (Durey 1997, 222). He called for a federal constitution to ensure a strong central government in order to build a United States Empire throughout North America (Durey 1997, 222). At the Constitutional Convention, Hamilton lauded the British political system and monarchical rule; on other occasions he called for the election of the U.S. president **for life** (Cogliano 2000, 138-9).

During the years of struggle for independence the radical democrats had built grassroots mechanisms of governance at the local level in many parts of the Thirteen Colonies. To counteract these widespread democratic institutions that were born during the revolutionary struggle for independence, entrenched colonial elites embraced the contested notion of “republic” (Matson and Onuf 1990, 11). Many conservatives and/or wealthy members of the elite, therefore, sought to create a strong central government through a federal Constitution (Durey 1997, 222). Even though the federal Constitution that emerged from the Constitutional Convention never once mentions democracy, the grassroots democrats still supported the document. This was largely because while Britain was still at war with the U.S., unity was seen as essential and a central government seemed more tolerable, to some, even necessary. But it is also because the Constitution allowed for amendments (Aldridge 1984, 257). Bertrand Russell, like Hannah Arendt, characterizes the U.S. Constitution as the product of many who



consciously sought to prevent the establishment of democratic relations (Russell [1932] 2001, 268; Arendt 1963, 232).

Disappointed because the Constitution did not contain a bill of rights, embedding these popular rights within the Constitution, the democrats sought a U.S. Bill of Rights as a concession document, although it would have less authority than the Constitution which guaranteed property rights. Hamilton, for his part, characterized such a Bill of Rights as not only unnecessary, but “even dangerous” (S. Dunn 1999, 139).

1800 was the first instance of a peaceful transfer of federal political power in the United States (Cogliano 2000, 159), but there was no guarantee that this be the case, especially it seems if Hamilton had had his way. After Jefferson, as the leader of the newly-formed Republican Party, won the presidency in 1800, Hamilton wrote in private correspondence that he felt he had a “solemn obligation” to “prevent” Jefferson from assuming the presidency in spite of Jefferson’s election. Such actions preventing Jefferson from assuming office, he claimed, would be “justified by unequivocal reason of PUBLIC SAFETY” (emphasis in original quote, S. Dunn 1999, 82).

Thus although these struggles to limit democracy in the United States flourished in the 1970s, they did not begin then. They began centuries earlier during the creation of the U.S. nation itself.

### **3. STRUCTURAL ADJUSTMENTS AND THE IMF**

The advocates of neoliberalism have undertaken to redesign societies in favour of corporate interests and greater corporate power thereby limiting sovereignty and citizens' control of their government. Capitalist societies around the globe have been induced to "restructure" their economies with "structural adjustment programs." The first experiment occurred in Chile. It was implemented by the brutal dictatorship of General Augusto Pinochet, brought to power through machinations spearheaded by the United States government, which colluded to plot the subversion and eventually the violent overthrow of the elected government of Salvador Allende (US Congress 1975, 1-15). In Pinochet's Chile, any opposition to the neoliberal measures was simply met with an iron fist. Subsequently, countries were subjected to "structural adjustment programs" whenever their economies experienced a crisis of debt payment, as occurred when U.S. interest rates rose dramatically in the first few years of the 1980s. They then came under the influence of the International Monetary Fund (IMF), which routinely would oblige them to "restructure" their economy using increasingly severe "austerity measures."

In addition to its regular long-term loans and refinancing of existing debt, from the 1970s onwards, the IMF was redirected by the major industrial nations under the leadership of the USA, to provide "bridge loans" when an economy faltered and the government of that country lacked the necessary finances to even service their existing debt. By the early 1980s, these loans became common occurrences. However, these were loans that came with conditions attached whereby the IMF came to micro-manage

the economies of the indebted countries. The IMF would supply the necessary loans if, and only if, an economy adopted the imposed package of neoliberal policies (Moon 2000, 187). These IMF measures have imposed neoliberalism on countries of the south, sometimes even at the cost of creating economic crises as in the case of Thailand in 1998 and Brazil in 1999. This impact was denounced even by Joseph Stiglitz, chief economist with the World Bank until that year and recipient of the Nobel Prize for Economics in 2001 (Stiglitz 2002, 89-91, 100). Canadian neoliberal Thomas A. Hockin recognizes Stiglitz to be "one of America's more highly respected economists" (Hockin 2001, 29).

## **B. THE WORLD TRADE ORGANIZATION**

We are no longer writing the rules of interaction among separate national economies. We are writing the constitution of a single global economy.

-Renato Ruggiero, first Director-General of the World Trade Organization (1995)

A major achievement of the neoliberals was the establishment of a global body to act as the ultimate arbitrator between nations, indeed, a form of world court to impose neoliberalism. This was the World Trade Organization (WTO) established in 1995.

The WTO emerged out of trade negotiations convened under the auspices of the General Agreement of Trade and Tariffs (GATT). The GATT was a creation that was intended in 1947 to serve the needs of a proposed International Trade Organization, the ITO (Moon 2000, 86). But the constitution for the ITO that had been negotiated multinationally, included responsibilities as well as rights for transnational corporations

(Brown 1950, 163-9), including the acceptance of opinions from the International World Court as binding (Brown 1950, 233). The ITO constitution was never ratified. The failure of ratification in the U.S. Congress in 1949 signaled to other countries its international death (Barlow and Clarke 1997, 13). The GATT, however, bastard offspring of an aborted project, continued to exist.

It was Canada (in 1990, in the person of Trade Minister, John Crosbie) that formally proposed the creation of the WTO. By 1998, Canada had become one of the four members of the all-powerful neoliberal "Quad" group - the other three being the USA, the European Union and Japan (Hockin 2001, 30). This is indicative of the totally accommodating and subservient role of the Canadian federal government in relation to the more powerful nations in bringing about this new anti-democratic model. It was, after all, also Canada that drafted and promoted within the Organization for Economic Cooperation and Development (OECD) the miscarried Multilateral Agreement on Investment (MAI) - a bill of corporate rights without accompanying responsibilities. The process had been overseen by Canadian Liberal former trade minister, Roy MacLaren (Barlow and Clarke 1997, 2-3).

The introduction of neoliberalism meant that some institutions, such as the Bretton Woods institutions, the IMF and World Bank, needed to have their roles redefined. Others had yet to be created. Arguably the most powerful of these is the WTO. There is only one organization in the world whose rulings have the impact of changing the laws of potentially any member nation. It is the World Trade Organization.

From where did it come? Its authority stems from a 26,000 page treaty (1,000 pages, plus appendices) known as the "Agreement Establishing the World Trade Organization," that brought the WTO into effect on January 1, 1995 (Jackson 1998, 36).

How did the WTO come to hold so much power? The very same governments that had been loath to empower a World Court of Justice seem to have had no difficulty in extending such power to a body that would regulate trade. This is because the means of the WTO for exerting power over member nations, if they refuse to repeal any domestic laws overruled by the WTO, lay exclusively with the larger industrialized nations. Thus the power that is institutionalized through the WTO is a power that is already disproportionately held by the most industrialized and capitalized nations in the world: the power of economic sanctions. These are the only overt forms of pressure to be applied to ensure compliance with WTO rulings.

How does this work specifically? At the request of a member, the Dispute Settlement Body (DSB), a special assembly of all WTO member nations, is obliged to convene a panel to decide over any trade dispute (Folsom et al 1996, 79-80). If a negotiated solution is not found, then a panel is drawn up of three judges who are chosen from among the list of "well-qualified persons" (Folsom et al. 1996, 82), typically trade lawyers. These are powerful panels, mandated to form groups of experts or to call upon whatever information they need, including receiving confidential information from governments, and to produce a final report on the dispute within six months (Folsom et al. 1996, 84). If the decision is appealed, it goes to an Appellate Body, formed of seven

anonymous judges. This is a highly unusual and original form of world court (Commonwealth Secretariat 1999, 43).

The ruling of a panel or Appellate Body needs to be endorsed by the DSB without modifications, but with the strange proviso that the endorsement is necessarily automatic unless the DSB agrees unanimously to overturn the decision. Since this consensus would also involve the member nations that were part of the complaint, it is difficult to imagine that this mechanism would ever be employed (Folsom et al. 1996, 80, 85-6). The solution involves either the elimination of the offending legislation and practices by the nation found guilty of violating trade agreements or a negotiated solution involving some form of compensation. Failing this, the aggrieved nation may apply to impose trade sanctions on the offending party or, alternatively, lift its own obligations to that party (Commonwealth Secretariat 1999, 43).

#### **1. "NON-TARIFF BARRIERS TO TRADE"**

The extension of the "free trade" discussions to areas well beyond trade was accomplished in the GATT discussions during the 1973-79 Tokyo Round (Barlow and Clarke 2001, 68). Later the WTO itself pushed its mandate to cover all domains that may in any way, however indirectly, result in some degree of impact on foreign trade. This was achieved by neoliberals by extending the jurisdiction of trade regulation to also cover "non-tariff trade barriers."

Trade could now simply overrule all other concerns, indeed, almost "everything a government does" (Barlow and Clarke 2001, 68). Such "non-tariff barriers" may include almost any provision that contributes to the creation of a comparative advantage. These non-tariff barriers include among other issues: health and safety regulations, environmental laws, norms governing product standards or safety, customs procedures and government procurement issues (Folsom et al. 1996, 94). As in the MAI proposal, the WTO does not draw a distinction among service providers whether they be public agencies, for-profit corporations, or voluntary not-for-profit organizations.

Not one of the WTO rulings to date has reaffirmed a single piece of protective legislation that has been challenged in the name of trade, be this environmental, health and safety, or human rights. When trade was involved, the WTO has ruled against them all, cushioning responses with the claim that there is nothing wrong with having such policies as long as they do not impact trade. Trade trumps all else (Stiglitz 2002, 216). As Steven Shrybman writes in referring to the inordinate powers of the WTO, "(I)t is not unrealistic to regard the WTO as the first effective world government in human history" (1999a, 144).

As Daniel Finn stated, writing for the U.S. National Council of Churches, once we acknowledge that for reasons of basic social justice there need be a long list of so-called "non-tariff barriers," then the question must be framed not as one of "free trade" or not but what sort of regulatory framework is needed (1996, 254). This perspective, however, falls under the logic of civil society but not the logic of capital. Without the

ability to design a regulatory framework, no country will retain any significant degree of national sovereignty nor will any form of self-governance be possible.

## **2. NAFTA PROVISIONS**

Two of the most controversial and radical provisions of the North American Free Trade Agreement (NAFTA) that undermine the potential for democratic governance were also among the most repudiated elements of the MAI. With the collapse of the MAI in May 1998 through popular opposition in which Canadian civil society under the leadership of the Council of Canadians played a dominant role (Barlow and Clarke 2001), both provisions were then targeted instead for inclusion under the WTO and the Free Trade Area of the Americas (FTAA). These are the provisions of "national treatment" and "expropriation." The appearance of multiple levels of increasingly complex trade agreements and provisions that defer to and seek to harmonize with more global bodies and agreements, such as the WTO, result in a "ratcheting up" of neoliberal measures.

### **a. "NATIONAL TREATMENT"**

The "national treatment" clause, found in NAFTA's chapter 11, extends a specific set of rights to foreign corporations within any national market. It requires that no foreign corporation be treated less favourably than any domestic corporation. Domestic corporations may be given less benefits than foreign investors enjoy, but it is illegal under international trade law for the opposite to be the case (Shrybman 1999a, 125).



"National treatment" is one of the new investor rights established for corporations under NAFTA (Shrybman 1999a, 125). It is also a major provision under the WTO (Moon 2000, 108-9).

**b. "EXPROPRIATION"**

"Expropriation" in "free trade" terminology refers to the elimination of a market opportunity when a government declares a previously imported product unacceptable for importation for some reason. The first case under the provision of the NAFTA was the challenge raised by Ethyl Corporation regarding Canada's ban in 1996 on the importation of MMT, a substitute for lead as an additive to gasoline, because its manganese content could act as a neurotoxin (Shrybman 1999a, 132-3) and could damage the pollution control devices including catalytic converters. Ethyl Corporation managed to extract under the NAFTA provisions over \$20 million in compensation together with a reversal of the Canadian ban on the importation of MMT even though it remained banned in numerous US states.

The introduction of these measures signifies the birth of an entirely new type of trade regime - one that has shifted from a voluntary, negotiated form to an imposed, binding resolution. But the shift does not end there. Instead of trade regulations being limited to exclusively trade matters, jurisdiction has been expanded until trade concerns dominate over all others, resulting in governments being unable to implement public

policy and the WTO increasingly constricting this sphere of national sovereignty (Shrybman 1999a, 144).

Where was the discussion among citizens over whether they wanted this radical change imposed by government and capital? For the most part, there was no informed public debate that resulted in popular support for these policies. There would, of course, be an explosive response, but it was not immediate. It was only once the effects of WTO rulings became visible to civil society that a popular response made itself felt. In North America, this would take five years.

The neoliberal mechanisms outlined above necessarily erode the basis for democratic governance. A chill factor has resulted in governments no longer even attempting to introduce progressive legislation which they believe may later be shot down by the WTO or other trade agreements (Shrybman, 1999b). An entirely new regime of rights is in formation: a regime of corporate rights. What remains of the commons is being enclosed at a rapid rate, as the world is quickly being privatized and commodified.<sup>57</sup>

One significant result of these new institutionalized neoliberal relations is that legislative bodies, no matter how willing, will no longer have the ability to freely determine policy at any level of government. Instead, decision-making will be situated

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<sup>57</sup> The enclosure of the commons refers to the elimination of common property in favour of private property during the establishment of capitalism and the erosion of communal life. Modern day commons includes such basic services that have been until recently provided by the public sector as local water supplies, healthcare, prisons, public education and even patenting of lifeforms and human genes to name some of the more controversial areas of privatization.

elsewhere, certainly not under democratic rule nor even governmental rule, but instead corporate rule. Politicians are increasingly reduced to being managers of a system controlled by corporate decisions rather than part of sovereign governments, no matter how undemocratic they may be.

These major transformations to a neoliberal economy and political structure are forms of strategic action, as Habermas refers to them. These are actions, rooted in the system,<sup>58</sup> not the lifeworld, and carried out through formal organization, institutions and bureaucracies. They use resources of the system, typically money and power for managing or "steering" the economy and the administration respectively (Habermas 1996, 54-6), to achieve given ends, which, although not based on reaching any agreement, still seek the "consent" of civil society to obtain greater legitimacy. For Habermas, the system and the lifeworld become differentiated to the degree the system becomes more complex and the lifeworld more rational (1984, II, 153-4).

When the corporations follow a logic of maximizing profit at any cost, as justified by neoliberalism, civil society is under attack. The U.S. Fortune 500 industrial corporations, in the early years of neoliberalism between 1980 and 1993, "downsized" their corporations with massive lay-offs totaling 4.4 million jobs in spite of their sales

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<sup>58</sup> Through the use of the concept of "system," Habermas draws a distinction between it and the lifeworld that results for him in a two-level concept of society (McCarthy 1984, xxiii). The term "system," for Habermas, refers to the structure of impersonal interconnections that mediate, integrate and coordinate actions, even though those involved may not realize nor intend this outcome (Crossley 1996, 107). I use the term "system" to provide an additional framework within which to view social relations, without endorsing, nor indeed even engaging with, the relationship in Habermas's usage between the concepts of system and lifeworld.

growing during this same period by forty percent and their assets more than doubling (Korten 1998, 15).

Invoking Adam Smith as their ideologue, neoliberals have often maintained that here they found justification for their radical "free market" approach. But even Adam Smith, although he wrote when capitalism was still in its initial development, was perfectly aware that such markets conditions could only offer choice if there were no monopolies. Once a monopoly emerged in any sector, Smith called for government intervention to control it, for without such control, he knew that industrialists would tend to engage in practices that would be contrary to the public interests (Copley 1995, 10; Rosenberg 1976, 25).

Today there are few sectors of economic activity that are not dominated by powerful monopoly corporations. They have used their power to amass enormous wealth. By 1996, there were 447 billionaires in the world, almost double the number of five years previous (Korten 1998, 10). Inevitably neoliberal policies have generated among civil society a response of outrage. Part of the response of civil society has been to generate its own dialogue within which communicative action has played a significant part, as we will see in the following chapter.

### **C. SEATTLE: THIRD MINISTERIAL CONFERENCE OF THE WTO**

Defenders of the WTO have been quick to declare that street demonstrations outside the Third Ministerial Conference in Seattle from November 30 to December 3, 1999 were not responsible for the failures inside (Schott & Watal 2000, 283).

These defenders of neoliberalism are correct insofar as it was not directly the blocking of the streets and the inability of the delegates to arrive that created the failed meeting, although the non-violent direct action did delay the opening for a day. Rather, as an African delegate informed some of the protesters in the streets, delegates from the South supported the non-violent direct actions outside because they gave those from the South inside a greater inclination to challenge the impunity of the industrialized nations, especially the host government, the US (Rateel, December 99). A most acute focus of tension was the so-called Green Room, where only a few more powerful representatives from the South were allowed to participate in negotiating the first draft of new policies, but most were excluded and outraged since the selection of participants was made behind closed doors by the most industrialized nations (Schott & Watal 2000, 285).

#### **SEATTLE'S NON-VIOLENT DIRECT ACTION**

Once the rulings of the WTO became increasingly known, the realization slowly began to sink in that the so-called Free Trade Agreements were actually introducing a new form of governance based on corporate rights and power. WTO rulings by 1999

against the U.S. Clean Air Act, the U.S. Marine Mammal Protection Act, and Endangered Species Act meant that environmentalists who worked on these issues or cared about them knew what the WTO stood for and what it stood against. It stood for increased trade – any trade - at the cost of environmental protection (Wallach and Sforza 1999, 19-29). Still under attack but unresolved at the time of the WTO third ministerial meeting in Seattle were the following environmental issues: meaningful standards for the electronics manufacturing industry; Kyoto Treaty; bans on trapping; and the threat of making illegal any form of eco-labeling (Walach and Sforza 1999, 30-42).

WTO rulings on challenges to human rights legislation have all been against such provisions. By 1999 these included the understanding that a ban on importing goods made with child labour would violate the GATT provisions and the WTO ruling that a boycott of Burmese imports (and therefore any nation's imports) because of human rights' violations was illegal (Wallach and Sforza 1999, 174, 186, 188). Human rights activists were aghast at this new radical, monstrosity of an international body that was overturning laws of sovereign nations.

Jubilee 2000, a world coalition of different religions and denominations, called for people to go to Seattle to pressure for the forgiving of the debts to the less industrialized and unindustrialized nations. A wide spectrum of groups that struggled for social justice in one form or another found common cause to speak out and act out against the WTO. Diverse grouping organized days of educationals, street actions, mobilization, marches, panel discussions, open mikes and workshops. All shared an

outrage in one form or another, at the power extended to the undemocratic WTO and the radical measures that this silent power shift implied.

WTO agreements support the proliferation of genetically modified organisms and threaten to outlaw legislation that called for labeling GMO products (Wallach and Saforza 1999, 90-5). Indeed in whatever field there had been a WTO ruling on challenges to progressive legislation, no matter whether it protected a species, the environment, health and safety, labour, standards, public health, or human rights, the WTO had consistently ruled against such legislation. The word was out. Many people in numerous sectors chose to respond to the presence of the WTO in Seattle. A call to develop forms of non-violent direct action from a newly created Direct Action Network (DAN) went out ten months before the conference was held. Large numbers of youth, especially the youth, responded to the call. Impressive numbers of them on November 30 were between seventeen and twenty-three years of age.

In spite of careful planning through the DAN established in Seattle by *Art and Revolution* of San Francisco and the Ruckus Society, the protest was met with extreme violence from the state. A few dozen members of the *black bloc* late in the afternoon intentionally engaged in very selective property damage targeting major transnational corporations that employ inhumane practices, although the *black bloc* clarified it was careful to commit no violence against any person. The state, however, unleashed a series of very violent attacks from early in the day, long before the property damage. None of the violent attacks during the day were ever against the *black bloc*; all were against

pacifist protesters amassed in the streets. They employed chemical warfare, at least in the late afternoon if not sooner, using not only tear gas (OC) and pepper spray, but also CN gas, an irritant gas suspended in methylene chloride, which constitutes 50% of the spray's content. Methylene chloride is a known toxic chemical, cited since the 1980s in medical literature as a carcinogenic agent (EPA, 3-7). It is also known to cause birth defects among pregnant women who are exposed to it or women who become pregnant even months after exposure. These chemicals were publicly acknowledged by the Seattle Police Department when pressured in the aftermath of the protests under the Public Disclosure Act by the Washington Toxics Coalition, alarmed by the widespread serious symptoms reported by the medics and physicians who attended the protesters who were gassed. These are mechanisms of state terror. Methylene chloride is specifically banned by international treaty for use in warfare against hostile forces, yet it was used by the US government **against its own population** in efforts to curb peaceful protest and dissent. The fact that no known mainstream media outlet in North America even reported this story reveals a level of complicity by the corporate media.<sup>59</sup>

Even the brutal attacks by the security forces, under orders from the state at its multiple levels, were barely criticized in the mainstream media, never mind the usage of chemical warfare. Instead, the attacks by the security forces on those engaged in non-violent civil disobedience have come to be characterized as a response to "the violent

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<sup>59</sup> I, like others, attempted to interest the mainstream media in covering the story by providing the information and copies of the admission to mainstream outlets to no avail. Especially disappointing was a reporter for *MacLean's* magazine who, when interviewing me immediately after November 30, had claimed she could get any story printed if it were actually newsworthy. One wonders what standards for newsworthiness are employed to not include coverage of this crime against humanity. Only the Vancouver alternative weekly, *The Georgia Straight*, dared to print the story.



street protests" as though it were the protesters who engaged in violence (Schott 2000, 3). Sometimes this dismissive portrayal is only implicit, although equally powerful, through characterizing of the street conflicts as the "Battle of Seattle" (Moon 2000, 110-1).

#### **D. NEW DEMOCRATIC POTENTIAL**

The street actions in Seattle on N30<sup>60</sup> were part of a global movement against neoliberalism as will be clarified in the following chapter. They were the result of meetings held since February earlier that year. At these meetings, a fundamentally discursive process determined the actions that culminated in activity in the streets on N30. Many of these meetings seem to have been based on communicative action. The equivalent meetings in Vancouver in preparation for contingents of activists to go to Seattle certainly were. These new spaces in an emerging public sphere of civil society differed from the more formal meetings of "representatives" of different organizations, many representing NGOs and a few trade unions. The styles of meeting were entirely different; they operated with different logics.

These different logics reflect the norms and practices of different political cultures - one administrative and the other democratic. In Vancouver, the administrative position was reflected in the organizing efforts of *Trading Strategies*, while the communicative action of a more democratic political culture was evident within *Vancouver Grassroots Alliance* (VGA) before N30 and, afterwards, the *Vancouver Committee Against*

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<sup>60</sup> The "N30" notation is for November 30, as M16 (May 16, 1998) or J18 (June 18, 1999) had already been used to designate the dates of previous global days of action.

*Corporate Globalization* (VCACG), the *Vancouver Direct Action Network* (VAN-DAN) as well as others. The *Trading Strategies* coalition would typically have its agenda as well as all major decisions worked out before the meeting even began. Its officials sincerely believed themselves responsible in having done so as a contribution to the meeting, not a sabotage of it. The meetings of the grassroots groups, responding to a new situation, would be open to all aspects of any issue, including how to organize the meeting itself. The process of *Trading Strategies* appeared to these activists to be undemocratic and centralist.

Some meetings of *Trading Strategies* came closer to adopting forms of communicative action than others. But always over the major issues, strategic action predominated. This is in reference to process, not sympathies or political persuasions. When a direct action organizer, having attended various organizing meetings in and around Seattle, attended a *Trading Strategies* meeting a month before the Seattle day of action and informed the meeting that there would be 10,000 non-violent protesters in the streets of Seattle, he was received with thunderous applause. Even his declaration that "The revolution is on!" was warmly received. However, while sympathies may have overlapped, there were significant differences of process between the grassroots committees and the coalition of NGOs.

The grassroots committees (VGA, VCACG, VAN-DAN) adopted the logic of civil society, rooted in concerns of survival and sustainability, while the NGOs typically carry some degree of institutional bias and administrative process from within the system.

NGOs, while being part of civil society, are certainly not its spokespersons. If they adhere to the logic of capital (most common when NGOs are dependent on its financing) or the logic of the state (when dependent on the state instead of capital), then they may well be part of civil society, but they would be under the logic of a different sphere, having been "colonized," as Habermas puts it, by the logic of that other sphere.

New expressions and slogans emerged to creatively express rights of civil society and their complaints of injustice under neoliberalism. "Speak truth to power" encapsulates the need for civil society to articulate unstated knowledge and challenge those who hold power in our societies. Since Seattle (as well as earlier in more marginal contexts), the movement in North America has frequently raised the slogan to "reclaim democracy" as was already prevalent in Vancouver following organizing arising out of Zapatista campaigns. It characterizes the overall thrust of the radical elements of the anti-neoliberal movement. Seattle also widely diffused two slogans that emerged from different ethnic enclaves in the U.S. The first, "Ain't no power like the power of the people, cuz the power of the people don't stop!" comes from urban Afro-American struggles and speaks to the resilience of popular struggles and the power of a unified people. It became a declaration of empowerment. Secondly was "Si, se puede!" ("Yes, we can!") from the Chicanos and Mexican migrant workers. These slogans are expressions of unity in a range of struggles. Most of these slogans would later be heard during organizing efforts on the streets of Washington DC, Vancouver, Quebec City, Ottawa (or in other cities on the days of protest in the cities cited above) and probably

many of the other cities that joined in organizing protests for global neoliberal meetings or even outside the Democratic and Republican conventions in the USA.

One of the most powerful slogans in the streets invoked democracy: "This is what democracy looks like!" For the most part in Seattle the slogan was used to point towards the absurdity of the government declaring itself to be democratic when it was so blatantly repressive. The slogan has increasingly come to be used since Seattle, to point towards actions of civil society that actually are democratic.

As the unity of this new social bloc solidified over the following twenty-two months (until the challenges from September 11, 2001), a new logic emerged on the international stage. Although it has been years in evolution, it has erupted with an explosion. It is the logic of civil society, as a voice for *rationality* - a clear voice of sanity and survival in a world of irrationality. No longer would the logic of the marketplace operate unchallenged, as it largely had in North America throughout the 1990s until N30 in Seattle. The loss of hegemony over the agenda, the terms and the content of the debate in the media resulted when the direct action moved from an activity framed in the mainstream media as "deviant" to one of legitimate controversy. This new social force served notice that it would no longer be silenced.

## E. THE LOGIC OF CIVIL SOCIETY

How can radically different understandings coexist over such fundamental issues as democracy? The differences reflect the existence and usage of multiple forms of logic: that of capital, the state and civil society. Each of these three major dominant spheres in modern society functions in accordance with its own internal organizing logic, with different imperatives, concepts, assumptions and conclusions. What may be a "logical" conclusion within one realm could indeed appear entirely illogical within another domain under a different framework or organizing logic.

For example, the *logic of capital* would conclude that wealth has been created even when the last fish of a given species is pulled from the ocean and killed. Again wealth is said to be created when an environmental disaster occurs and opportunities for clean-up contracts result. Yet these very same actions, under the *logic of civil society*, would be viewed as serious crimes against nature. Two diametrically opposed views therefore result from radically different interpretations of the same action, as a product of different organizing logics, rooted in spheres that operate on entirely different assumptions.

A schematic portrayal of the relations among these spheres could employ a Venn diagram, where three circles intersect with one another and in one central instance where all three spheres may even overlap. To conceive of three neat circles of equal size representing these spheres would clearly miss the essential point. It is simply that each of

these three pervasive systems of logic would tend to intersect with the others in different instances. We could think of each as a sphere for it would tend to have its own internal organizing logic governing its analysis and actions. The activities that find themselves in overlapping areas of two or more spheres would necessarily be subject to the push and pulls of the organizing logic of more than one sphere. Which logic would dominate and under what circumstances would be points of severe contestation.

A range of alternatives exists, including that the logic of one of the spheres dominates over all inter-spheric transactions. One example of this would be where the state manages to corporatize civil society, as under fascism, and to prevent any form of autonomous action. A similar example, but this time from the perspective of civil society, could be when a social movement creates a political party, say the German Green Party or the Workers Party in Brazil, which then participates in the political realm and finds its positions increasingly influenced and watered down by a logic other than that of civil society, typically from the state (not wanting to lose the financial support or political power provided by the state). From a perspective of the logic of the state, this may be seen as merely being "realistic." But from the logic of civil society, it would imply a qualitative shift resulting in abandoning the organizing logic of one's own lifeworld in favour of that of another set of interests. From that perspective, it exemplifies the essence of co-optation of civil society. This does not mean to imply that there are not inevitably numerous differences within the framework of civil society, but it does delineates these differences and their potential resolution as being qualitatively different from the interests of capital or a bourgeois state.

When any one sphere becomes dominated by the logic of another sphere, it may be considered to be "colonized" by the logic of the other (Habermas 1984, II, 333). A current example of such colonization would be the neoliberal assumption that the state can effectively be governed by the logic of the market place - a position that seeks to justify the current massive social cuts imposed by neoliberal policies. The state then comes to operate not in accordance with the logic of the state itself but with the logic of capital. This is the logic of the "bottom line" of profitability, justifying massive spending cuts as an economic imperative to reduce a government's debt and/or deficit at all costs.

The logic of capital says "let the market decide," as it pursues an objective of profit maximization and expanded capital accumulation. The logic of the state says, from a perspective that claims to be neutral, "let the state arbitrate" among conflicting interests, as it monopolizes violence in its effort to preserve the existing mode of production. The logic of civil society, for its part, says "let rational discussion decide," as it attempts to meet human needs in the pursuit of humanity's survival and well-being. This rational discussion, of course, requires the constituting of an alternative public sphere in which civil society may engage in communicative action, a practice that lies at the heart of democratic governance.

While both the state and capital strategically employ power and money, as Habermas says, to "steer" society, civil society for its part relies principally on *solidarity* as a means by which to assert power in any significant sense. This occurs at all levels:

solidarity through seeking to understand the struggles of others; solidarity in adopting practices that arise out of any new understanding, such as Fair Trade if the issue were so-called Free Trade; solidarity in action of many kinds that support the struggle for social justice. Thus solidarity lies at the very heart of any successful new social movement, as the global anti-neoliberal movement has already clearly demonstrated. Dynamic social movements are necessarily integral to a healthy civil society in any democracy (Cohen and Arato 1992, p19). The new public sphere of civil society being built is rooted precisely in the principles of solidarity, mutual respect, inclusivity and assertive forms of mass direct action. It is also displaying effective use of well coordinated, decentralized and autonomous forms of organizing. To build forms of democratic governance, no matter how, will necessarily require communicative action.

Like the ancient and historical examples of self-governing politics discussed in earlier chapters, the people struggling for democratic governance today are discovering what democracy looks like through shared reflection on their lived experiences. A new public sphere would be based on principles of solidarity, mutual respect, and inclusivity, employing mass direct action and forms of decentralized and autonomous organization.



## CHAPTER TEN

### COMMUNICATIVE ACTION: "THIS IS WHAT DEMOCRACY LOOKS LIKE!"

From the host of democratic mechanisms and institutions presented thus far, which ones can be identified as essential to democracy, that is, without which there could simply be no democracy?

The assembly? Perhaps. Certainly many would argue that without assemblies at the local level, there could be no democracy. While this may be true, the mere existence of an assembly, in itself, proves nothing since subsequent levels of organizing that coordinate local communities could possibly be empowered to nullify any decisions made at the local level. Besides some assemblies may, of course, simply not be democratic in nature. Open, inclusive and dynamic assemblies would, therefore, seem to be necessary, but not sufficient. In some ways, the above question seems ill posed, for it is not merely a mechanism nor institution that is critical for democracy's existence. More appropriately there is a type of social action that is common to democratic governance and critical to its existence. It is one that we have come across frequently thus far. It embodies the democratic spirit and can be said to capture the essence of democracy itself. Indeed an assembly is necessary for it to occur. It is communicative action.

This is a conclusion derived from personal experience. I first learned of communicative action through practice in 1968,<sup>61</sup> but I only learned the name for this social action in the 1990s. When an open assembly accepts not only to decide what actions need to be undertaken but also to decide what norms and mechanisms will be used to govern its conduct, a special moment of empowerment is created. The shared experience of collective communicative action can produce a generalized realization that empowerment arises from cooperative actions that are discursively determined. In the process of deciding as a group what to do and how to agree on what to do, invariably there will be moments of cooperation and moments of conflict. As differences are aired and alternatives debated in order to reach decisions, a realization often occurs not only that it is up to us collectively to determine our own lives and how to live them but that we actually can do this and to do so is empowering. Cooperative mass moments in democratic struggles create moments of social communication action. More than any other single element, this one can be identified as an essential component to democratic governance. At the chapter's end is a theoretical explanation, as elaborated by Habermas, for this democratic relationship even at a one-on-one level of communication. However my identification of communicative action as a critical element in democratic experience comes from lived experience and practice, not theoretical arguments. These I would only embrace if they resonate, as they do, with personal experience in the lifeworld.

This chapter, then, presents three recent examples of communicative action arising out of struggles of civil society to confront the irrationality of the social, political,

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<sup>61</sup> This was during a course at Simon Fraser University offered by Martin Nicolas, where my tutorial spent two days discussing *process* in an occupied office of the Board of Governors at SFU, engaged in attempting to re-write the *Communist Manifesto* for an audience of the late twentieth century.

economic and cultural relations created by neoliberalism. They vary considerably in the settings that produced them and demonstrate different aspects of communicative action. They were chosen, not because they are necessarily more important than other examples so much as that they were instances with which the author had first-hand experience as a participant-observer.

First we will look at examples of communicative action as the product of elements from within civil society seeking to build a democratic movement at a global level to challenge the existing power structures. The first examples are from anti-neoliberal organizing that was part of the global political movement that led to the street protests in Seattle. Secondly, we will review a significantly different grassroots instance in which members of civil society successfully challenged the advance of neoliberal relations by achieving a reversal in the positions of their regional government to privatize control over one of the basic necessities of life: the local water supply. Finally, the chapter will review the democratic case made for communicative action by Habermas as what he believes to be the democratic essence found in forms of basic speech merely from being oriented towards understanding.

#### **A. COMMUNICATIVE DIMENSIONS OF THE ZAPATISTAS' *ENCUENTROS***

From July 29 to August 3, 1996, the Zapatista Army for National Liberation (EZLN) held the first *Intercontinental Gathering For Humanity and Against*

*Neoliberalism*, known also by its Spanish name of *Encuentro* (Gathering). This represented a critical historic moment in the constitution of global opposition to neoliberalism. International civil society was invited to attend. The gathering was held in the jungle and mountains of Chiapas - somewhat appropriately, in a war zone. More than two thousand members of international civil society attended, as did hundreds of urban Mexicans who had been vetted by the EZLN for security reasons (Fernandez 1996). The Zapatistas, as hosts, meticulously avoided any form of strategic action and, instead, quietly observed the proceedings and discussions. Other than for the opening and closing ceremonies, they only intervened to ask questions of clarification or when they, as a political movement, were explicitly requested to address an issue; the response to such a request would, of course, only come after a delay for internal discussion.

The Zapatistas showed themselves to be the ideal hosts, providing all the basic necessities for thousands of guests even though some of these "needs" were ones that the local residents could not normally meet for themselves. Latrines and showers were built. In Oventic, electricity was brought in by generator for the first time. The masked Zapatistas who participated in the daily proceedings were typically content with observing and listening, three or four Zapatistas per discussion group of 50 to 150 participants; some would take notes in moments of interesting discussion. Others would nod off to sleep during debates that were clearly unable to produce communicative action. These were on occasion fierce debates among European leftists of different tendencies over points that were understood as irrelevant in the manner they were discussed because they were discussions from a time before neoliberalism that was both

foreign and uninteresting to the Zapatistas. These debates may have been based on either instrumental or strategic action, but certainly not on communicative action. Nonetheless the Zapatistas refrained from intervening to change the course of the discussion to one more conducive to communicative action. Communicative action, nonetheless, did repeatedly emerge, including at the opening assembly where we discussed how to organize ourselves and under what norms we would operate.

Each of the five “Tables” or themes, hosted at five different locations or *Agua Calientes* throughout Zapatista territory in Chiapas, in turn, was divided into sub-themes. Each sub-theme grouping, for its part, decided its own organization and structure. In some cases this included occasional small discussion groups or additional evening meetings; in others, it did not. This overall organizational structure and agenda for discussions at the *Encuentro* was proposed months earlier as the outcome of a planning meeting held in Chiapas and attended by dozens of international delegates, largely European and Mexican. The initial plenaries at each Table, however, decided whether to adopt or modify any proposal before it, as did any smaller grouping.

Table 4 at Oventic was called “What Society is this that is not Civil?” and focused on social issues. In the opening plenary, there were issues raised that were not anticipated nor addressed by the members of Mexican civil society who assisted in preparing the gathering. One of the concerns had to do with the need for greater discussion of “environmental protection”; another had to do with whether to constitute a separate group to address the specific concerns of women or to include these concerns

throughout.<sup>62</sup> But more interesting than the discussion on *what* would be included was the discussion to decide *how* matters would be resolved. This was a dynamic instance of communicative action. The process did not necessarily need to arrive at a consensus, but it did need to determine how decisions would occur. The meeting followed consensus-building norms but without formally adopting any measures. It sought at least to achieve a consensus on what mechanisms would be employed for resolving differences. After protracted discussion in an assembly of the whole, a consensus was reached on the course of action to be followed, that is, how we would divide ourselves and what topics would be discussed in each group. Although it was an instance of consensusbuilding, it managed to avoid the thorny question of what approach would be adopted if a consensus had not been reached.

In spite of the Zapatista communities living in abject poverty, they expended considerable energy and resources on providing the necessary accommodations and staging elaborate ceremonies. There was a pronounced contrast between the simplicity and harshness of a Zapatista community, swept with fog and wind, and the image of an urban foreign woman standing under lights on a huge stage reading a carefully crafted "final statement" from a computer screen. This occurred in a community that prior to the

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<sup>62</sup> The matter was resolved by offering to test how many people were interested in a separate group for "ecology", which were few, while most considered, as with discussions of women, ecology also needed to be considered in every section and every group. However, the assembly also agreed to an evening gathering of women for those interested. These themes later became part of an international consultation before the next gathering to determine whether and, if so, how they should be included in the Second *Encuentro* ([www.geocities.com/CapitolHill/3849/gatherdx.html](http://www.geocities.com/CapitolHill/3849/gatherdx.html)).

*Encuentro* had not only never had computers, but that had never even had electricity; the only running water was what flowed naturally, powered by gravity.

In the closing ceremony at Oventic, the wind blew full force through the night, bringing in rapidly-moving thick clouds, which at times even concealed the stage from the view of thousands of participants sitting in bleachers only fifty meters away. The contrast of such extremely diverse worlds was testimony to the remarkable nature of this new social unity. Common ground was sought and achieved among diverse social forces, who had never before come together. Diverse forces, who were frequently marginalized in the industrialized world, had come together before to support the struggles of liberation movements in the South, but never before had a liberation movement from the South reciprocally embraced all the struggles of those marginalized in the North. The public welcome with which the EZLN greeted the participation of lesbians, those oppressed by the mental health system, and other marginalized groups was unique. It signaled a new stage in the formation of what the Zapatistas identified as “international civil society.” It was the unity of the excluded: the marginalized reconstituted as the embryonic expression of a new majority.

The First *Encuentro* radiated active commitment to revolutionary change in the renewed hope that a new world may be built from the ashes of the old. This sentiment was expressed in various manners. Direct action was advocated for challenging existing

inequities and the building of new relations.<sup>63</sup> Indeed the political movement that would eventually result from this initial effort would pivot on a practice of non-violent direct action.

The Zapatistas have contested and opened (at least momentarily) not only physical space within their own regions but social, cultural and political space well beyond their physical location. Much of this has been discursively defined contestation and opening of space. In the closing comments at *La Realidad*, Subcomandante Marcos read the "Second Declaration of La Realidad" in which he called for all present to not simply return to their respective homes but to continue to "create a collective network of all our particular struggles and resistance." This would be a network "without an organizational structure, without a director nor ruling body, without a central command nor a hierarchy. All of us who resist are the network" (EZLN 1996, 276). A proposed name for this network without a structure was the International of Hope, a term first used in the *First Declaration of La Realidad*, which called for the First *Encuentro* (Ruggiero 1998, 13).

The resulting network would not, however, be called the International of Hope, but instead the Peoples' Global Action, PGA. No matter what its name, the initiative had been launched. For those present, hope had been reborn, renewed in the face of

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<sup>63</sup> From the summary provided by the assembly at *La Realidad* on "political" issues: "It is necessary to recognize that in diverse circumstances, places and moments, people will have to employ passive resistance or pass into civil disobedience or other forms of non-violent action" (1st Encuentro, 61; my translation).



overwhelming odds, hope for a post-neoliberal world, which for most present was clearly a post-capitalist world.

## **B. THE SECOND *ENCUENTRO* FOR HUMANITY AND AGAINST NEOLIBERALISM**

From the five *Aguas Calientes*<sup>64</sup> of Chiapas was born a new international movement. From here emerged a spark that ignited and unified elements of civil society from around the world to shape a militant global democratic opposition to neoliberalism that would employ non-violent direct action and present the first serious opposition to neoliberal rule. Some of those present sought to break out of an academic discursive mode and proposed instead forms of global action with a street presence. A second encounter was agreed at the final plenary of the First *Encuentro* to be called for a year later. It was held in Spain, and like the first, it convened meetings around five different themes: political, economic, social, cultural and indigenous rights, discussed in opening and closing plenaries and dozens of smaller sub-theme meetings held over four days. These were located in five different regions throughout Spain and involved more than 2,000 participants, mostly Europeans.

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<sup>64</sup> The term *Aguas Calientes* refers historically to a town in central Mexico where the 1917 Constitution was hammered out by a constituent assembly during the Mexican Revolution. The name was then given to the Zapatista town, Guadalupe Tepejec, when it hosted a National Democratic Convention in August, 1994 inviting Mexican civil society to Chiapas to discuss how to realize democracy in Mexico (6,000 Mexicans came). When the military attacked again (the first time being in January, 1994) and occupied the town in 1995, four other towns in Chiapas offered to become *Aguas Calientes* and host future meetings as well, while the people from Guadalupe Tepejec established the new settlement nearby of *La Realidad* (reality), which in turn functioned as an *Aguas Calientes*.

The cultural discussions at the Second *Encuentro* in Spain had been divided by the organizers into three different sub-themes. The meeting which addressed issues of mass media and movement politics convened in Barcelona with 146 registered participants. The hosts provided a facilitator, who soon sought to pass the responsibility to another who emerged from the meeting at large since the task was a demanding one. With widespread rejection of the initial proposals from the organizing committee, the assembly itself needed to make major decisions. Initial efforts involving strategic action to support the design of the organizers were met with democratically-based rejection by many present, who pushed instead for dialogue around what the assembly would do. It was widely understood that agendas were only to have been *proposed*, not *adopted* beforehand. The meeting had to determine what would be decided as well as how it would be decided. Thus emerged an instance of communicative action: discussion not only of what norms would apply but also how to decide upon those norms. All was open to questioning, including various norms that some participants had merely assumed would be adopted without question. The situation was clear to those present, yet difficult to articulate. This chapter identifies the major elements involved in this process, especially the vital element of communicative action; this is intended to allow for these dynamics to be reflectively discussed in any similar future situation.

A few participants initially appeared disheartened at what struck them as a prospect of endless discussion and no resolution; they spent the following day on the beaches of Barcelona. But the overwhelming majority were animated. The possibility for communicative action was sensed by many as a necessary component to both the

liberty<sup>65</sup> and democracy that those present claimed to be seeking. Indeed, to the degree that the obstacles were overcome and the discussion proceeded, the experience was one of profound empowerment, generating a contagious energizing sensation voiced by many present.

The assembly agreed to briefly break into small groups to discuss options for the next three days, then to return to the meeting of the whole to assess these different options. The larger group, once reconvened, then decided that for the next three days they would meet in three different sub-groups, of forty to fifty participants each, focusing on three different themes and using distinct approaches to grapple with their respective issues.

Spontaneously the small groups arranged themselves into large circles and selected their own facilitator. All groups decided on the norms that they would adopt; all agreed to operate on consensus-building norms, employing rounds for individual contributions when the topic was initially uncharted terrain. The proceedings were based on principles of inclusion and a broad respect for diversity.

Substantively, focusing on forms of international communication, the merits and demerits of the internet were debated as were the value and forms of decentralized organization and the nature of the network that needed to be built. The internet was cautiously acknowledged to be, for then at least, a useful medium by which civil society

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<sup>65</sup> Liberty is understood here to be a negative freedom, a state of not being subjected to coercion in any form.

in the more industrialized parts of the world could articulate local struggles and exchange information with one another and widely circulate calls for regional or global action. But the internet was also declared to be definitively secondary to any non-mediated communication that was possible (*Second Encuentro* 1997). This non-mediated communication requires, of course, physical travel of some to the locales of others. Only when physical travel was not feasible nor timely was the internet considered to be a useful tool, albeit open to easy monitoring from the very forces against which civil society is struggling (*Second Encuentro* 1997). The nature of the information and potential resulting actions would determine if an on-line message would suffice. The intention was to avoid developing a dependency on this technology.

From this experience of grappling with the dynamics of communicative action, in both the small group and the large, came the shared joy of solving collective problems as well as the concrete matter of learning norms of conduct and discussion that not only were necessary for the meetings at hand to proceed but which were also valuable to take back to attempt to use in different local realities. Norms that have already evolved, sometimes painfully, in one set of circumstances are able to be shared with others sometimes without the lessons needing to be re-learned each time. The emotive element generated from these experiences of communicative action is often extremely intense. When the context is one of determining action, as it would be in future meetings of affinity groups<sup>66</sup> and spokescouncils<sup>67</sup> in preparation for and during street actions of

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<sup>66</sup> Affinity groups are decentralized forms of autonomous political organization, traditionally adopted by anarchists and unlike the hierarchically structured cell formations adopted by Leninist organizations. Affinity groups are composed of those who know and trust one another and jointly commit to undertake some necessary political action.

Seattle, Quebec City, Ottawa and elsewhere, the intensity of the experience and the transformative qualities are potentially profound. As one enters a scenario where it is likely that the police will use considerable force against a group, the bonding experienced can be intense and contribute to a qualitative leap in commitment.

In Spain at the Second *Encuentro*, the recognition that a challenge was presented and that those assembled confronted it effectively with communicative action reinforced an awareness of an existing capacity for self-governance. It was an enclave of alternative relations, which generated an experience of empowerment.

Both the First and Second *Encuentros* left numerous participants animated by their experiences. Although none articulated the experience by identifying it as communicative action, most of those at the gathering described above in the Second *Encuentro* could identify the process itself as what empowered them. The instances of communicative action served to provide moments in which the ability to manage group process democratically became central. They were moments where those present oriented their actions towards seeking understanding. These moments of communicative action were ones which spoke to the feasibility of establishing democratic process.

These communicative actions created a sense that together those present could resolve matters, that less than democratic practices would be challenged, that we need to

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<sup>67</sup> Spokescouncils have been employed in North America for coordinating mass direct action since the preparations for Seattle's N30 and have been used to prepare all subsequent militant mass street actions. Only one member of an affinity group that is preparing some form of direct action need take part on behalf the entire affinity group. This is to avoid revealing the identity of the members of the affinity group until after the action has occurred in order to prevent the action from being compromised.

assess continually whether the means at our disposal are the most appropriate ones.

Communicative actions were oriented towards reaching an understanding among those present. All pledged to offer their support for a mutually-agreed-upon option if that option sought to be rational, inclusive and just. The norms adopted were consensus-building ones. These were moments of empowerment created through instances of self-determination and self-governance. Communicative actions are the experiential building blocks in learning to construct a democratic society.

### **C. AN HISTORIC MOMENT: "WE ARE AS TRANSNATIONAL AS CAPITAL"**

Following the closing plenary of the Second *Encuentro*, in El Indiano, fifty participants from both North and South remained to discuss the launching of a new action-oriented organization. It was agreed to convene a founding meeting for Peoples' Global Action against "Free" Trade and the WTO in February 1998 in Geneva. The initial basis of unity was around four points: i) a clear rejection of the WTO and other institutions of multinationals and speculators; ii) a confrontational attitude "since we do not think that lobbying can have a major impact in such biased and undemocratic organizations, in which transnational capital is the only real policy-maker"; iii) the call for use of non-violent civil disobedience and the building of local alternative relations; and iv) an organizational philosophy of decentralization and autonomy ([www.agp.org](http://www.agp.org)).

A Conveners' Committee was constituted in El Indiano, which was entrusted with organizing the founding meeting of the Peoples' Global Action (PGA). This Conveners' Committee was composed of the CST - Central Sandinista de Trabajadores (Sandinistas Workers Confederation, Nicaragua), FZLN - Frente Zapatista de Liberacion Nacional (Zapatista Front for National Liberation, Mexico), KRRS - Karnataka State Farmers Association (India), Red de Mujeres Indigenas (Indigenous Women's Network, Americas and Oceania), Fair Play Europe!, KAP - Philippines Peasants' Movement (Philippines), Mama 86 (Ukraine), FIA - Foundation for Independent Analysis/ Foundation for Independent Aotearoa (Aotearoa/ New Zealand), MST - Movement of Landless Workers (Brazil), and MOSEP - Movement for the Survival of the Ogoni People (Nigeria) ([www.agp.org](http://www.agp.org)).

Between February 23 and 25, 1998, more than three hundred delegates from seventy-one countries of all the inhabited continents met in Geneva and founded the Peoples' Global Action Against "Free" Trade and the WTO (PGA Bulletin #1). The PGA was defined as being neither an organization which "represented" nor which was "represented" by anyone nor any organization. It was instead conceived of as a **process** - a process of coordinating international action against so-called "Free" Trade and the WTO. What there is of "organization" is dedicated exclusively to the end of facilitating this process. The PGA adopted the four basic points listed above, which served as the basis of unity until the next PGA conference in August 1999 in Bangalore, India added an additional point: to oppose all forms of discrimination and systems of domination, such as patriarchy, religious fundamentalism, and racism (PGA Bulletin, #4.1).

The first planned PGA action was against the second ministerial meeting of the WTO in Geneva May 16-20, 1998. Official elites, who had been invited to celebrate fifty years of multilateral trade regimes through the GATT and more recently the WTO were greeted by ten thousand protestors, street theatre and non-violent direct action. Mass activities, aiming to make May 16 a global day of resistance, were held in twenty-nine countries (PGA Bulletin #2.2). From 50 people in Estonia to 50,000 in Brasilia or 100,000 in Hyderabad, India, people around the world protested the WTO and their respective government's involvement (PGA Bulletin #2.2).

May 16, 1998 was the first day of global action called by the PGA, but it would not be the last. PGA's second global day of action was June 18, 1999 (henceforth referred to as "J18"); it was the opening day of the G8 meeting in Cologne, Germany. Its third global day of action would be the opening of the third WTO ministerial conference in Seattle on November 30 (or "N30") and lasting until December 3, 1999 (PGA, 10 April 1999). A fourth global day of action, decided at the PGA conference in Bangalore, India, was selected for May 1, 2000, also referred to as Mayday2K or M1 (PGA Bulletin #4).

The J18 activities had the character in Cologne, London, Geneva, Madrid and elsewhere, of a festival of resistance: costumes, street theatre, street performers, and a combative spirit of confrontation with neoliberalism and capitalism itself ([www.nondo50.org/reclaim/](http://www.nondo50.org/reclaim/)). In total 122 cities in forty-one countries participated in



J18; twenty-five of these were in India; nineteen were in England (PGA-Ottawa press release June 18 1999). But there were only a handful involved in North America. In Canada, only three cities participated; in Vancouver a meager thirty-five people turned out, albeit organized within only a few days.

In the USA, there were a reported 500 people in the streets of the financial district of New York (with thirty arrested), 500 in San Francisco, 100 in Boston, 600 in Washington DC (RST NY, June 19 1999) and 160 in Eugene, Oregon ([bak.spc.org/j18/site/usa.html](http://bak.spc.org/j18/site/usa.html)). For J18, there were more than five times as many mobilized among the Ogoni nation alone in Nigeria as there were in all of the United States. The next PGA global day of action would be different. It would be on the North American continent, and it initiated North America's serious involvement in the days of global action. It was Seattle N30, where some 50,000 participated in the organized march through the streets, while an estimated 10,000 to 15,000 participated in forms of direct action. Although this was merely continuing with a practice of global protest initiated first from Europe, North American mainstream media claimed that the anti-neoliberal movement "began" in Seattle.

#### **D. COMMUNICATIVE ACTION IN GREATER VANCOUVER**

In 2001 the Greater Vancouver Regional District (GVRD), responsible for the drinking water of the region, had decided to involve the private sector. They had invited

bids from four select international consortia. The involvement of any one of them would have meant that the terms and conditions of international so-called Free Trade agreements would govern the future control of the region's water. Few citizens of the region were attentive to the developments within the GVRD as they unfolded throughout the year, but when residents of the region found out at the last moment what was at stake, a powerful response from civil society developed. Many people had recently become informed through activities and publications of the impacts of the so-called Free Trade agreements during the recent Summit of the Americas in Quebec City only a few months earlier. The empowering experience of that struggle for civil society came at a public meeting called by the GVRD on June 14, 2001.

It was only after extensive debate that the GVRD decided to even call a public meeting at all. It would be only one meeting. It would be the means through which they intended to explain, but not alter, their plans for a private consortium to build and run a new filtration plant for the region's water supply. A month later, the GVRD formally cancelled its proposed plans for a private sector design-build-operate contract as a result of that meeting. This reversal was a direct outcome of citizens' communicative action.

At that initial and lone public meeting on June 14, 2001, the terms of the debate were set. At one moment, a chant erupted and grew among many of the boisterous overflowing crowd that packed the room: "This is what democracy looks like!" It came in response and as a challenge to Marvin Hunt, the head of the GVRD Water Committee, who claimed to be not only a democrat but a proponent of direct democracy, although he

refused to support or implement public opinion even if it were unanimous (as was that overflowing meeting). He arrogantly claimed he would still refuse to do so even if multiple regional meetings were called by the GVRD and all so demanded.

The gulf between the two sides in terms of differences in understanding of "democracy" could not have been greater. Radically divergent perspectives were presented by these two imbalanced sides (a handful of GVRD officials vs. a roomful of local citizens) with each side embracing not only different, but opposing, meanings of democracy. For those from the GVRD, it was a question of defending their strategic action even though no consent was about to occur. They avoided discussion of alternative meanings of democracy. That debate they would leave for others. For those from civil society, it was an exercise in challenging hegemonic ideology to retain control of the local water supply that resulted in actually building instances of democracy by learning through practice, which is the principal way in which civil society learns how to engage in such large fora.

The only legitimacy, in so-called democratic terms, for the five government officials present (three Board members and two civil servants) lay with the Board members, who had been elected to a municipal level of government, which in turn selected them to sit on the GVRD Board. As "democracy" is allegedly reducible to elections, they assumed the mantle of democracy through institutional power. Besides the three GVRD officials making presentations, there were also two Board members who

sat in a corner and, as if to delegitimize themselves, refused to even identify themselves to the public when asked!

On the other side, present in the room, were some 460 members of the public, out of some 850 to 1,000 people who had come to the meeting in spite of a lockout of public transportation. The GVRD signed up 200 of the people remaining outside who requested to be informed of a future meeting, while GVRD employees claimed that more than that number, who could not enter the meeting, left without even leaving their name. Only 460 were allowed into the room, which according to fire regulations ought to be used to accommodate no more than 390. Before opening proceedings, the GVRD announced that since not everyone who came could enter, they would call another such meeting the following week. The very calling of an additional forum was seen as a victory, for it would allow for further discussion and organizing.

The 460 who packed the room were members of civil society. For them the logic of sound argument and consideration of their future interests were fundamental. The dominant mode of presentation appealed to rationality. The dominant sentiment was solidarity. Be they unionized blue-collar workers, unemployed housewives, office workers, irate students, lawyers, pensioners, members of neighbourhood councils - all spoke with one single objective. Each who spoke presented a different comment from a wide range of backgrounds, but all contributed to the same critique of neoliberal economics around water as it was to impact, or already had impacted, on their own life or as they understood the situation from their informed perspective, either as a professional

or as a concerned member of the public. Together they wove a fine cloth of reason to explain why it was neither reasonable nor acceptable to continue with the GVRD filtration plan as proposed. The process that civil society adopted was one of communicative action. They adopted an approach invoking communicative action by aiming to reach an understanding and a consensus for action, at least among themselves, even though the GVRD officials continued to defend their strategic action. This was an instance that invoked forms of direct action, including a march of more than 100 painted people through the streets as a “Living River”, who entered the meeting with militant chants and set a militant tone, while insisting on public discursively-determined outcomes. Dryzek, who stresses the discursive or deliberative dimension of democracy as pivotal, maintains that "democracy can be sought both within and against authority" (Dryzek 1996, 150).

For those from civil society, this was a political assembly that could discursively determine a position among all those present - a call to abandon the proposed design-build-operate contract for one of four private, invited consortia, all of whom had a foreign component that would invoke international trade rules, effectively removing the regional water supply from local residents' control. Two distinct logics were invoked, that of capital presented by the GVRD and that of civil society. After scrutiny, only one would continue to stand as rational and logical. The offering of the contract on the local water system to a non-Canadian company would subject that contract to the terms and conditions of the so-called Free Trade agreements. This would mean that a contractual relationship with such a consortium of private corporations could not be terminated

unless the GVRD or the Canadian government committed to paying the equivalent of the contract's value to that consortium in perpetuity. This would be the case only if there were foreign corporations within the consortium contracted. All four of the consortia from which the GVRD solicited tenders included foreign corporations.

To stop extension of such a watershed contract, numerous democratic norms and mechanisms were invoked. That the officials responsible were required to respond to questions from the public was an example of democratic measures functioning as they had never functioned before with the GVRD. Government employees and politicians were obliged to answer questions regarding their intended contracting of a private foreign consortium. When a question was evaded, speaker after speaker insisted on a response and often got it, although the answers were unsatisfactory.

The public forum, although explicitly declared beforehand by the GVRD as not intended to influence its decision, was converted by those from civil society who were present from a state-orchestrated function into a functioning political public sphere. Regional non-democratic government became subjected to citizens' democratic pressure demanding accountability. There was also a predisposition for direct action that ensured that the meeting would not be a mockery. It aimed to guarantee that opinions divergent from those of the government could be expressed in a collective effort to explain the irrationality involved in proceeding with the GVRD's proposal while exposing any efforts at deception. The tone was set when the Living River arrived, chanting militant

slogans and a huge banner reading "Don't Privatize Our Water." It was reinforced when the crowd chanted such slogans as "This is what democracy looks like!"

The assembled members of civil society, despite their diversity of social backgrounds and political perspectives, understood without a word being uttered that they needed to speak with a single voice, albeit as multi-inflected as possible, in order to obtain what they all sought. The hostile context of a government offensive to implement yet more neoliberal measures and put potential for democracy even further distant demanded unity in response. One apparent consensus (as indicated by a vote of those present) was around the need for a plebiscite on the issue (referred to as a referendum), although not everyone there actually agreed with the measure owing to its lack of clarity, all voted in agreement. For those better informed of democratic practice, the disagreement with unqualified "referenda" was the manner in which referenda have been typically conducted in advanced capitalist societies, without adequate constraints on spending. Yet this was clearly not the moment to raise that point. Not a word of debate was offered in an effort to not divide popular forces. The issue of referenda had already been discussed in various circles, including some of those most active ones in civil society. The most recent context in which the issue had been raised was one still unfolding at that point, that addressed the undemocratic nature of holding a referendum over inalienable rights or even historical rights, such as the rights of First Nations under attack by the Liberal government of British Columbia. For some, this was understood as clearly a farcical abuse of the original democratic intent of referenda, but it was understood that interpretation over the definition and nature of a referendum could be

clarified later. In the meeting, however, priorities were understood; one of those was unity of the popular forces. All chose to vote in favour of the referendum or not vote at all, including not abstaining, making the show of hands unanimous. The moment was oriented towards understanding and action where the specifics of a referendum were deemed momentarily of secondary importance.

The lone politician among the three GVRD officials took a hard line in refusing to be influenced by or to concede anything to the meeting. Yet democratic pressures were still exerted effectively. Had the officials left, the meeting would have still continued, perhaps assuming a more militant tone. The building belonged to the union of the local fire-fighters, who clearly saw themselves as part of civil society and interested in retaining local control over the water supply. Had the meeting continued without GVRD officials present, there would definitely have been an effort to culminate the process of communicative action by determining both process and further action through consensus-building mechanisms. As it was, the strategic action of the GVRD towards complying with partisan interests and an undisclosed agenda in their privatization proposal was exposed for what it was: a move against the interests of the people they allegedly serve, favourable instead to large, corporate interests, and therefore from the logic of civil society or a democratic state, irrational.

The slogan "This is what democracy looks like," of course, has a history. It was widely chanted in the streets of Seattle during the WTO ministerial conference and has often been exclaimed in anti-neoliberal street protests since that time, inflected at times to



question the actions of a repressive state that is clearly operating with excessive force, and at others to point out actions that actually are democratic. In this instance, it was clearer than ever how the direct action was in fact what democracy looks like and not merely direct action protesting non-democratic corporate governance.

Fresh from the streets of Quebec City, some local activists were able to adapt the same tactics for publicizing and communicating this regional concern. Street theatre, the Living River (people dressed in blue, many with their faces painted blue, who "snaked" their way through crowds) and leafleting helped spread the word through neighbourhoods on various occasions in the week before the event. Anti-corporate globalization networks became involved as this was a concrete local example of resistance to global neoliberal measures. There was only one week to mobilize for the GVRD meeting. Environmental organizations sent the word out through their networks around the region. The union of the local watershed workers, the Canadian Union of Public Employees (CUPE), ensured that the labour movement was informed, as well as having commissioned both a legal opinion against the proposal and a formal survey of opinion regarding the proposal. The CUPE officials involved in the confrontation with the GVRD presented no differences in strategy from those of the grassroots, unlike the alienating organizing style of organized labour in *Trading Strategies* described in Chapter Nine.

Those present would seem to have agreed with Rousseau that when citizens prefer to pay others to fight for them and even to govern for them, "Thanks to laziness and

money, they end up with soldiers to enslave the country and deputies to sell it" (Rousseau [1762] 1968, 140).

## **E. COMMUNICATIVE ACTION AS LEFWORLD CREATION**

Communicative action functions not only at a societal level but also at the level of language competency. It does so by seeking shared understandings as part of the process of learning to use a complex language system, especially in modern societies. The very need to reach an understanding requires that reciprocal terms and conditions be extended in debate to all parties involved, under circumstances where it is difficult to exclude anyone interested in participating (Habermas 1996, 361). This would be a critical embodiment of democracy for it would be a democratic relationship found embedded in the very practice of speech acts. If Habermas is correct, speech acts themselves are most efficient when they are most democratic. They create the conditions conducive to democratic governance by establishing an egalitarian, reciprocal exchange, motivated by both parties seeking to achieve understanding. As Jeffrey Alexander states, these processes "carry inside themselves the potential for critique and transcendence of the status quo" (1991, 51). This would mean that even if there were "forces of darkness" unleashed by neoliberalism that extinguished all trace and understanding of democratic governance and rights in the lifeworld, the spark to ignite a new wave of democratic struggle which seems to have been so "natural" in our distant past, may be found embedded in the very process of language.

Habermas develops a model of communicative action that is oriented to reaching understanding as opposed to imposing coercion. He refuses to privilege the objectifying attitude, maintaining that anyone who learns a language can shift among the "perspectives of the first, second, and third persons" (Habermas 1998a, 267). With any speech act, she who speaks establishes through speech a relation with her subjective, the social and the objective worlds, corresponding to the first, second and third person in speech (Habermas 1998a, 313-4). In doing so, she relates to something in the subjective and social worlds differently than she would to something in the objective world (Habermas 1992a, 76). These relations embedded in speech acts solicit reciprocity; they construct conditions of mutual interdependence through the very process of seeking understanding.

Habermas claims that speech acts aim at being acknowledged intersubjectively by speaker and hearer and that they can only be verified or rejected discursively and with reasons (Habermas 1998b, 293). In this sense communicative action for Habermas demands rationality; it provides all the necessary aspects for argumentation. It also has the consequence, for Habermas, of being cooperative relations of responsibility and commitment to achieving understanding (Cooke 1998, 4). This power is the rational potential built into everyday processes of communication (Cooke 1998, 5).

Habermas describes the network of communicative actions as "nourished by resources of the lifeworld" and "at the same time the medium by which concrete forms of

life are produced" (1998a, 316). Communicative action is contrasted with strategic action in that the former coordinates action through "the rationally motivating force" of reaching understanding (1992, 80). Reason, "by its very nature," is embodied both in "communicative action itself and in the structures of the lifeworld" (1998a, 322).

The lifeworld provides a store of taken-for-granted elements from which "communicative participants draw consensual interpretive patterns in their efforts at interpretation" (Habermas 1998a, 298). Communicative action can be seen as the medium through which the lifeworld reproduces itself by propagating cultural traditions, integrating groups by norms and values and socializing succeeding generations (Habermas 1998a, 299). These processes are understood to "operate only in the medium of action oriented toward reaching an understanding" (Habermas 1993, 102), which places communicative action in a very central location indeed.

## **F. CONCLUSION**

Challenging the privatization of water in Greater Vancouver is, of course, merely one of countless instances of citizens' resistance that have evolved in response to the neoliberal offensive around the globe. It is just one of numerous examples where the momentum for resistance to corporate globalization resulted through communicative action in local expressions of resistance over specific neoliberal projects in the face of strategic action by politicians. These are instances where civil society, through its

expressions and interaction with a system that seems ever less rational, seeks to build in its stead democratic relations of governance.

In attempting to identify what are the specific elements that emerged from the global movement for democracy and against neoliberalism, there seem to be various lessons from one instance that seem to have carried over to strengthen the democratic movement in other contexts. There is, of course, the appreciation of elements of proactivity and of human agency in even coming together to address a problem. There are the theoretical understandings of what is neoliberalism and how to think about it in order to combat it. There are the experiences of non-violent direct actions, through numerous forms of creative expression, that produced the desired effects, at least for those present, of exposing the irrationality of strategic actions advanced by the state and capital. There is the solidarity of civil society, which creates a deeply bonding experience for those from civil society. But above all are the actual practices developed during such gatherings. Most important of them all is clearly the practice of communicative action, although of those who participated in the above examples, there were likely few, if any, who had heard of, nor who would understand, that term as employed here. However, it was because of communicative action that the meetings discussed above came to have the impact that they did on building the global democratic movement that has emerged. There is little doubt that it will be because of communicative action that the movement for democracy will grow in the future.

Further, if Habermas's theory of communicative action at the interpersonal level of one-to-one discussion, outside of political meetings, is correct in claiming that this communicative action is democratic in its essence, then one can rest assured that no matter how dark the period of political oppression may become, the very central concept of democratic relations will always be preserved, if nowhere else, in the basic components of human speech. This emerges from the mere pursuit of orienting discussion towards a mutual understanding.

## **CHAPTER ELEVEN:**

### **DEMOCRACY: THE RECONSTRUCTION OF COMMUNICATIVE ACTION AS HISTORICAL PROCESS**

In this work I have traced how prehistorical and early historical societies had a lifeworld and system which seem to have been integrally bound to one another. I have shown the mechanisms of democratic practice at both the local and national levels and the circumstances under which they evolved. With the development of hierarchical relations in early tribal societies and the emergence of the patriarchal state, communicative action was increasingly replaced by institutional political authority. To regain democratic practice, the element of communicative action needs to be reclaimed. Efforts to do this will inevitably come into conflict with existing political authority. In the last few years of the twentieth century, vibrant social and political movements against neoliberalism evolved. When this process of communicative actions ultimately results in the reintegration of the lifeworld and system through forms of democratic governance, then we can once again live in a world no longer fractured and based on social, political and cultural alienation.

Knowledge of the existence over millennia of a matrifocal and in all likelihood egalitarian society (even if it were limited to only Old Europe and western and southern Asia) allows us to anchor ourselves and our analytic framework in a past that can be contrasted with the most profound and insidious elements of one of the master narratives of contemporary society, that of patriarchy.

In regards to today's world, there is an "indissoluble tension" between capitalism and democracy, as Habermas referred to it (1984, II, 345), resulting from the irrationality that dominates modern societies (Habermas 1992a, 225-6). Neoliberalism is not rational. Rationality would likely require, if not the dissolution of capital as we know it today, then at least a shift in power from the corporate sector to that of civil society functioning under democratic norms in a new radical public sphere. With such a contradiction embedded within existing capitalist societies, how then may we approach a democratic solution?

#### **A. PUBLIC SPHERES: BEYOND THE BOURGEOIS**

The overriding demand and strategic objective that unifies this new potentially revolutionary social bloc to **reclaim democracy** would require the creation of alternative public spheres, very active and extensive ones given the number of people who could potentially become involved. What would these look like? As we saw above, the bourgeois public sphere has long exhausted itself. There will necessarily have to be a new form of dynamic public spheres through which to build a new form of governance.

For one, they would be more inclusive; for another, they would be more participatory and not limited to a mere vote for elected officials every few years. Rather, alternative public spheres would be based on and promote forms of direct or participatory democracy. Citizens would assemble, discuss and arrive at concrete, political,



discursively-determined actions, governed by self-determined democratic norms and increasingly sophisticated procedures. These would be the public spheres of the popular<sup>68</sup> classes: popular public spheres of civil society.

Such public spheres would occupy different public spaces; they would be shaped differently and involve entirely different relations - democracy-building ones. Popular public spaces would not, of course, be centred in salons or parlours, as in Habermas's early bourgeois public sphere, with their unusual quality of being public spaces created in privately-owned settings, be these homes or businesses. These venues, by their very class nature have been exclusionary for most of the popular classes. Unlike a bourgeois public sphere, a popular public sphere being more inclusive would present a cacophony of voices and a much wider range of opinions. These would cover a range of different kinds of popular opinions, rooted in interests different from those that dominate today.

These popular public spheres would locate and construct power differently than bourgeois public spheres. They would embody the communal spirit (Dewey 1927, 216) and likely incorporate even some of the practices of village and town communes. During the feudal and early capitalist years, we do not find a democratic tradition in the royal courts nor the British Parliament of the landed aristocracy turned mercantile capitalist as occurred in the British Isles (Habermas 1989, 57); rather the democratic tradition was found in the communal past, among the very relations that capitalism sought to extinguish. The communes, not Parliaments or Congresses, are the forerunners of any

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<sup>68</sup> "Popular" makes reference to "the people," in as inclusive manner as possible without including classes whose economic survival depends on the exploitation of others. This perspective is from that of the classes that are the most numerous in any society.

present and future democratic practices. A popular public sphere would have no Parliament, but it would indeed have assemblies. The roots of modern electoral so-called "democracies" run to Rome through the Magna Carta, the Petition of Rights, and the Glorious Revolution; they do not pass through Athens or communal relations, urban or rural (Wood 1996, 132).

Much of the space needed for activities of the public sphere is likely to be public space; the public nature of this space needs to be reclaimed and dedicated to community-building. Among such spaces are community centres, local public halls, schools, colleges, universities, theatres, churches, buildings owned by cooperatives, unions and collectives that are offered for public meetings. Parks, plazas and diverse public settings, even the streets - indeed, especially the streets, are also necessary as spaces of public contestation. The former would largely be used for discussion and assemblies; the latter, for mass actions. Mass action would arise out of communicative action reached in the former settings. Construction of an alternative public sphere for democratic governance in both spaces requires reclaiming the commons.

Discursive interaction alone can contribute to the emergence of pockets of a new public sphere in civil society. Indeed, as Habermas wrote, public spheres are constituted from the very processes of language, whereby "linguistically constituted public space" can through communicative action result in the constitution of public spaces themselves. These public spaces can be consolidated into nascent forms of public spheres in the form of popular assemblies (Habermas 1996, 361).

One of the most basic elements of an alternative public sphere - to cite a contemporary example - would seem to be the coming together of a community into neighbourhood assemblies, supplemented by massive assemblies of delegates from each neighbourhood to coordinate the grassroots efforts, as has been occurring in urban centres throughout Argentina since December 2001. These new forms of community organization are careful to maintain their non-hierarchical nature while seeking to address the needs of the community that the almost-bankrupt state neglects. Different committees have been organized for different purposes. Some organize food cooperatives, buying in bulk. Others volunteer their skilled labour to reconnect homes to the public utility grids or to attend to the house-bound ill or elderly. Some create community gardens, while others build neighbourhood banks and health clinics. All reportedly agree the traditional government and politicians are corrupt and useless. There are more than fifty such neighbourhood assemblies that meet each Friday in Buenos Aires alone. Each one sends delegates to an open assembly in Parque Centenario (Centennial Park) on Sunday to coordinate actions across the entire city; sometimes four thousand people attend (Valente 2002a, 2002b).

Factories declared bankrupt and closed in Argentina are sometimes re-opened by the workers. They have adopted forms of worker control, such as Brukman Clothing in Buenos Aires, Zanon Ceramics in Neuquen or La Baskonia metal factory in La Matanza. The workers and neighbourhood assemblies have organized coordination with one another on a local and national level (Workers Declaration, April 2002). Few people in

North America are aware of the events brewing in Argentina, while much suggests these activities may be the cutting edge in demonstrating forms of survival during the transition beyond neoliberalism. There is simply no informative coverage of these activities in the Canadian mainstream mass media. Instead Canadian media privilege stories on Argentina that suggest Scotia Bank is being unfairly treated owing to pending legal consequences resulting from its failure to return deposits in dollars to those who deposited dollars in their Buenos Aires accounts.<sup>69</sup>

Local and regional currencies have existed throughout the country for years. Interestingly, the IMF had micromanaged the Argentine economy for two decades before the government went broke. Argentina, with its massive restructuring under IMF dictates, had until recently been referred to for a decade as one of the few "success" stories of neoliberalism in Latin America (Glade 1991, 153; Stiglitz 2002, 69, 79, 129). Today it is neoliberalism's horror story and in the forefront of modeling democratic responses that seek to transcend not only neoliberalism but capitalism.

Assemblies are politically "owned" by those who attend them when the participants make a meeting theirs in an inclusive manner, using it to make decisions that are then implemented. These can be community-building experiences. Assemblies may, of course, be convened by different people for different reasons. But those assemblies that grow out of communicative action and in which communicative action can develop are those in which people exercise their communicative rights. Meetings called for the

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<sup>69</sup> Information for those who read Spanish may be readily obtained on on-going events regarding the popular assemblies through the *Indymedia* site in Buenos Aires: <http://argentina.indymedia.org/>. The Inter Press Service and [a-infos@tao.ca](mailto:a-infos@tao.ca) offer information on Argentina in multiple languages including English.

purpose of deciding a course of action can be conducive to communicative action. But so are meetings called merely to explore a new situation. Some of the rights invoked in these assemblies would be the same communicative rights as established by liberal democrats: freedom of speech, press, assembly and association (Habermas 1996, 368). But a further right, a democratic right, would also be assumed (indeed **the** democratic right): the right to govern themselves - the right to build a democracy.

For Habermas, a public sphere distinguishes itself through its communication structure, which is related to the social space generated by communicative action (1996, 360). This space is identified as the product of a speech situation. "Every encounter in which actors do not just observe each other but take a second-person attitude, reciprocally attributing communicative freedoms to each other, unfolds in a linguistically constituted public space" (Habermas 1996, 361).

These assemblies would need to be public spaces in which rights were clearly and discursively established as inalienable rights. Assemblies are the basic instance of gathering for a large collective or community. Being dialogic, communication is the essence of community building; it is the very substance not only of all culture but of all social interaction. It is essential to our humanity. A circle or an assembly is a collective's most basic non-hierarchical organizational form. The repeated use of assemblies of millennia would likely have contributed to encouraging liberal democrats so readily to enshrine the communicative freedoms of both speech and assembly.

Any alternative public sphere today would necessarily embrace and promote democratic principles in all of their variants and complexities. Many of the same basic principles that evolved in the Swiss alpine cantons and the Athenian assemblies may well be employed. Community building requires the use of consensus-building mechanisms, although not necessarily ever reaching a consensus, guided by a willingness to compromise. If resources are involved, then there would need to be an equitable division of both benefits and responsibilities based on proportionality when divisibility is possible and drawing lots when it is not. There would have to be limited power for any official, and selection of such officials would likely occur by rotation when possible and by sortition when not. Elections would likely only be for those positions where extremely specialized and critical skills were required. As with the democratic societies of the past, the specific mechanisms that evolve will tend to reflect the very specific conditions of a given society at a particular moment in its history.

With the mainstream mass media, predominantly motivated by profit and oriented ideologically towards not undermining the continued existence of the capitalist relations that generate their profit, any concerns over democratic principles are far too easily relegated to a secondary importance. Thus a popular public sphere would require the elaboration of alternative forms of communication, alternative media networks, including new forms of media, adapted to new demands to serve as the backbone of democratic communication. Nevertheless, if successful in mobilizing civil society itself, democratic issues would necessarily erupt from time to time in the mainstream media as well.

While face-to-face communication should be privileged whenever possible, it is not always a viable option. There need to be means to supplement in-person discussions. Among mass-mediated forms of communication, there have for decades been numerous pockets of alternative media that have for the most part been unable to effectively share their resources. New forms of mediated communication and new modes of access to alternative sources of information would seem likely to accompany any new alternative popular public sphere. While this problem had been recognized in the 1990s (at the Zapatista *Encuentros* of 1996 and 1997), it was not until the turn of the century that the problem was effectively addressed with the practice of the imperfect, yet highly valuable, *Indymedias* and multi-lingual listservs exemplified by the *a-infos* news service provided by TAO Communications of Toronto and Vancouver, the latter which recently re-constituted itself as “Resist!ca”.

When democracy is thought of existing along a continuum measured by degrees (Elklit 1994) or "scalar" ("along the spectrum of the more or less democratic" Hyland 1995, 53), then we run the risk of losing sight of qualitative shifts. The slippery slope then exists whereby all too easily a single element can come to be cited as justification for the most undemocratic practices. All too often this lone element is the mere existence of electoral politics. The demonstration elections of U.S. client-states such as El Salvador, pre-socialist Vietnam or most Latin American, Caribbean and some southeast Asian "controlled democracies" of the 1970s and 1980s have shown the severe limitation of using this lone criterion as indicator (Herman & Brodhead 1984).

Voting for officials is hardly the essence of a democracy, although it may play a small role under some unusual circumstances. A democracy demands circumstances where a people govern themselves in an on-going participatory manner. I would claim that from a much more rigorous and more accurate perspective, if there were to be a single constituent element for defining a thoroughly democratic society or democratic practice to achieve such a society, it would certainly not be elections, but instead the existence or not of communicative action at the political level, whereby a collective consciously decides the norms under which decisions are made as well as making these decisions. No other single factor can be isolated as a determinant factor as can communicative action.

## **B. HABERMAS AND DEMOCRATIC THEORY**

Having drawn heavily from Habermas in addressing the issues of democratic governance, through both his three-part model of civil society and his contribution of communicative action, one may reasonably assume that Habermas might qualify, at least in my opinion, as a good contemporary democratic theorist. Is this the case? Let us, then, review Habermas and democratic theory.

Most remarkably for someone who provides fundamental rational argument for the creation of democratic conditions, Habermas fails like so many others to be rigorous in his usage of the term "democracy" itself, which he describes as "the unfinished project of modernity" (Bohman 1996, 211). Often when he uses the term (1984, II, 344-5, 360-



1; 1996, 299, 301, 307), it is difficult to distinguish if he is using his own definition or merely accepting that of the theorist whom he is critiquing (1996, 345, 349, and 356). It is therefore useful to look to instances in which the usage Habermas adopts is clearly outside the constraints of merely attempting to reference existing electoral systems (Habermas 1996, 359). These may be found in Habermas's discussion of radical democracy.

In one such instance, in contrast to having dealt with the public sphere "as a communication structure rooted in the lifeworld through the associational network of civil society," Habermas alternatively refers to the public sphere from the "perspective of democratic theory." But here he claims the public sphere had to "not only detect and identify problems but also convincingly and *influentially* thematize them, furnish them with possible solutions, and dramatize them in such a way that they are taken up and dealt with by parliamentary complexes" (Habermas 1996, 359). Here Habermas clearly limits his understanding of democratic theory to the contemporary electoral system. He does not entertain democratic institutions beyond the existing electoral, non-democratic ones.

Habermas echoes Cohen and Arato in claiming they "rightly emphasize the limited scope for action that civil society and the public sphere afford to non-institutional political movements and forms of political expression" (Habermas 1996, 371). He goes on to say:

...But political steering can often take only an indirect approach and must, as we have seen, leave intact the modes of operation internal to functional

systems and other highly organized spheres of action. As a result, democratic movements emerging from civil society must give up holistic aspirations to a self-organizing society, aspirations that also undergirded Marxist ideas of social revolution. Civil society can directly transform only itself, and it can have at most an indirect effect on the self-transformation of the political system; generally it has an influence only on the personnel and programming in this system (Habermas 1996, 372).

Habermas then adds, "These can *develop* in the wake of democratization processes but they cannot be *brought about* through intervention" (emphasis in original; 1996, 372). It is easy to agree with the claim that new democratic forms can emerge after a democratic process has occurred; but it is not clear at all that they can emerge only then. It is not clear as to why civil society in its moments of insurrection, mobilized against the exposed strategic action of partisan interests and organized into massive neighbourhood assemblies, coordinated through city-wide, then regional assemblies of delegates and engaged in various forms of communicative action would be unable to intervene to actively relocate power to democratic institutions and processes, in short, why a democratic revolution is not feasible.

Were Habermas arguing that the centralized nature of the "socialist" states made them unable to create democratic forms of governance or that a given political party cannot merely dictate or decree a new model that would be democratic, then the claims would resonate. But to claim that civil society is unable to create democratic forms of governance suggests denying the very possibility that civil society can be an agent for radical social and political change, whether through the creation of new democratic institutions or, at a minimum, through the radical transformation of those that exist by

means of relocating power in democratic bodies. There would necessarily be a process of building democratic relations, but from where else would that process find leadership if not civil society. How else would new democratic processes be introduced and institutionalized, if not through a new alternative public sphere of civil society?

Cohen and Arato, whom Habermas endorses on this issue, call for movements in civil society to supplement, but not replace, the competitive party system or other aspects of what they call "allegedly undemocratic" electoral systems (1992, 7, 20). Indeed they claim that "the task is to guarantee the autonomy of the modern state and economy while simultaneously protecting civil society..." (1992, 25). Tactically I could understand, although perhaps not agree with, the desire to allow capital its autonomy, in order for civil society to regain its own autonomy. But strategically, why would civil society possibly want to guarantee the autonomy of capital (or the economy as Cohen and Arato label it in the above quote) instead of trying to control it through the state or civil society? Civil society must instead create entirely new political relations and institutions.

Not only do Cohen and Arato refer to the "self-limiting" practices of civil society and "self-limiting radicalism" but also to "self-limiting revolution" (Cohen & Arato 1992, 74). They agree with Bobbio in discarding the notion of a radical rupture in civil society (Cohen & Arato 1992, 173) and of revolution, democratic or otherwise. This call for a "continuation of liberal democracy" (Cohen & Arato 1992, 471) is highly problematic and calls out for deeper scrutiny in view of the experiences of historical, democratic practices, which they seem to ignore. Habermas, Cohen and Arato are seemingly

reacting to the Eastern European efforts to establish socialism from above. But as with Eastern Europe, it is civil society, not the state, which needs to be protected or conserved. For civil society, through its public sphere, to create new political forms for democratic governance there is no need to violate the integrity nor autonomy of civil society. There is only the need to question the right of bourgeois electoral forms to continue unchallenged.

In this same vein, Habermas points to the political constitution of liberal bourgeois electoral regimes as the ultimate guarantor of freedoms and rights (1996, 368). In this light, like Cohen and Arato, Habermas conceives of any new, democratic, alternative public sphere as working only to complement, not to replace, existing parliamentary bodies (Habermas 1996, 484). Habermas justifies this reformist position with the claim that the complexity of modern societies does not allow otherwise (Habermas 1996, 372). This position leads Cohen and Arato to abandon all expectations for radical democracy (Cohen & Arato 1992, 454) pulling back more than Habermas, who continues to refer to himself, in spite of his reformism, as a "radical democrat" (Bohman 1996, 214). As James Bohman says, in reference to Habermas attempting to combine liberal constitutionalism with radical democracy, in such a framework "the question is whether anything remains of radical democracy" (Bohman 1996, 208). With Thomas McCarthy, who also acknowledges Habermas as often having declared his support for participatory democracy, I too wonder, if self-determination, political equality and citizen participation in decision-making are essential elements of a democracy for

Habermas, how can he continue to claim this could be part of the existing political *system* (McCarthy 1991, 132), merely complementing electoral politics?

Radical democracy would entail a radical re-interpretation of liberal rights and freedoms. A constitutional framework for radical democratic governance may indeed be desirable as Athenian democracy suggests (although Rhaetian and Swiss democracy had an unwritten constitution since theirs were predominantly oral cultures), but it is not at all clear that this would be the completion of existing liberal constitutions and able to be carried out under their framework. While it is easy to agree that forms of non-violent direct action may achieve dual objectives as Habermas states, it is not clear that the process could ever yield the completion of existing constitutions nor that this would be the preferred outcome. More viable would seem to be the establishment of delegated constituent assemblies empowered by local assemblies to coordinate the reformulation of an entirely new democratic constitution. If autonomous public spheres understood their task to be the building of democratic relations and democratic governance, then they would pursue the building of democratic relations by whatever means possible, including creating alternative ones. Momentary reforms in the process of struggling for strategic democratic objectives may well follow the course Habermas outlines. But to follow that course would be a political decision of the assemblies so constituted; it is not an integral structural condition nor the only option.

Habermas's allegiance to the existing political institutions seems to be a significant limiting factor, questioning his ultimate acceptance of any revolutionary

change, when only revolutionary change will allow for broad democratic relations to be established. After dismissing revolution as “a notion of the nineteenth century,” Habermas concluded, “The only way is to radicalize those institutions that we have already established in Western countries, to direct them toward a form of radical democracy...” (Habermas 1992b, 469-70). This is a poor manner in which to formulate an approach to the problem. The only way to establish democratic relations throughout society is to build an alternative democratic power, discursively determined within civil society, that seeks to democratize society and from that perspective to assess which existing institutions would serve the needs of new democratic forms of governance. These might, indeed, include some existing political institutions, and then again they might well not. That is not the central question. The central question is where power is located and how it is exercised. At times one has to wonder whether Habermas may have simply forgotten that the “system” he has identified is merely part of the superstructure that, of course, will change as the relations of production are redefined.

Habermas’s identification with radical democracy, although not apparent in his reformist social and political positions, is expressed in his support for non-violent direct action since at least 1986 ([1986] 1998a, 224-5) and re-affirmed a decade later (1996, 382-3). In these instances, he endorsed the civil disobedience form of direct action long before it erupted onto the international stage. He classified civil disobedience as non-violent actions of symbolic rule violation in an expression of protest against illegitimacy vis-a-vis constitutional principles. These are actions that Habermas claims appeal to two constituencies: the parliamentarians and to the sense of justice in civil society (Habermas

1996, 383). They are actions taken from a perspective that sees the constitution as an unfinished project (Habermas 1996, 384). In light of the limited response from parliamentarians in a neoliberal world, these actions would seem to need primarily to be forms of non-violent direct action that capture the hearts and minds of those of civil society who see them.

### **C. RECENT EXEMPLARY ACTIONS DEMANDING DEMOCRACY**

Exemplary in this light are the critical focal points for the challenge of neoliberalism that emerged, at the turn of the century, around the meetings, first of the WTO, then the IMF and World Bank, and soon of every important international instance that promoted neoliberalism. The multiple levels of public action around these meetings were exemplary in revealing the creative capacity of civil society and its astounding ability to unify under necessary conditions. No longer would these meetings of corporate power go unacknowledged and unchallenged, instead they would be converted into instances of movement growth and resistance to neoliberalism. From Seattle to Quebec City, this included the following.

- Informative public meetings at which the most authoritative, diverse, critical voices conveyed of the assaults occurring against civil society;
- A web of political, social and cultural activities held by a host of coalitions of diverse organizations of civil society allowed space for extremely diverse sectors of civil society;
- A militant street presence was celebrated as a "carnival against capitalism";

- Novel and exciting cultural forms conveyed clear political points in the streets (large puppets; street theatre; radical cheerleaders);
- Creative, clear slogans resonated with the lifeworld of popular sectors;
- Popular media included Indymedia websites created for the purpose of building actions surrounding the event and disseminating information about them before and afterwards; these were fed by volunteer postings to the websites;
- Marches and rallies brought together thousands of people with an over-arching message and a unified presence, while diffusing multiple messages regarding points of injury to civil society by neoliberalism in all its expressions;
- Non-violent direct action was undertaken by thousands of protesters, organized into affinity groups and trained in non-violent mechanisms in the preceding months; and
- Spokescouncils with delegates from affinity groups were often held until the time of the event. Occasionally they occurred spontaneously. They coordinated the actions of any amount of affinity groups, allowing for anonymity of most members of an affinity when desired.

In seeking alternative relations, these concentrations of critical and active citizens are likely to generate numerous instances of political communicative action. Spokescouncils would seem to be the most conducive, but organizing meetings for almost any task easily results in communicative action. The organizing of each task then becomes both a learning and an empowering experience, a veritable school for democracy.



It has not been the electoral aspects of modern societies that have embodied what there have been of democratic practices in contemporary capitalist societies. It has been, instead, the democratic rights and freedoms established as norms, no matter how frequently violated, which indeed have been among the few democratic elements in capitalist societies (Habermas 1996, 368-9). A continual loss of these rights and freedoms through long-term erosion has resulted from growing corporate rights. This in turn has been exacerbated with the passing of so-called anti-terrorist legislation in the months immediately following September 11, 2001, seriously eroding civil liberties and democratic rights, while criminalizing dissent. But the U.S. Federal Bureau of Investigations (FBI) had already criminalized dissent in May 2001 following Quebec City. At their website defining the interpretation of domestic terrorism, they classified anyone who participates in organizing a *Carnival Against Capitalism* or a *Reclaim the Streets!* event as a terrorist ([www.fbi.gov/congress//congress01/free0501991.htm](http://www.fbi.gov/congress//congress01/free0501991.htm)). As the rights of citizens "die out little by little," "the protests of the weak (become) treated as seditious murmurs" (Rousseau [1755] 1992, 64).

Already in 1996, however, a Rand Corporation study, prepared for the U.S. Office of the Secretary of Defense by John Arquilla and David Ronfeldt in a bellicose move, framed the use of electronic media by NGOs for purposes even of lobbying elected officials to respect human rights as "netwar" (1996, 48, 71). In both this and a similar study commissioned by the U.S. Army two years later, the authors consistently associate legal, political opposition that uses the internet as a form of communication with

organized crime, concluding that "netwar is a natural next mode of conflict and crime" (Arquilla & Ronfeldt 1996, 43).

The more political regimes in the dying years of capitalism make a mockery of liberal democratic rights and violate their own alleged ideals with impunity, the more likely that alternative political relations, rights and norms will constitute themselves outside existing institutions, traditions and practices.

#### **D. CONCLUSIONS**

In this work, I have traced how democracy came to be so thoroughly distorted, forgotten and replaced by forms of non-democratic rule based on electoral politics. Like W. Joshua Miller I would simply call an electoral system *liberal* and reserve the term *democracy* for what is typically referred to thought of as "direct democracy" (Miller 1991, 11). I have pointed to a history of allegedly representative forms of government being presented as democratic when they are clearly far from that. One of the cornerstones of democratic practice over millennia, sortition, is today not only not practiced, but almost unknown. Democracy has been born anew in different periods, without a body of democratic theory to guide its emergence. Instead it has arisen, time and again, generated from internal dynamics at different historical instances. This point should not be dismissed lightly. The prehistoric societies, where widespread and prolonged egalitarian relations dominated for millennia, seem to serve as testimony that

such relations were once commonplace in much, if not all, of the world. We do not know how far back into our past these relations might extend. We do know that it was for millennia, but the existence of early goddess figurines as far back as 22,000 years suggest that it may well extend that far back or possibly further. From this perspective, it would be patriarchy which would be the anomaly, even though patriarchy is presented in today's world as natural and normal, as being "inevitable" and simply beyond question when envisioning alternatives to the option imposed by the Trilateral Commission through strategic action.

We will once again create democratic relations as seem to be found in our pre-patriarchal past and as were clearly present, although less inclusively, in the more complex or sophisticated patriarchal societies, among others, of Classical Greece or even the Swiss Republic and Rhaetia. Future democratic societies, of course, will look nothing like those of the past. Habermas makes a convincing argument that the very elements necessary for seeking understanding through speech acts create the conditions for establishing and promoting democratic political relations. On a political level as well, communicative action has produced precisely the necessary conditions for self-governance. With it, the popular public sphere of civil society in its effort to establish new democratic relations will need to create entirely new political institutions as well as reshaping any surviving institutions were they deemed valuable, even on an interim basis, in building a democratic society.

Democracy is indeed, as Habermas called it, the "unfinished project of modernity." It would seem that communicative action has a central role in guaranteeing its eventual constitution.

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