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The Quality of Democracy

Theory and Applications

Edited by

Guillermo O'Donnell,
Jorge Vargas Cullell, *and*
Osvaldo M. Iazzetta

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*We dedicate this book to the memory of Norbert Lechner,
a great intellectual, an inspiring colleague, a loyal friend
and, above all, a wonderful human being.*

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Human Development, Human Rights, and Democracy

GUILLERMO O'DONNELL

This chapter is based on a central argument: a democratic regime (to be defined below) is a fundamental component of democracy, but it is insufficient for adequately conceptualizing what democracy is. This is true everywhere, but it has been made particularly evident by the study of new (and some not so new) democracies in the South and the East. Generally, mainstream political science limits itself to the study of the regime. This limitation offers the safe harbor of an obviously important and apparently well-defined field of study. Going beyond the regime is a risky enterprise; it could lead to a slippery slope that ends with equating democracy with everything one happens to like. One way to avoid this risk is to tie a strong rope onto a relatively firm foundation—the regime—and with its help cautiously descend into the abyss. Of course, not any rope will do. The one I have chosen comes from an often neglected but important aspect of democracy that is already present at the level of the democratic regime: a particular conception of the human being *cum* citizen as an *agent*. This is the grounding factor, the thread that we will follow. The hope is that it will help us provide a better understanding of democracy in Latin America and elsewhere.

Thus, what follows is democratic theory with a comparative intent. It is a first exploration. It relies on contributions from several disciplines, but it sees some phenomena from angles that are largely unexplored. For this reason this chapter is an incomplete piece of democratic theory. I basically argue about foundations and some of its consequences. I say little about other extremely important topics, such as who are the real political actors—individual and collective—in a given circumstance; or how governments and states exercise their power; or the domestic consequences of various dimensions of globalization.¹ Furthermore, even though the state occupies a central place in my analysis, because of space and time limitations my discussion of the state is rather elementary. I hope, however, that even at the cost of some parsimony the present incursion beyond the regime opens topics and angles of inquiry that are not only intellectually challenging but also useful for enhancing the quality and impact of democracies in the East and South.

When reflecting on the grounding factor of democracy—agency—I found that there are intimate connections between democracy, human development, and human rights.² In addition to highlighting these connections, I argue that they lead us to assess the differential quality of existing democracies, and I propose some criteria for dealing with this matter. My main point is that democracy, human development, and human rights are based on a similar (moral and, in democracies, legally enacted) conception of the human being as an agent. I also note that this same view can be found in several international and regional covenants and treaties, as well as in the United Nations Development Program's (UNDP) *Human Development Reports*. I further argue that this conception traces a perpetually moving horizon that prohibits considering human development, human rights, and democracy as static or unilinear phenomena, such as seeing human development as merely the increase in the availability of material resources or of aggregate utility; or reducing human rights to protection against physical violence; or, indeed, restricting democracy to the regime.

To my knowledge, the detection of this common grounding and the exploration of its consequences is close to *terra incognita*. One danger of entering largely uncharted territory is the possibility of getting lost in the many ramifications that appear. Although I have not fully avoided this danger, my inquiry is guided by the following questions: What is the common grounding of these currents? Why should we be concerned, aside from instrumental reasons (such as, for example, its presumable contribution to economic growth) with democracy and its quality? What are the conceptual parameters under which the question of the quality of democracy may be fruitfully posed? How can we establish a conversation among these three currents so that they might

nourish each other and thereby foster in theory and practice the view of agency that the three of them share?

It may be helpful if I summarize at the outset the main lines of my reasoning.

1. Human development, human rights, and democracy share a common, morally grounded, view of human agency.
2. The enacting of agency requires the universalistic attainment of at least some basic rights and capabilities.
3. Because of their common grounding in a shared view of agency, the rights and capabilities postulated by these three currents overlap quite extensively.
4. It is theoretically impossible to identify precisely the set of rights and capabilities that would be necessary and jointly sufficient for generating an "adequate" level of human development, human rights, or political rights.
5. The above fact does not prevent—quite the contrary, it challenges us—to be as specific as possible concerning the rights and capabilities involved, as well as their mutual relationships.
6. The processes aimed at inscribing need-claims as legally enacted and backed rights are eminently political (and, consequently, conflictive).
7. Given the indeterminacy and historical variability of these processes, democracy is not only very important per se but also as an enabling institutional milieu for the struggles usually needed in order to inscribe need-claims as effective rights.

A corollary of these considerations is that we have good reasons for assessing differences and changes in the quality of existing democracies. In order to help the reader follow my arguments, I have included *propositions* that highlight the main conclusions reached as I develop my argument. I also include suggestions concerning the empirical assessment (or auditing) of the quality of democracy.

1. Preliminaries

The concept of human development that has been proposed and widely diffused by UNDP's *Reports* and the work of Amartya Sen was a reversal of prevailing views about development. Instead of focusing on aggregate measures of economic performance or utility, human development as conceived by UNDP

and Sen begins and ends with human beings. The concept asks how every individual is doing in relation to the achievement of “the most elementary capabilities, such as living a long and healthy life, being knowledgeable, and enjoying a decent standard of living” (UNDP 2000a: 20). These are deemed basic conditions necessary “so that each person can lead a life of respect and value.” From this point of view, not only is “human development . . . a process of enhancing human capabilities” (UNDP 2000a: 2); it also becomes the yardstick with which other aspects of development are assessed.

Throughout its *Human Development Reports*, UNDP has become increasingly assertive in drawing an important corollary of this approach. The achievement of basic capabilities and their expansion is not just something to which human beings have a moral claim, or a goal that well-meaning individuals may posit. More consequentially, achievement of basic capabilities is deemed to be a *right* of all who suffer, at least, deprivation of primary (or basic) capabilities. This is a human interest, the satisfaction of which can be legitimately claimed to be the responsibility of others, especially the state.

The assertion of these rights strikes me as a quite radical and, indeed, institutionally courageous move. To begin with, the existence of such rights is disputed, in and of themselves or because of their alleged impracticability, by influential currents in philosophy, ethical theory, and jurisprudence and is plainly ignored by most of political science. Furthermore, in the *Human Development Report* I have been quoting, this assertion comes together with a discussion of human rights, including their similarities and differences with the concept of human development. This convergence is not accidental. Once the achievement of some basic capabilities is defined as a right (say, to some basic standards of nutrition and health), then some of the human interests obviously entailed (say, to physical integrity) tend to be defined as no less than basic human rights.

These perspectives have some crucial elements in common: both begin and end with human beings, and both ask for what may be, at least, a minimum set of conditions, or capabilities, that enable human beings to function in ways appropriate to their condition as such beings. True, in its origins the concept of human development focused mostly on the social and economic context, while the concept of human rights focused mostly on the legal system and on the prevention and redress of state violence. Yet the 2000 *Human Development Report's* discussion of human rights, on one side, and the increasing attention of human rights scholars and practitioners to (broadly understood) social factors, on the other,³ reveals an important convergence: both currents deal with bundles of rights and capabilities that, in Sen's terms, are valuable insofar as they allow individuals to freely choose functionings (what

they actually do and are) appropriate to their condition as human beings—as agents, as I argue below.

You may have noticed that I have twice used the exceedingly vague term “appropriate.” The only way to specify this term is to come up with a certain conception of the human being in terms of which the attribute of appropriateness is predicated. Following the argument I have developed up to this point, I have jumped into deep waters. In the first place, in terms of the logic of their arguments both the proponents of human development and of human rights must be unabashed universalists, at least in terms of the “basic” rights and capabilities they posit. Proponents of slavery, the inferiority of certain races, the innate inferiority of women, and the irreducible uniqueness of cultures, cynics of various sorts, governments that do not want to be assessed in terms of their records on human development and human rights, and the like strenuously deny this universalism. In contrast, human development and human rights authors and practitioners ask, What are the basic conditions applicable to every human being, irrespective of social, cultural, and biological conditions?⁴

Secondly, it is the job of the universalists to delineate—and face the sharp discussions that will inevitably follow—the conception that underlies their claim that at least a basic set of capabilities and human rights should be generally achieved. Later in this chapter I argue that this underlying element is a moral conception of the human being as an *agent*; that is, someone who is normally endowed with sufficient autonomy for deciding what kind of life she wants to live; has the cognitive ability to reasonably detect the options available to her; and feels herself to be, and is construed by others, as responsible for the courses of action she takes. Of course, an individual can abdicate these characteristics, or may choose courses of action (functionings) that are useless or even self-destructive, or, unfortunately, may be born, say, with a severe cognitive impairment. These are important issues, but not the ones that mainly concern human development and human rights.⁵ The central issue, because it affects hundreds of millions of people, refers to situations that objectively (that is, well beyond the presumable preferences of those concerned) and severely hinder the probability of an individual becoming, after the biologically determined heteronomy of infancy, an agent. The problem, of course, is how to arrive, and by whom, at criteria that will allow us to gauge these matters.

Now I recapitulate my argument thus far with some propositions.

- 1. *The concepts of human development and human rights share an underlying, universalistic vision of the human being as an agent.*
- 2. *This vision leads to the question of what may be the basic conditions that normally enable an individual to function as an agent.*

I mentioned how difficult and, indeed, disputable is the first issue; the second one, although more practical and empirical, is no less complex. Yet before tackling these matters we need to add another dimension to our discussion—democracy.

2. Components of a Democratic Regime, or Political Democracy

After the preceding prolegomena, we must focus on the rock to which we will, later on, tie our rope. In a democratic regime elections are competitive, free, egalitarian, decisive, and inclusive, and those who vote also have the right to be elected—they are *political citizens*. If elections are competitive, individuals face at least six options: vote for party A; vote for party B; do not vote; vote in blank; cast an invalid vote; or adopt some random procedure that determines which of the preceding options is effectuated. Furthermore, the (at least two) competing parties must have a reasonable chance to make their views known to all (potential and actual) voters. In order to be a real choice, the election must also be free, in that citizens are not coerced when making their voting decisions and when voting. In order for the election to be egalitarian, each vote (or nonvote) should count equally and be counted as such without fraud, irrespective of the social position, party affiliation, or other characteristics of each.⁶ Finally, elections must be decisive in several senses: (a) those who turn out to be the winners gain incumbency of the respective governmental roles; (b) elected officials, based on the authority assigned to these roles, can actually make the binding decisions that a democratic legal/constitutional framework normally authorizes; and (c) elected officials end their mandates in the terms and/or under the conditions stipulated by this same framework.

Notice that these attributes of democratic elections say nothing about the composition of the electorate. There have been oligarchic democracies—those with restricted suffrage—that satisfied the above conditions. But as a consequence of the historical processes of democratization in the originating countries⁷ and of its diffusion to other countries, democracy has acquired another characteristic: *inclusiveness*, meaning that the right to vote and to be elected is assigned, with few exceptions, to all adult members of a given country. For brevity, from now on I will call *fair elections* those that have the joint condition of being free, competitive, egalitarian, decisive, and inclusive.⁸ This kind of election entails that governments may lose elections and must abide by the results (Przeworski 1988). Fair elections are a specific characteristic of a *democratic regime*, or *political democracy*, or *polyarchy*—three terms that I use interchangeably. Elections may be held in communist and other authoritarian

countries, or for the selection of the pope, or even in some military juntas, but only in a political democracy do elections meet all the above criteria.

In contrast with influential “minimalist” currents in political science,⁹ however, I maintain that fair elections are not sufficient for characterizing a democratic regime. In democratic regimes elections do not refer to a onetime event but to a series of elections that continue, and are broadly expected to continue, into an indefinite future. In saying this I have defined an *institution*. Elections under a democratic regime are institutionalized: practically all actors, political and otherwise, take for granted that fair elections will continue being held into the indefinite future at legally preestablished dates (in presidential systems) or according to legally preestablished occasions (in parliamentary systems). This means that the actors also take for granted that some “political” rights (to which I refer below) will continue to be effective. Where these expectations are widely held, fair elections are institutionalized. These cases are different not only from authoritarian ones but also from those where, even if a given election has been fair, it is not widely expected that similar elections will continue to occur in the future. Only when elections are institutionalized do relevant actors adjust their strategies to the expectation that fair elections will continue to be held. Normally, the convergence of these expectations increases the likelihood that such elections will continue happening.¹⁰ Otherwise, elections will not be “the only game in town,” and relevant agents will invest in resources other than elections in order to access the highest positions of the regime.¹¹

I have been referring to a *regime*, a term that demands definition. By regime I mean the patterns, formal and informal and explicit or implicit, that determine the channels of access to principal governmental positions; the characteristics of the actors who are admitted and excluded from such access; and the resources and strategies that they are allowed to use for gaining access.¹² Fair and institutionalized elections are a central component of a democratic regime because they are the only means of access (with the exception of high courts, armed forces, and, eventually, central banks) to the principal governmental positions.

But this still is not sufficient for characterizing a democratic regime. I stated above that in a democratic regime each voter has at least six options. We must also recall something quite often overlooked: all citizens have the right to try to get elected. The fact that she may or may not want to exercise this right is irrelevant in relation to the fact that, by having the right to be elected, each adult carries with her the potential authority of participating in governmental decisions. The important point with respect to the participatory political rights of voting and being elected is that they define an *agent*. This definition is a *legal* one; these

rights are assigned by the legal system to most adults in the territory of a state, with exceptions that are themselves legally defined. This assignment is *universalistic*: it is attached to all adults in a territory, irrespective of their social condition and of ascriptive characteristics other than age and nationality. At the level I am discussing—a democratic regime—agency entails the *legal attribution* of the capacity to make choices that are deemed sufficiently reasonable as to have significant consequences in terms of the aggregation of votes and of the incumbency of governing roles. Individuals may not exercise these rights, yet the legal system construes them all as equally capable of effectuating these rights and their correlated duties (such as, say, abstaining from fraud or violence when voting, or acting within legally mandated limits in governmental roles). This attribution creates a space, or a dimension, of universalistic equality predicated on all those who meet the criterion of citizenship.

This attribution clearly entails the agency of all those to whom it applies—the citizens. This agency pertains to relationships referred to a regime based on fair and institutionalized elections. For the later discussion of this topic, notice that this is an attribution of agency by means of a *bounded universalism*: it applies to most adults in the territory of a state that contains a democratic regime. Normally, the universalism predicated by human development and human rights is *unbounded*, in that it extends across all sorts of states and regimes. Yet the bounded universalism of political rights has a distinct advantage. It clearly establishes an addressee for the respective rights: they can be claimed, via the legal system, against the state as well as against private individuals who may infringe on these rights. These are valid (that is, legally actionable) subjective rights (see section 4) that exist because of the very fact that these individuals are located in a territorially delimited state that includes a democratic regime.

Seen from this angle, political democracy is not the result of some kind of consensus, individual choice, social contract, or deliberative process. *It is the result of an institutionalized wager*. The legal system assigns to every individual manifold rights and obligations. Individuals do not choose them; at birth they find themselves immersed in a social web that includes rights and duties enacted and backed by the legal system of the state in which they live. We are social beings well before we make any willful decision,¹³ and in contemporary societies an important part of that being is legally defined and regulated. What is the wager? It is that in a political democracy every *ego* must accept that practically every other adult participates—by voting and eventually by being elected—in the act of fair and institutionalized elections, which determines who will govern them for some time. It is an institutionalized wager because it is imposed on every *ego* independently of his will: *ego* must accept it even if he

believes that allowing certain individuals to vote or be elected is very inappropriate. *Ego* has no option but to take the chance that the “wrong” people and policies are chosen as the result of fair elections.¹⁴ *Ego* has to take this risk because it is entailed, and backed, by the legal system of a democracy; this is part of the fact that *ego* is a social being embraced and constituted by rights and duties enacted and backed, if necessary with coercion, by the state.¹⁵ For *ego* this is, however, a tempered risk: she is assured that in future elections she will have a fair chance to try to have the “right” people elected.

We have found another characteristic specific to political democracy: it is the only kind of regime that is the result of an institutionalized, universalistic, and inclusive wager. All other regimes, whether they include elections or not, place some kind of restriction on this wager or suppress it entirely. New or old, beyond their founding moment contemporary democratic regimes are the result of this wager and are profoundly imprinted by this fact. We can now include a proposition.

- 3. *A democratic regime includes elections that are fair and institutionalized, as well as an institutionalized, inclusive, and universalistic wager.*

At this point we should remember that the individuals in a state with this kind of regime have some participatory rights. In addition, it stands to reason that in order for individuals to effectively enjoy these rights, the state and its legal system must uphold other “political” rights, or guarantees. If fair elections are institutionalized, especially because it involves expectations of indefinite endurance, such elections cannot stand alone. Some freedoms that surround the elections and—very importantly—continue in force between them must also exist. Otherwise, the government could quite easily manipulate or even cancel future elections. According to an influential author, Robert Dahl (1989, 1999), the relevant political freedoms are those of expression, association, and access to pluralist information; other authors posit, more or less explicitly and in detail, similar rights. Like the participatory rights, the rights I am discussing at this moment are boundedly universalistic, in that they are assigned to practically all adults in and by the legal system of a state that contains a democratic regime.

We should notice, however, that the combined effect of the freedoms listed by Dahl and other authors cannot fully guarantee that elections will be fair, much less institutionalized. For example (taking into consideration freedoms usually omitted in these definitions), the government might prohibit opposition candidates from traveling within the country, or subject them to police harassment for reasons allegedly unrelated to their candidacy. In such

cases, even if the freedoms listed by Dahl and others held, we would hardly conclude that the elections are fair. This means that the conditions proposed by Dahl and others are not sufficient for guaranteeing fair elections. Rather, these are *necessary conditions* that jointly support a probabilistic judgment: if they hold, then *ceteris paribus* there is a strong likelihood that elections will be fair.¹⁶

We may now discuss a matter that is ignored by most contemporary theories of democracy but has a close bearing on the topic of human development and human rights. The rights mentioned above are inductively derived. The listing of these rights is the result of a reasoned empirical assessment of their impact on the likelihood of fair elections.¹⁷ This judgment is controlled by the intention of finding a minimal, or core set, of "political" freedoms, in the sense that the listing does not slip into a useless inventory of every right or freedom that might have some conceivable bearing on the fairness and institutionalization of elections. The problem is that since the criteria for inclusion of some freedoms and exclusion of others unavoidably result from inductive judgments, there cannot exist a theory that establishes a firm and clear line that would determine what I will call a *minimal sufficient set*. In the case of political freedoms, I mean a kind of set that would include only the necessary and jointly sufficient conditions for the existence of fair and institutionalized elections; this set, conversely, would exclude other freedoms that, even if they might be supportive of, are not necessary or sufficient for fair and institutionalized elections. Because the freedoms to be included and excluded in the set are inductively derived, however, there never will be generalized intersubjective agreement on the contents of the minimal sufficient set—we will forever dispute the freedoms are "truly" necessary and jointly sufficient for the exercise of political citizenship.¹⁸

Up to now I have discussed the external boundaries of the freedoms that surround, and make likely, fair and institutionalized elections—the issue of which freedoms to include and exclude from this set. But there is another problem, namely, the internal boundaries of each of these freedoms. All of them contain a "reasonability clause" that, once again, is usually left implicit in theories of democracy.¹⁹ The freedom to form associations does not include creating organizations with terrorist aims; the freedom of expression is limited, among others, by the law of libel; the freedom of information does not require that ownership of the media is fully competitive, etc. How do we determine if these freedoms are effective or not? Surely, cases that fall close to one or the other extreme are unproblematic. But other cases fall in a gray area between the two poles, and these cases depend on inductive judgments about the degree to which the feeble, or partial, or intermittent effectiveness of certain freedoms supports, or

not, the likelihood of fair and institutionalized elections. Once again, there is no firm and clear answer to this problem: the external and the internal boundaries of political rights are *theoretically undecidable*.²⁰ In other words, the minimal sufficient set of these freedoms is undecidable. This fact, however, should not lead us to deny that the freedoms that are reasonable candidates to belong to the minimal sufficient set are extremely important, and as such should be taken into careful consideration.²¹

A further difficulty is that the internal boundaries of freedoms such as the ones listed by Dahl, and of other rights and freedoms that also are potentially relevant to fair and institutionalized elections, have undergone significant changes over time. Suffice to say that certain restrictions on freedom of expression and of association that in the originating countries were considered acceptable not long ago would be deemed undemocratic today.²² With this in mind, how demanding should be the criteria we apply to newly emerged democracies (and to older ones outside the Northwest)? Should we apply the criteria presently prevalent in the originating countries,²³ or the criteria used in their past, or, once more, make in each case reasoned inductive assessments of these rights in terms of the likelihood of the effectuation of fair and institutionalized elections? It seems to me that the latter option is the more adequate, but it sends us back squarely to the undecidability of the respective set of rights, now further complicated by their historical variability.

I conclude that there is, and there will continue to be, disagreement in academia and, indeed, in practical politics, concerning where to trace the external and internal boundaries of the freedoms that surround, and make likely, fair and institutionalized elections. This is not a flaw in the attempts to list these freedoms. These freedoms are very important *per se* and because of their relation to those elections; they are necessary conditions for enabling the rights of participation entailed by a democratic regime. As such these freedoms are worth listing. On the one hand, it can be empirically established that the lack or severe curtailment of some of these rights or freedoms (say, of expression, association, or movement) eliminates the likelihood of fair elections and, *a fortiori*, of their institutionalization. On the other hand, the inductive character of these listings, and the related problem of their external and internal boundaries, shows their limitations as theoretical statements. Consequently, instead of ignoring these problems, or artificially trying to fix the external and internal boundaries of these freedoms and rights, a more fruitful avenue of inquiry consists of thematizing theoretically the reasons and implications of this conundrum.²⁴ We are in a terrain that I gather is familiar to those who have reflected on human development and human rights in terms of attempts

to find minimal sufficient sets for their respective concerns. After this discussion, it may be useful to list two propositions.

- 4. *In addition to the characteristics noted in proposition 3, a democratic regime consists of some (boundedly) universalistic “political” freedoms. These rights are important per se and because they are necessary conditions for fair and institutionalized elections and for the continued effectiveness of the democratic wager.*
- 5. *Because the external and internal boundaries of these freedoms are theoretically undecidable, there is no theoretical or intersubjectively general valid way of clearly and firmly establishing a minimal sufficient set of these rights.*

Let us now notice two conclusions we have implicitly reached through the preceding discussion. One is a definition of *political citizenship* as the individual component of a democratic regime. It consists of the legal assignment of the rights entailed by the wager—both some surrounding freedoms (such as of expression, association, information, free movement, and the like) and the rights of participation in fair and institutionalized elections, including voting and being elected. The second point is that in reaching this definition we have gone beyond the regime and run into *the state* in two senses: (a) as a territorial entity that delimits those who are the carriers of the rights and obligations of political citizenship; and (b) as a legal system that enacts and backs these rights and obligations. The democratic wager and political citizenship are, respectively, the aggregate and the individual sides of the same coin, and they jointly presuppose the state, both as a territorial delimitation and as a legal system. Furthermore, these aspects of the state have a double face. In one sense, they are necessary conditions for the existence of a democratic regime. In another sense, which I discuss below, they are characteristics of the democraticness of the state itself, not just of the regime. Now I include some propositions.

- 6. *Political citizenship consists of the universalistic assignment of the rights entailed by the inclusive democratic wager, both some surrounding freedoms and the rights of participation in fair elections, including voting and being elected.*
- 7. *A democratic regime (or political democracy or polyarchy) presupposes: (a) a territorially based state that delimits those who are considered political citizens; and (b) a legal system of that same state that within its territory assigns political citizenship on a (boundedly) universalistic basis, by means of various participatory rights and political freedoms.*

3. First Excursus on Assessing the Quality of Democracy

The present excursus, as well as the ones that follow, bear strong resemblance to the extremely valuable work done by the team of the Costa Rican Proyecto Estado de la Nación, especially their *Auditoría Ciudadana sobre la Calidad de la Democracia* (2001).²⁵ This is no accident, since I was inspired by their work and on several occasions I have discussed these matters in detail with the authors. The premise of the citizen audit, as well as of what follows here, is that the quality of democracy in given countries may be gauged by its different degrees of democraticness along several dimensions.²⁶ In the present excursus I limit myself to dimensions that are directly implied in my discussion so far.²⁷ I discuss other dimensions as I analyze other themes.

For the purpose of ordering my suggestions on this matter, I arrange sequentially several typical events about which we want to know:

With regard to elections as fair and institutionalized

In terms of citizens:

1. How many have a clear and presumably stable preference for a democratic regime over any other.
2. How many accept that the territorially bounded population of the state in which they live is the proper unit for defining the electorate.
3. How well informed they are about the parties, candidates, and issues of the election.
4. How interested they are about the parties, candidates, and issues of the election.
5. How much and in what ways they participate in political activities, especially those related to elections.
6. To what extent they use existing opportunities for expressing views concerning the discussion, decision, or implementation of public policies.
7. If policies and/or incentives exist for facilitating and eventually promoting the self-organization and political participation of poor and/or otherwise discriminated against sectors or categories of citizens.²⁸

In terms of the electoral system:

1. If national elections are held with sufficient frequency to reflect major changes in public opinion, and if there are constitutional mechanisms that enable citizens to remove elected officials between elections.²⁹

2. If there exists an independent, impartial, and adequately empowered and funded electoral commission.
3. If the electoral system does not overrepresent some constituencies and, if this is the case, to what degree.
4. If it significantly compensates for the disadvantages that some parties may suffer because they are not being supported by economically powerful groups.
5. If it has clear and enforceable rules for disclosing the contributions that political parties receive for electoral campaigns and/or for their continued functioning.
6. If it does not interpose high barriers to the creation and workings of political parties, with the exception of those that advocate violent means for political competition and/or for accessing governmental positions.
7. If it does not interpose difficult requirements for voter registration, especially those that may be hard to meet by poor and/or discriminated against individuals.
8. If every citizen is free to become a member of a political party, try to be nominated as a candidate for this party, and if nominated run for election.
9. If all parties and candidates are treated respectfully and impartially by state authorities.

In terms of political parties:

1. If their internal procedures, especially in terms of the appointment of their leaders and electoral candidates, are themselves democratic as well as open to the scrutiny of their affiliates and pertinent public institutions.
2. If they disclose, in proper time and form, the public and private support they receive and render proper accounts of the use of this support.
3. If they conduct their electoral campaigns respecting the civil and political rights of their opponents and in ways that do not entail or promote discrimination, bias, slander, or any type of bigotry.

In terms of elections themselves:

1. If voters are not intimidated or pressured in any way, and if their ballots are truly secret.
2. If there is free access to the polling places for representatives of political parties, election observers, and the media.
3. If the elections are conducted in an orderly and peaceful way.
4. If votes are counted fairly and the results announced expeditiously.
5. If those who turn out to be winners are proclaimed as such and in proper time take up their respective governmental roles.

6. If complaints about the elections are dealt with impartially and promptly.
7. If the election results are accepted as valid by the population at large.

With regard to the elected government

In terms of the executive:

1. If it acts with clear and consistent respect of the rights of the citizens and their associations and of the jurisdiction of other public institutions.

In terms of Congress:

1. If it acts with clear and consistent respect of the rights of the citizens and their associations and of the jurisdiction of other public institutions.
2. If it conducts its deliberations and makes decisions in ways that reasonably respect the right of every legislator to be heard (in plenaries and/or in commissions) and have his/her votes weighted equally.
3. If minority parties have a fair chance to have their criticisms and proposals considered and discussed, inside and outside of Congress.

In terms of the general workings of the government:

1. If it acts with clear and consistent respect of the rights of the citizens and their associations and of the jurisdiction of other public institutions.
2. If it offers clear, timely, and feasible opportunities for the citizens and their associations to express their views concerning the discussion, decision, or implementation of public policies.

I hasten to add that this is, so to speak, an innocent list. One reason is that it ignores trade-offs. In particular, the list is biased toward positively valuing citizens' opportunities for participation, thus enhancing—or at least facilitating—the popular component of democracy. In some policy areas, however (say, currency exchange decisions), there may be solid reasons against allowing that participation; or in other areas (say, foreign relations negotiations or some national security matters) the need for secrecy may be persuasively argued. In these cases I believe that the test of relative democraticness should focus on the kind of procedures and actors involved in the setting of these limitations,³⁰ as well as their amenability to challenge and revision.

The second reason for the innocence of the preceding list is that it overlooks the question of whether an electoral system is of better quality, or more democratic, if it tends toward majoritarianism or toward proportionality. Individuals who, according to any test we might apply, are solidly democratic would tend to prefer proportionality if they are of a strong liberal persuasion,

while no less solid democrats who hold views derived from classic democracy or republicanism would tend to prefer majoritarianism.³¹ I believe that ultimately this is an unsolvable problem. Assuming that the electorate is divided on this matter, the natural democratic answer is to have them vote. But if it is an election it has to be held under one or the other rule, and if it is a referendum, then the issue has been prejudged in favor of the majoritarians. This may be one reason why we often find hybrid electoral regimes that combine, sometimes in quite clumsy fashion, both kinds of rules. In view of this, I believe that an assessment of the quality of democracy should abstain from this issue.

Finally, you may have noticed an omission in the preceding list: it does not deal with some important aspects of the institutional format of democracies, especially regimes that are federalist or unitary and presidential or parliamentary (and various combinations thereof), nor with systems of judicial review versus constitutional courts. The reason is that, in the present state of our knowledge, I do not believe that any of these variations can be predicated as more or less democratic than the other;³² furthermore, all of them may be assessed in terms of the items listed here and in further excursi.

4. Democracy and Agency

The preceding analysis of the regime is descriptive. We now enter a terrain where not only factual but also normative assertions are needed.³³ In particular, the theme of human agency, which I will discuss throughout the rest of the chapter, demands not only descriptive statements but also drawing the normative implications of its effectuation and, especially in the case of Latin America, its curtailment.

I begin by recalling that the democratic wager entails the (boundedly) universalistic attribution of agency. Let us now take a more careful look at political citizenship. It is a legally defined status assigned, as part and consequence of the democratic wager, to most of the inhabitants of a state that includes a regime consisting of fair and institutionalized elections. This status is mixed. It is adscriptive in that (excepting naturalization) it pertains to individuals by the sheer fact of their being born in a given territory (*ius solis*) or from a lineage (*ius sanguinis*). It is boundedly universalistic in that within the jurisdiction delimited by a state it is assigned on the same terms to all adults who meet the nationality criterion. It is also a formal status because it results from legal rules that in their content, enactment, and adjudication satisfy criteria that are specified by other legal rules, some of which are constitutional. Furthermore, political citizenship is public. By this I mean, first, that it is the

result of laws that satisfy carefully spelled-out requisites of publicity and, second, that the rights and obligations it assigns to every *ego* imply, and legally demand, a system of mutual recognition among all individuals, irrespective of their social position, as carriers of such rights and obligations.³⁴ Finally, it is egalitarian: it generates a space of legally enacted equality in the attribution (and in the at least potential enjoyment) of political rights.

Now I turn to the democratic wager. Its inclusiveness is a recent achievement. For a long time in the originating countries, many social groups were excluded from voting, let alone being elected: peasants, blue-collar workers, domestic workers (and, in general, non-property owners and poorly educated individuals), blacks in the United States, Native Americans in the latter country as well as in many others, and women. Only during the twentieth century, and with regard to women as late as after World War II in many countries, did political rights become inclusive.³⁵ On their part, at various times countries in the South and East adopted inclusive suffrage; however, the variations of "tutelary" or "façade" democracies, and of course openly authoritarian regimes, that emerged there meant the denial of the democratic wager.

Everywhere, the history of democracy is the history of the reluctant acceptance of the inclusive wager—that is, the refusal to accept the universality of agency in the political realm. The history of the originating countries is punctuated by the catastrophic predictions and the violent resistance of privileged sectors of society opposing the extension of political rights to "undeserving" or "untrustworthy" sectors.³⁶ In the South and East, by means often more violent and comprehensively exclusionary, this same extension also has been resisted. What were the grounds for this refusal? Typically, the privileged classes argued for the lack of autonomy and responsibility—that is, lack of agency—of the excluded groups. Only some individuals (whether they were highly educated and/or property owners, a political vanguard that had deciphered the direction of history, or a military *junta* that understood the demands of national security, etc.) were supposed to have the moral and cognitive capabilities necessary for participating in political life. Only they were seen as sufficiently invested (in terms of education, property, revolutionary work, or patriotic designs) to have adequate motivation for responsibly making collective decisions. Of course, revolutionary vanguards, military *juntas*, and the like generated authoritarian regimes, while in the originating countries the privileged generated, in most cases, oligarchical, noninclusive democratic regimes for themselves and political exclusion for the rest.

As mentioned above, a central idea underlies the inclusive wager: agency. An agent is somebody endowed with practical reason: she uses her cognitive

and motivational capabilities to make choices that are reasonable in terms of her situation and goals, of which, barring conclusive proof to the contrary, she is deemed to be the best judge.³⁷ This capacity confers upon the agent a moral dimension, in the sense that normally the agent will feel, and will be construed by relevant others as, responsible for her choices and for at least the direct consequences that ensue from these choices.

Surely, the literatures that deal with this topic from various angles offer a number of qualifications to what I have just stated. Yet the point I want to stress is that the presumption of agency is another institutionalized fact, one that in the originating countries is older and more entrenched than the democratic wager and fair elections. This presumption is not just a moral, philosophical, or psychological concept; it is a legally enacted one. The presumption of agency constitutes every individual as a legal person, a carrier of subjective rights. The legal person makes choices, and is assigned responsibility for them, because the legal system presupposes that she is autonomous, responsible, and reasonable—that is, that she is an agent.³⁸

This view became the core of the legal systems of the originating countries well before the establishment of democracy. The institutionalized (that is, legally enacted and backed and widely taken for granted) recognition of an agent as a carrier of subjective rights was a long and convoluted process. It began with some of the Sophists and Stoics and Cicero, runs through Roman law and medieval legists,³⁹ was refined by natural law theorists, and was finally reappropriated and, as it were, politicized, in spite of their differences in other respects, by the great early liberal thinkers—especially Hobbes, Locke, and Kant, as well as a nonliberal, Rousseau.

I cannot recount this story here (see O'Donnell 2000). It suffices to note that it is the history of the formulation and progressive expansion of a view of the individual as a carrier of subjective rights, which pertain to each individual as such, not as a derivation (as in Aristotelian and other organicist theories) of the individual's position in a social hierarchy. These rights underlie what the classical legal theories called the *potestas* of each individual—his capacity to willfully and responsibly commit to duties he freely assumes and, correlatively, his right to demand the fulfillment of the duties of his counterparts. Historically, this conception found its main expression in contract law and in the progressive marketization of landed property (see, among others, Hamburger 1989). This institutionalization of agency occurred counterpointally to the expansion, in the originating countries, of capitalism and the state. On the one hand, the agent who validly commits his will is the same who “freely” sells his labor to the capitalist; on the other hand, the formally equalizing attribution of agency in the areas of contract and property and as common

subjects to a ruler was a powerful instrument in the struggles of state makers against feudal powers, urban privileges, medieval corporations, and the Catholic Church (see Weber 1968). Until the liberal thinkers transposed this idea of agency into the political realm, the rights of individuals were basically limited to what in the continental tradition are called *civil rights*, those referring to “private” relationships among individuals. Furthermore, these rights were not extended universalistically: some social categories such as serfs or peasants, and women, were denied many of them.

The crucial facts for my discussion, however, are (a) the legal attribution of agency to an expanding number of individuals has a long history in the originating countries; (b) this attribution was elaborated in detail in diverse philosophical, moral, and—especially—legal doctrines well before the great liberal theorists transposed the idea of agency into the political realm;⁴⁰ and (c) later on this same view suffused the two great modern constitutions, those of France and the United States. Now I insert a proposition.

- 8. *In the Northwest the conception of the individual as an agent had, well before the universalistic extension of political citizenship, a long process of elaboration in religious, ethical, and philosophical doctrines. More importantly, this same conception was carefully elaborated, and progressively implanted at the rhythm of the expansion of capitalism and the modern state, as a legal doctrine that, in assigning subjective rights to individuals, attributed to them legally actionable agency.*

As many have argued, however, this construction of an agent carrier of subjective rights, because it omitted the actual conditions of the exercise of these rights, helped to reproduce extremely unequal relationships, especially between capitalists and workers.⁴¹ Yet this construction contained explosive corollaries. First, if *ego* is attributed agency in certain spheres of life that are, for her and in the aggregate for the whole of society, extremely important (such as the labor contract or the sale of landed property), why should this attribution be denied in other spheres of social and political life, and who should have the authority to decide this matter? A second corollary proved no less explosive: since agency obviously entails choice, what actual options, or capabilities, are reasonably consistent with *ego*'s condition as an agent?

The answer to the first question is the history of the further expansion of subjective rights, including the right of suffrage up to its present inclusiveness. In the originating countries, this history was written by manifold conflicts at the end of which, after having accepted massive death in war for their countries and exchanging revolution for the welfare state, the *classes dangereuses*

were admitted into the inclusive democratic wager—they gained political citizenship.⁴² While this happened, other processes continued in the originating countries. One was that the map of western Europe and North America was quite firmly drawn as a consequence of successful, and often cruel, state making (see especially Tilly 1985, 1990). Another was the further expansion of rights in the civil sphere, in the double sense that already recognized rights and duties were further specified and new ones were added.⁴³ These processes meant that, when sometime in the nineteenth century most countries of the Northwest adopted oligarchic, noninclusive democracy, an overwhelming part of their male population (and, albeit to a limited extent, females, too) already had been assigned a series of subjective rights that regulated numerous parts of their lives. These were not—not yet—the participatory rights of the democratic wager. They were civil rights—rights pertaining to “private” social and economic activities. These rights have been summed up as “civil citizenship” by T. H. Marshall.⁴⁴

I want to stress that when full political inclusion became an issue, in the originating countries there already existed a rich repertoire of legally enacted and elaborated criteria concerning the attribution of agency to a vast number of individuals. Truly, the scope of these rights was, by our contemporary standards, limited. But it is also true that in the originating countries civil citizenship by and large preceded political citizenship and provided to it a rich supporting texture. These same processes furnished the historical background of the core idea of political liberalism: The government and the state must be limited and constitutionally regulated because they exist for, and on behalf of, individuals who are carriers of subjective rights enacted and backed by the same legal system that the state and the government must obey and from which they derive their authority.⁴⁵ I can now insert another proposition.

— 9. *After a long and complex historical trajectory that in the countries of the Northwest first included the rather extensive achievement of (mostly male) civil citizenship, contemporary democracy is based on the idea of political citizenship, which in turn is based on the conception of an agency that is legally enacted and backed.*

In some countries this conception of agency describes quite well their historical experience, in which agency was first implanted in the sphere of civil rights and later expanded into the political sphere; in other countries, however, civil rights have never been effected for large parts of their populations. I discuss this matter further below, although here I note that these remarks have empirical implications. Some democracies may be conceived as having a cen-

tral set of political rights that are surrounded, supported, and strengthened by a dense web of civil rights. Other democracies, in contrast, may exhibit (by definition of a democratic regime) these political rights, but the surrounding texture of civil rights may be tiny and/or unevenly distributed among different kinds of individuals, social categories, and regions. It seems to me that the differences along these dimensions, across cases and time, should have a strong bearing on the quality of democracy in each case and period.

Above I noted that even if initially restricted to civil rights, the idea of agency has explosive potentialities. In particular, an issue quite obviously raised by the presumption of agency is the capabilities (and, consequently, the range of options) available to each individual.⁴⁶ In the Northwest, the answer to this issue branched out in two directions. One focused on civil rights, especially, but not exclusively, in the (broadly defined) area of contract. A series of legal criteria were elaborated for voiding, redressing, or preventing situations in which there exists a “manifestly disproportionate” relationship⁴⁷ between the parties involved and/or where one of the parties may be construed—because of duress, fraud, mental incapacity, etc.—as not having lent autonomous consent to a contract or other legal relationship. These tutelary measures rest on a basic criterion of fairness, which in turn is a corollary of the idea of agency. Agents are supposed to relate to each other as agents, that is, without suffering for whatever reason lack of basic capabilities (a central theme of human development) or being subjected to decisive coercion (a central theme of human rights), which severely hinder their agency per se and/or in terms of the availability of a reasonable range of choices. In these circumstances individuals lack enough freedom to be construed as having willfully agreed to their obligations. We see that with regard to civil rights it has been recognized in multiple ways that agency entails choice, and choice entails the freedom to choose among alternatives that the agent has reasons to value. Through these legal constructions, the fairness requirement of creating a minimally level playing field among agents was added into the legal systems of the originating countries.⁴⁸

The second direction in which the issue of agency and its relationship to capabilities branched out was the emergence of social rights.⁴⁹ Here again the value of the fairness component of agency stands out, albeit focused on social categories rather than on single individuals as in civil law. Through another long and convoluted process that I need not detail here, the newly accepted participants in the democratic wager exchanged their acceptance of political democracy for a share in the benefits of the welfare state. These benefits were not only material; through collective representation and other devices, these actors diminished their sharp de facto inequality with respect to capitalists and

the state that Marx and others had pointedly denounced as existing behind the universalism of the legal systems. By means of welfare legislation, and with ups and downs in terms of the respective power relationships,⁵⁰ these views of fairness were incorporated into the legal system. Welfare legislation joined civil law in expressing the view that if agents are to be reasonably presumed to be such agents, then society, and especially the state and its legal system, should not be indifferent to, at the very least, cases where there exists severe deprivation of relevant capabilities. Preventive and remedial actions were consequently mandated, ranging from supporting basic levels of material conditions to various mechanisms of collective representation. Although they have been a mixed blessing,⁵¹ these were democratizing changes: they increased the density of the legal texture that enacts and backs the very same agency that is entailed by democracy. It is time for another proposition.

— 10. *In the originating countries, the issue of the capabilities that actually enable agency was faced in terms of civil and social rights. The underlying view of these legal constructions is one of the fairness that, in terms of their available capabilities, is due to individuals who are construed as freely and responsibly choosing—that is, agents.*

I find quite remarkable (and, in fact, one of the negative consequences of the segmenting of disciplines that prevails in the contemporary academic world) that, to my knowledge, the story I have briefly told is largely ignored by democratic, human development, and human rights theories. This is regrettable insofar as these theories, and their practitioners, face the issue concerning if, and in what sense and to what extent, there should be at least a basic set of rights or capabilities pertaining to their respective concerns. We saw that this issue forcefully appeared in matters of, first, civil and, later on, social rights. There is much to be learned from this experience. One lesson lies in the agency and fairness arguments used for justifying the legal imposition of a more level playing field in a series of relationships, as well as in the criticisms and grim predictions that these attempts elicited. The second lesson, to which I will return, is that most of these rights were not just granted; they were conquered by means of manifold struggles by subordinated classes and sectors who faced discrimination; all of them ultimately aimed at inscribing their needs and claims as formally enacted and effectively implemented rights.⁵²

Now I begin to develop an argument that is central to this chapter: The relationship between agency and capabilities in the political sphere is closely related to this same issue in connection with civil and social rights. Posing the issue of capabilities in the political sphere involves going beyond the universal-

istic assignment of the rights of political citizenship. It leads to the question of what conditions may allow the effective exercise of these rights.⁵³ In this sense, it seems to me mistaken to omit, as most political science theories of democracy do, the issue of the effectiveness of political citizenship when referring to individuals who are severely deprived of civil and social rights. True, in a democratic regime these same individuals are assigned the universalistic political rights we have examined. Yet looking exclusively at this side of the matter means eliding from democratic theory the very issue of agency and capabilities that private law and welfare legislation (as well as human development and human rights) could not ignore.⁵⁴ This assertion may be stated as a proposition.

— 11. *Agency has direct, and concurrent, implications in the civil, social, and political spheres because it is a moral conception, which in several aspects has been legally enacted, of the human being as an autonomous, reasonable, and responsible individual.*

This view of agency is not just one that has been enacted in some rich countries; it was also inscribed in the moral conscience of humanity by the French Declaration of the Rights of Man and of the Citizen; the Prologue and the First Amendment of the Constitution of the United States; the United Nation's Universal Declaration of Human Rights (1948); the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social, and Cultural Rights; the Vienna Declaration on Human Rights; and several other international and regional treaties and covenants (including the Inter-American Convention on Human Rights), all of which have been ratified by a large number of countries.⁵⁵

5. Democracy and the State

In the preceding sections we have gone beyond the regime. This demands that we consider the various ways in which the state is relevant for the study of democracy. To begin with, let us remember that in contemporary countries most rights and obligations are enacted and backed by a legal system. This legal system is a part of the state. Normally, the state extends its rule, most of it effectuated in the grammar of law, across the territory it encompasses. We saw that for a democratic regime to exist there must be a territorial delimitation of its citizens and some rights assigned to them. The state is not only a set of bureaucracies; it is also a legal system that is enacted and normally backed by the supremacy of coercion held by the state institutions over the territory they delimit.⁵⁶ This legal

system embraces and constitutes *qua* legal persons the individuals in the state's territory. It follows that insofar as it upholds the democratic wager as well as a regime consisting of fair and institutionalized elections and some surrounding freedoms, the state and its system are democratic. Democraticness is an attribute of the state, not only of the regime (see O'Donnell 1999b and 2000).

Some authors consider the rights of association, expression, and the like as negative ones, but this view has been persuasively criticized.⁵⁷ One way or the other, the rights of voting and being elected clearly are positive. Furthermore, there is at least another right, implied by the former, that is also positive: the right to fair and expeditious access to courts. This right involves the expectation that some state institutions will undertake, if legally appropriate, actions oriented toward the effectuation of the above-mentioned rights as well as others (Fábre 1998). The denial of this expectation would mean that these rights are purely nominal. With this assertion we have again run into the state *qua* legal system that enacts and backs rights that, in spite of differences among authors as to which to list specifically, are widely agreed to be basic components or necessary conditions of political democracy. The point at this stage of my discussion is that in addition to the legal system, we have identified some institutions of the state that are directly related to a democratic regime. This allows me to complete the picture of a legal system: It is not just an aggregation of rules but properly a *system*, consisting of the interlacing of legal rules and legally regulated state institutions. In turn, a species of this genus—a *democratic* legal system—is one characterized by two features: (a) it enacts and backs the rights attached to a democratic regime; and (b) there is no institution or official in the state or in the regime (or, for that matter, in society) that is *de legibus solutus*. In an *Estado democrático de derecho*⁵⁸ everyone is subject to the legal authority of some other institution(s).⁵⁹ This legal system “closes,” in the sense that nobody is supposed to be above or beyond its rules.⁶⁰ In turn, this characteristic is closely related (as the tradition of liberal constitutionalism recognized very early) to the protection of political and other rights; lacking this safeguard, there would exist some ultimately uncontrollable power(s) that may unilaterally cancel these rights. In a democracy rulers are supposed to be submitted to three kinds of accountability. One is vertical electoral accountability, resulting from fair and institutionalized elections, through which citizens may change the party and officers in government. Another kind of vertical accountability, of a societal kind,⁶¹ is exercised by groups and even individuals who aim to mobilize the legal system to place demands on the state and the government in order to prevent, redress, and/or punish presumably illegal actions (or inactions) perpetrated by public officials. The third kind of accountability, horizontal, results when some properly authorized state insti-

tutions act to prevent, redress, and/or punish presumably illegal actions or inactions committed by public officials (see O'Donnell 1998a, 2003). Notice, however, that there is an important difference among these types of accountability. Vertical electoral accountability must exist by the very definition of a democratic regime, while the degree and effectiveness of vertical societal and horizontal accountability are variable across cases and time. These variations are relevant for assessing the quality of democracy; for example, the lack of a vigorous and self-assertive society or the impossibility or unwillingness of certain state institutions to discharge their authority over other state institutions (especially elected officials) are indications of a low-quality democracy.

We have reached another conclusion. Above I noted that there are three specific characteristics of political democracy not shared by any other kind of regime: fair and institutionalized elections, some participatory rights and “political freedoms,” and an inclusive wager. Now we see that there are two other specific characteristics: (a) by implication of the definition of a democratic regime, a legal system that enacts and backs—at least—those same rights and freedoms; and (b) a legal system that prescribes that no person or institution is *de legibus solutus*.⁶² While the first three characteristics of political democracy pertain to the level of the regime, the last two are located at the level of the state. We see that an exclusive focus on the regime is insufficient for an adequate characterization of democracy. We have abandoned democracy at the level of the regime and entered the more complex level of the state. These conclusions may be stated as a proposition.

- 12. *Democracy has five unique characteristics in relation to all other political types: (a) fair and institutionalized elections; (b) a set of participatory rights and political freedoms without which those elections would be meaningless; (c) an inclusive and (boundedly) universalistic wager; (d) a legal system that enacts and backs—at least—the rights and freedoms included in the definition of a democratic regime; and (e) a legal system that prevents anyone from being de legibus solutus. The first three characteristics pertain to the regime, the last two to the state.*

As implied by the example of courts, another aspect of the legal system is its effectiveness—the degree to which it actually orders social relations. This is a function of the interlacings of the legal system. For example, at one level, which we will call inter-institutional, a judge dealing with a criminal case would have no authority without the inclusion at several stages of the process of the police, prosecutors, defense lawyers, etc., as well as, eventually, higher courts and prisons.⁶³ Horizontally, I noted that in a democratic legal system no state

institution or officer is supposed to escape from legal controls concerning the lawfulness of their actions. In a third dimension, namely, territorial, the legal system is supposed to extend homogeneously across the space delimited by the state. In a fourth dimension, stratificational, the legal system is supposed to treat like cases alike irrespective of the class, gender, ethnicity, or other attributes of the respective actors. In all these dimensions, the legal system presupposes what Linz and Stepan call an "effective state" (1996: 37); in my terms, it is not just a matter of appropriate legislation but also of a network of state institutions that operate in the direction of ensuring the effectiveness of a legal system that is itself democratic. We will see that the weakness of this kind of state is one of the most disturbing characteristics of most Latin American countries. Before discussing this matter, we can add another proposition.

- 13. *The effectiveness of a legal system depends on the interlacing of its rules with a network of state institutions that, in a democracy, act with purposes and outcomes that are regularly consistent with an Estado democrático de derecho or, equivalently, a democratic rule of law.*

We have not finished our examination of the relationship between democracy and the state. Remember that through the assignment of various political rights, democracy construes citizens as agents. Remember, too, that agents are carriers of subjective rights that are legally assigned on a (boundedly) universalistic basis. Now I add that this legal system, beginning with its highest—constitutional—rules, establishes that citizens, as they make their voting decisions in fair elections, are the source of the authority exercised over them by the state and the government. Citizens are not only the carriers of rights; they are the source and justification of the claim to rule that states and governments articulate when making collectively binding decisions. Contemporary democracy hardly is *by* the people; but it certainly is *from* the people and, because of this, it should be *for* the people, too. Elected government officials quite obviously derive their authority from the citizenry. This is also true of all other state officials insofar as, in a democracy, they derive their authority from the highest—elected—powers of the country. Furthermore, the jurisdiction and obligations of those state officials are determined by the same legal system that, by prohibiting them from being *de legibus solutus*, subjects all public officials, elected and nonelected, to horizontal accountability. Finally, everyone, including those who are not political citizens (nonadults and foreigners) is also construed as an agent by the legal rules that regulate civil and social relationships.⁶⁴

It follows that an individual is not, and should never be treated as, a subject—a supplicant of the goodwill of the government or the state. This

individual—an agent carrier of a bundle of civil and eventually social rights, whether or not she is a political citizen—has a legally grounded claim to be treated with full consideration and respect and on an equal basis to everyone else who is treated with such consideration and respect.⁶⁵ Furthermore, this treatment must be based on the application of laws and regulations that are clear, knowable by the citizens, and enacted in ways that accord to democratic procedures.⁶⁶ In this sense, Robert Lane has argued that "By and large, democratic theory is reticent on how we are treated by the political, social and economic institutions that the theory addresses." However, a crucial aspect of democratic theory and practice is that "how we are treated is as important to us as what we get," including "who treats whom with dignity, with minimal procedural pain, and with sympathetic attention to the individual's sense of justice" (1988: 189).⁶⁷

I believe that to the degree that state institutions effectively recognize these rights, they may be deemed more or less democratic, or at least more or less consistent with the duties imposed on them by democracy and its agency concomitants. Indeed, this is arguably the hardest face of democracy. In relation to fair elections and, normally, to the exercise of political rights, citizens are placed on a level of generic equality. In contrast, when dealing with state institutions individuals, whether citizens or not, are often placed in situations of sharp *de facto* inequality. They face bureaucracies that act on the basis of formal and informal rules that are seldom transparent and easily understandable and that make decisions (and omissions) that often have important consequences for their "subjects." It is a sad law of human nature that when individuals are placed on the more powerful side of sharply unequal relationships, they tend to forget that their right to exercise authority derives from those "below" who are carriers of rights that demand full consideration and respect.⁶⁸ This is a problem everywhere. It is more serious, and systematic, when the "subject" of these relationships is afflicted by severe and extended poverty and inequality. These ills breed social authoritarianism, including the way state institutions treat many of its citizens. This is, to my mind, another crucial dimension of the quality of democracy.⁶⁹ In Latin America, with its deep and persistent inequalities, this dimension is one of the most deeply flawed. Now I insert two propositions.

- 14. *Under democracy the state institutions have the duty (correlative to the rights of political and civil citizenship) of treating everyone with the full fairness, consideration, and respect due to an agent.*
- 15. *Although the tendency to deny these rights is structurally impressed in all vertical power relationships (especially if they are bureaucratized), deep poverty and inequality tend to accentuate this tendency.*

6. Second Excursus on Assessing the Quality of Democracy

In the two preceding sections we have covered broad ground. It is time to link some of the conclusions we have reached with the assessment of the quality of democracy.

With regard to the legal system

1. If it extends homogeneously across the territory of the state.
2. If it extends homogeneously across various classes, sectors, and groups.
3. If it enacts rules that prohibit and eventually punish discrimination against the poor, women, foreigners, and various minorities.
4. If it deals in a respectful and considerate manner with indigenous communities and their legal systems.

With regard to the state and government

1. If there exists a state that exercises effective and legally bound control over its whole territory.
2. If there exist adequately authorized and empowered state institutions for the exercise of horizontal accountability, including in relation to cases of presumed illegal actions or inactions by elected officials.

With regard to the courts and their auxiliary institutions

1. If reasonably fair and expeditious access to courts exists, differentiated by kinds of courts.
2. If the courts recognize, and to what extent and in what kinds of cases, international covenants and treaties, including those on human, gender, childhood, economic, and indigenous social rights.
3. If there exist reasonably effective arrangements for access to the courts and the legal defense of the poor, illiterate, or otherwise legally deprived individuals and groups.
4. If the police and other security forces respect the rights of all citizens.
5. If individuals are not held in prison or subject to other ills in violation of basic rules of procedural fairness.
6. If the prisons are in adequate condition.

With regard to state institutions in general

1. If they treat everyone with fairness, consideration, and respect.
2. If they are regulated by rules that are clear, publicly available, and properly enacted.

3. If there exist prompt and effective mechanisms for the prevention, discontinuance, and/or redress of the violation of citizens' rights by state institutions.

As with the previous one, the present excursus merits some comments. One is that the preceding items may be rephrased negatively. This probably would furnish better empirical guidance in cases where flaws in these dimensions outnumber the achievements. A second comment is that it is obviously impossible to map all the ways in which state institutions interact with the population. The imaginative research conducted in the Costa Rican citizen audit, however, has shown a fruitful way to tackle this problem. This type of research starts from the assumption that the most interesting encounters are those in which state institutions typically face the poor, disadvantaged, and/or discriminated against and then chooses from among these encounters those that occur on the more "problematic frontiers" between state and society, and, by means of ethnographic observations and also "sitios centinela," studies these encounters in depth.⁷⁰ Surely, this method does not provide a full map of these interactions, but it does make it possible to locate typical situations and kinds of personal treatment that deserve close attention. This procedure may be usefully complemented by similarly close observation of situations that are known or presumed to be of satisfactory treatment.

7. Democracy and the Social Context

Many democratic theorists agree that in addition to the rights I have listed, the availability of free, pluralistic, and nonmonopolized or state-censored information is another necessary condition for the existence of a democratic regime. For example, among the attributes listed by Dahl is that "alternative sources of information exist and are protected by law" (1989: 221). Notice that this is not strictly an individual right. Having this kind of information is a social given, independent of the will of any single individual. It is a public good, characterized by being indivisible, nonexcludable, and nonrival (see Raz 1986, 1994). On the other hand, the availability of free and pluralistic information is the collective side of the coin of the rights of expression and association; they presuppose and produce each other.

The freedom of accessing free and pluralist information and its cognates, the rights of expression and association, spans over innumerable social sites

well beyond the regime, as shown by the enormous attention paid to these sites in legal theory and practice. To be effective, this freedom presupposes two conditions. One is a social context that is congenial to the existence of a diversity of values, beliefs, lifestyles, and opinions. The other condition is—once again—a legal system that backs this diversity and, through it, the existence and continued transformation of a diverse social context.

Here we find another boundary problem. It is theoretically undecidable where and on the basis of what criteria we may trace a clear and firm dividing line between aspects of the freedom to express and obtain alternative information that are pertinent to political democracy and those that are not. For example, in a given case open discussion might be allowed about political issues, but these issues may be narrowly defined. If, say, the public discussion of gender or sexual diversity rights were censored, or if groups promoting agrarian reform were prohibited from accessing the media, we would have serious doubts about considering this freedom satisfied. On the other hand, in the not-too-distant past of the originating countries these restrictions were not considered problematic. As we saw with the boundary problems of other freedoms, this issue also poses a complicated comparative question. Would it be appropriate to apply to new democracies the criteria that the originating countries currently use, or should we accept more restrictive criteria such as those applied by the latter decades ago—or is there another alternative?

In order to deal with these matters we need to advance a bit more in our analysis. First let us go back to the political relationships demarcated by a democratic regime. We saw that in the sphere of the regime, individuals are construed as agents—they are political citizens who can vote and try to be elected. In order for voting to be a real choice, it stands to reason that citizens need a significant amount of free, plural, and competitive information. In addition, if, for example, Jane decides to try to get elected, she will need to mobilize some of her rights, such as expressing opinions and associating with parties and other citizens. These are rights that each person may or may not decide to utilize. Peter may not care whether these rights exist or not, and he may even believe it is wrong that other individuals have and eventually use these rights. Yet we saw that in a contemporary—that is, inclusive—democratic regime, the waver assigns these rights universalistically, independent of the preferences of Peter.

This reasoning relates to an argument that Joseph Raz (1986, 1994) has fruitfully developed. The effectiveness of rights such as the ones I have enumerated is a public good because “The interest of individuals in living in an open society is not confined to those who desire to benefit from it as producers or consumers of information or opinion. It extends to all who live in that

society, for they benefit from the part of others in the free exchange of information and opinion” (Raz 1986: 253).⁷¹

Raz goes on to argue that this is the main reason why these rights are constitutionally entrenched. Whether we agree or not with this particular point, it is clear that Jane's rights would be ineffectual if a social context congenial to her purposes (say, one that does not discriminate against women entering into politics) did not exist. Without the public good of a diverse social context, the effectiveness of political rights is seriously hampered. When such a social context exists, it benefits everyone, even those who do not recognize its worth.

There is another point I want to stress because it connects with the *problématique* of human development and human rights. Agency, in Sen's conceptualization, entails having a capability set, defined as “the set of functioning vectors within his or her reach” (1985b: 20–21). These “capabilities are one way of characterizing positive freedom, and they can be seen as rights—positive rights to do this or to be that” (1985a: 16). An adequate capability set allows the individual to choose from among various valued functionings; according to Sen, this is the positive freedom to decide, with reasonable autonomy, knowledge, and responsibility, the course of one's life—in my terms, to be properly an agent.

There are many valuable lives that can be chosen, but each of us can only opt for one or very few of these lives. Agency and the freedom to choose functionings is at the root of social diversity.⁷² That manifold others have lived and are living lives different than mine greatly enriches me.⁷³ Furthermore, that these others are agents engages my moral duty of accepting and even celebrating, not just tolerating (except special cases that a democratic legal system carefully legislates), that they have chosen lives other than the one I live.⁷⁴ The aggregate result is a social context that so positively values diversity that it inscribes the respective rights in its legal system. Furthermore, such a social context, populated by legally backed plural agents, offers the public good that authoritarian rulers most strive to suppress: the possible emergence of a public sphere of free and public discussion and deliberation about matters of general interest.⁷⁵

We see now that what I have been calling “political” rights (expression, association, movement, and others) are actually segments of broader and older civil rights. These rights are effected in multiple locations of society, not only in the regime. In fact, we saw that in the originating countries many civil rights were effected well before its political segment. These are the same rights; they pertain to agents who need these rights (or, seen from the angle of human development, these capabilities) in order to freely choose the functionings they deem valuable. Individuals have the right to at least a basic set of rights

and capabilities (social, civil, and political) so they can achieve functionings that are consistent with, and consequently enabling of, their agency.⁷⁶

We have approximated some conclusions. One is that if my life is enriched by a diverse social context (and, indeed, if I am able to recognize this crucial fact of social life), then it is in my interest that all individuals, or as many as possible, have the necessary capabilities to freely choose their own functionings under the conditions established by a democratic rule of law. Second, it is also in my interest that these rights are inscribed in the legal system, thus clarifying and entrenching them against hostile views.⁷⁷ Third, the social aggregate of these individual rights, when broadly and effectively enacted, becomes the public good of freedoms that can be generally enjoyed and that surround and make possible a democratic regime. Fourth, if these rights are truncated (for example, if they are poorly implanted), the diversity of the social context is impoverished and, with it, the possibility of the emergence of the rich public sphere characteristic of a democracy of high quality.

These conclusions about democracy lead directly to human rights and human development. Pointing out and trying to remedy severe deprivations in these areas is not just a praiseworthy act of solidarity; it is a consequence of the moral duty of each agent to treat all others as such agents.⁷⁸ Furthermore, in several spheres of social life, treating every *alter* as an agent is a legal obligation; I already noted this obligation in what pertains to relations among political citizens, in many civil relationships, and in the encounters between state institutions and all individuals, citizens and noncitizens alike.

Let us go back to Jane, who has chosen among her functionings to become active in politics. Very likely, she would not have made this choice if she foresaw that it would bring upon her physical violence and/or severe material deprivations. If this were the case, Jane would not have considered entering politics to be within her capability set. Furthermore, in deciding to enter politics, she is taking for granted that there will be institutionalized places (the political party she joins, or the social movement she supports, or maybe just the public park where she addresses the passersby) where she can exercise her rights of expression, association, and movement. Those of us who have lived under authoritarian rule know this is exactly what one cannot take for granted. Clearly, Jane's agency would be curtailed if she did not count on these freedoms; her agency would be similarly curtailed if she could not choose this functioning because she suffers from severe material deprivations—"the autonomous agent is one who is not always struggling to maintain the minimum conditions of a worthwhile life" (Raz 1986: 155).

Jane, who does not suffer these deprivations, enters politics. There she encounters other citizens to whom the inclusive wager has assigned the same

rights and duties she possesses. She can try persuasion, bargaining, or any other means for garnering votes; but she is prohibited, as are the other candidates, from using or threatening violence and, if she succeeds in getting elected, of accepting bribes and, in general, ignoring the legally defined rights and duties of her office. Throughout, Jane is a discursive being: she processes and conveys information and opinions. In doing this, she relies upon, and utilizes, various sources of information. She is benefiting from, and reinforcing, a diverse social context.

Yet Jane may not prefer to engage in directly political activities. She may want to become active in a union, a neighborhood association, a club, or some other organization. In any of these endeavors, Jane has the right to expect respectful and fair treatment, including that her views are given considerate hearing—an agent is an agent everywhere. Some social locations, however, such as a business corporation, or a university, or UNDP, may raise the kind of trade-offs I mentioned concerning the workings of a state's institutions. I refer to considerations of expediency or efficacy that may prevent the democratization of the respective entities. But even in these cases, Jane has the right to demand (as legislation and jurisprudence, especially in the originating countries, has progressively but still insufficiently recognized) effective recognition of her civil rights, as well as of those that, as part of the evolution of rights I depicted in section 4, have become known as labor rights.

One way or the other, Jane is lucky. Not only does she have the required capabilities to be an agent, but she lives in a diverse social context. Not every democratic regime, however, is joined by an appropriate degree of democraticness of the state, or with a social context that furnishes to all at least a minimum of human rights and human development capabilities, or with a social context that is broadly diverse. These caveats send us in the direction of looking at contemporary Latin American democracies. Before dealing with this topic, however, I must further elaborate on the role of the social context in democracy, which I undertake after inserting two propositions.

- 16. *The effectiveness of the rights of political citizenship requires a social context that includes varied, nonmonopolized, and non-state-censored sources of information. This availability, which is a component of a diverse social context, is a public good supported by a democratic legal system and the congenial performance of state institutions.*
- 17. *More generally, the existence of such a social context plus the broadly available "political" freedoms, insofar as they imply multiple agents freely choosing their functionings, is a nurturing social aspect of the very same agency that is entailed by democracy.*

In order to further clarify the relationship between democracy and a diverse social context, I will first reason *a contrario*.⁷⁹ It seems clear that a democratic regime could not exist in a country where information is monopolized or broadly censored or where many kinds of opinions and associations are prohibited. In such a social context, not enough information would exist to enable meaningful voting, and even if the rights of expression and association were formally enacted, the freedom to decide what to express and with whom to associate would be de facto cancelled. Positively, this reasoning shows that the rights of expression, association, movement, and the like have two faces.⁸⁰ The individual one I have already discussed. The other face is that the effectuation of these rights is also a social fact; it feeds from, and at the same time generates, a social context the diversity of which expresses—jointly with various cultural, religious, artistic, and other values and practices—the very effectuation of those rights. I argued that political rights are necessary conditions for a democratic regime and that these rights are actually segments of broader, and older, civil rights. Now we see that these same rights—both their political and civil sides—have a social dimension: they cannot exist outside social institutions, values, and practices. These are necessary milieus for the existence of these rights, which in their social expression I have called freedoms. On the other hand, these milieus are generated and reproduced by the effectuation of those rights. This social (or, if you wish, collective) side of rights is the complement of political rights: both sides of the coin are necessary conditions for the existence of a democratic regime.

Notice that if the preceding reasoning is correct, we need to assess the democraticness of the social context or, more or less equivalently, its congeniality with democracy. Insofar as a congenial social context is both a necessary condition for democracy and an expression of the exercise of political and civil rights, we can reasonably hypothesize that there will be important reciprocal influences between the quality of a democracy and the characteristics of its social context. In particular (as it would be assessed by means of the items suggested in the first excursus), if citizens broadly utilize their civil and political rights and solidly support democracy, then the social context will tend to be diverse and congenial to democracy; conversely, such a social context will tend to foster such attitudes and practices in citizens. There is an obvious circularity in the preceding sentence, but it is useful because it restates the mutual imbrications of the individual and social sides of political and other rights.

Finally, a diverse social context is extremely important not only for the effectuation of the political rights linked to a democratic regime. Such a context is also the social space where citizens (and, in general, inhabitants) exercise the rights and powers they have not transferred to the state or temporarily

“loaned” to elected officials (Jorge Vargas Cullell, private communication). This is a *public* exercise, insofar as it entails, protected by a congenial social context and by the rights it recognizes, addressing others about matters that are, or are deemed by the addressors to be, of joint concern.

8. Third Excursus on Assessing the Quality of Democracy

Some of the items relevant to the preceding discussion I have already listed. On the other hand, some of the items that follow need further justification, which I attempt below.

With regard to the social context

1. If, in general—and as assessed, among other means, by public opinion polls, legislation, court decisions, and the media—a diverse social context exists, with special attention to indications of discrimination or intolerance.
2. If various media convey diverse information, opinions, and analyses about public matters, and if this information, opinions, and analyses may be deemed autonomous of interests or pressures of the state, the government, and/or various private interests, including economic ones.
3. If in associations other than directly political ones, rights of participation exist, or if at least the civil rights (and, eventually, the labor rights) of their members are upheld.
4. If adequate freedoms and guarantees exist for the exercise of various actions of societal accountability.
5. If, in general, there is a climate of opinion that rejects all types of bigotry and discrimination.

9. Contemporary Latin American Democracies

In contemporary Latin America many countries satisfy the definition of political democracy I propose above. They share two characteristics: they hold fair, institutionalized, and inclusive elections; and their citizens enjoy some political rights, especially freedom of opinion, expression, association, and movement and access to a reasonably free and pluralist media. While some Latin American countries presently have this kind of regime, there are variations as to the degree to which the above-mentioned attributes hold. There also are significant variations as to the degree to which the state and its legal system cover the whole territory of these countries.

In terms of these factors, a classification of contemporary Latin American regimes would look as follows:⁸¹

1. Countries where the regime and state characteristics of democracy are satisfied.
 - Costa Rica
 - Uruguay
 - Chile (Although the “authoritarian enclaves” inherited from the Pinochet regime raise important caveats about placing Chile in this group [Garretón 1987; Valenzuela 1992].)
2. Countries that may be classified as political democracies or democratic regimes. The pertinent characteristics are satisfied at the national level, but there are significant discontinuities in terms of the reach of the legality of the state in several regions, including the nondemocratic characteristics of some subnational regimes.
 - Argentina
 - Bolivia
 - Brazil
 - Colombia (Colombia may deserve special classification due to the extraordinary lack of reach of the state and its legal system over the territory, as well as the systematic violence that has been applied against candidates of leftist parties.)⁸²
 - Dominican Republic
 - Panama
3. Countries that may be classified as “conditional political democracies.” In addition to sharing the characteristics of the preceding group in terms of the limited reach of state legality, it is not presently certain (albeit for different reasons in each case) that fair elections have been institutionalized.
 - Ecuador
 - Guatemala (With the additional caveat that the armed forces are, although not formally as in Chile, an important authoritarian enclave.)
 - Mexico
 - Peru
 - Venezuela
4. Countries that may be classified as “electorally based authoritarian regimes.” Although they have held elections, these elections have not been fair (especially in their decisive dimension) and do not seem to be institutionalized.
 - Paraguay
 - Haiti

As can be seen in table 1, there was a big drop in the acceptance of “democracy [as a kind] of government” in the relatively short period of 1995–2001—an average fall of no less than eleven percentage points. Consistent with the classification above, we also see the high level of support in the two unqualified democratic regimes, Costa Rica and Uruguay,⁸³ as well as a significantly lower level of support in Chile, where the restrictions to democratic politics generated by the authoritarian enclaves may have been a factor. Notice, too, the extremely low levels of support in large countries such as Brazil (30%) and Colombia (36%), as well as in El Salvador (25%) and Panama (34%), jointly with the sharp drop in support in Argentina (–18), Colombia (–24), El Salvador (–31), and Panama (–41). The data from other countries are difficult to interpret because of their very recent democratization (Mexico) or redemocratization (Peru) or the uncertainties raised by the peculiarities of their present regime (Venezuela). But the low level of support for democracy, and especially its sharp drop in most countries between 1995 and 2001, is

Table 1 Proportion of respondents agreeing with the statement “Democracy is preferable to any other kind of government.”

Country	1995 ^a	2001	Difference
Argentina	76	58	–18
Bolivia (1996)	64	54	–10
Brazil	41	30	–11
Chile	52	45	–7
Colombia (1996)	60	36	–24
Costa Rica (1996)	80	71	–9
Ecuador (1996)	52	40	–12
El Salvador (1996)	56	25	–31
Guatemala (1996)	51	33	–18
Honduras (1996)	42	57	+15
Mexico	49	45	–4
Nicaragua (1996)	59	43	–16
Panama (1996)	75	34	–41
Paraguay	52	35	–17
Peru	52	62	+10
Uruguay	80	79	–1
Venezuela	60	57	–3

Source: Data from Latinobarómetro, 1995, 1996, and 2001.

^aExcept when otherwise indicated, data was collected in 1995.

worrisome. This feeling is reinforced by the responses received to another question in the same survey: "How satisfied are you with the way democracy works in your country?" Costa Rica and Uruguay received the highest scores, with (a not too encouraging) 40% of responses being positive. In all the other countries surveyed (which were the same as those in table 1), the unsatisfied responses were above 60%, with Brazil and Argentina scoring a massive 80% and Colombia 90%.

Seen from the angle of popular opinion, democracy is not doing well in Latin America. An important reason is that too often the image of democratically elected governments is that they are incapable of or unwilling to deal with basic development issues as well as social equity and even violence. Underlying these images is the sad fact that in the past two decades the state has weakened tremendously, and, in some regions of these countries, it has virtually evaporated. Economic crises, high inflation, the antistatist fury of most economic adjustment programs, pervasive corruption, and clientelism have concurred to generate an anemic state.⁸⁴

This anemia also appears in the legal system. In fact, in many Latin American countries a democratic regime coexists with an intermittent and biased rule of law. Simply put, the legality of the state does not extend to vast regions of the countries (and parts of their cities, too) where other kinds of law, basically variations of mafia law, are actually operative. Furthermore, even in the regions reached by the legal system, it is often applied with discriminatory biases against various minorities and even majorities, such as the poor and women. This truncated legal system generates what I have called a "citizenship of low intensity."⁸⁵ By this I mean that everyone has, at least in principle, the political rights that pertain to a democratic regime. Yet many are denied basic social rights, as suggested by the widespread poverty and inequality I do not need to document here. These people are also denied basic civil rights. They do not enjoy protection from police violence and various forms of private violence; they are denied fair access to state agencies and courts; their dwellings are raided arbitrarily; and, in general, they are forced to live a life not only of poverty but also of recurrent humiliation and fear of violence, quite often perpetrated by the same "security forces" that are supposed to protect them.⁸⁶ These people, whom I will call the *popular sector*, are not only materially poor; they are also legally poor.

Still, as it is true by definition in the countries I have classified as political democracies, at least in national elections these same people vote without physical coercion, their votes are counted fairly, and in principle they can use the rights of expression, association, movement, and the like. This is a situation in which the political rights that surround and make possible a democratic regime

are effective, while at the same time social rights and, no less harmfully, many civil rights are denied to many—a majority, in some countries.

One aspect of the poor territorial coverage of the legality of the state is that in some countries there are regions where local elections are not fair. These regions are controlled by subnational authoritarian regimes.⁸⁷ These "brown" regions send their representatives to the national political institutions of the regime, thus permeating it with less than democratic actors, interests, and strategies. These problems are shared by many new and some not so new political democracies in the contemporary world. This situation is historically unique in terms of the experience of the originating countries. In these countries the historical pattern of acquisition and extension of various kinds of rights differed significantly from what we observe in most new democracies, Latin America included.

What does democratic theory have to say about this? Unfortunately, not much. In large measure this is because most theories of democracy have been formulated within and based upon the historical experience of the Northwest. These theories leave implicit that, as we already saw, in this region civil rights were reasonably effective and extended throughout society before the adoption of the inclusive wager and the universalization of political rights. In addition, these theories assume that the legality of the state extends homogeneously throughout its territory and that, consequently, not only the national but also the subnational regimes are democratic.⁸⁸ Unfortunately, these assumptions do not fit the historical trajectory and present situation of most of Latin America.

Among the originating countries I note one basic variation. Great Britain, France, Scandinavia, and others roughly followed T. H. Marshall's sequence of the extension and expansion of rights—first the quite extensive achievement of civil rights, then of political rights, and finally of social rights (Marshall 1964). In Prussia/Germany, however, first civil rights were achieved, then social rights, and only later political rights. Yet in both sequences civil rights were quite effectively and extensively implanted before the achievement of other kinds of rights. This is more true with respect to men than to women and some minorities, an issue I will return to below.⁸⁹

With some caveats that need not detain me here, the Northwestern sequences roughly apply to Costa Rica, Chile, and Uruguay. Costa Rica and Chile basically followed the Marshallian pattern of civil-political-social rights, although under Pinochet, Chile experienced a sharp regression in terms of the latter. Uruguay, with its early welfare state, achieved almost simultaneously social and political rights. One way or the other, the patterns in these countries are similar to the ones in the Northwest in the sense that, especially in the

urban sectors, there existed a reasonably high degree of implantation of civil rights prior to the achievement of social and political rights. Indeed, despite the authoritarian interruptions suffered by Chile and Uruguay, these three countries are the longest-standing political democracies in Latin America. Furthermore, in terms of their present workings, with the already noted caveat of the *Pinochetista* legacy in Chile,⁹⁰ these three cases most closely approximate the typical patterns of functioning of the Northwestern regimes.

This was not the route followed by the rest of Latin America. Rather, the modal pattern has been as follows. First, some social rights were granted, although they were more limited than in the Northwest and, in the past two decades in most countries, have been sharply reversed. Later, political rights were acquired by means of past or recent processes of political democratization. Finally—and this continues even today—civil rights were implanted in a biased and intermittent way. This is the populist pattern followed by Argentina, Bolivia, Brazil, Ecuador, Mexico, and Peru.

Colombia and Venezuela differ because of their early, nonpopulist democratization, which meant the achievement of political rights in the first place. However, these countries share with the populist ones the fact that civil rights have not been significantly extended either before or after the achievement of political rights. In turn, Ecuador has alternated between authoritarian and oligarchic democratic regimes of various kinds. Now I summarize the preceding discussion as follows.

- 18. *In contrast to the originating countries, in most of Latin America (and in terms of population, for a large majority of this region), political rights were gained, or have been recovered recently, before an as yet unachieved generalization of civil rights. In turn, depending on the trajectory followed by each country, social rights were granted before or after political rights. In all cases these rights were rather limited, however, and recently in many countries they have been sharply reversed.*
- 19. *In these same countries, the penetration and effectiveness of state legality has been partial and intermittent. Furthermore, even under democratically elected governments the “brown” areas—those not covered by state legality—have grown, in some countries extensively.*

Consequently, an image of contemporary Latin America tells us the following: (a) in many countries, as a correlate of the inauguration of democratic regimes, the universalization of political rights has been achieved; (b) only a limited and biased implantation of civil rights has been attained, however; furthermore, for large segments of the respective populations these rights have

barely expanded, if at all, during the presently existing political democracies; (c) in most cases, there has also been a regression in social rights, which, in addition, has occurred from a baseline that, compared with the Northwest, was very limited; and (d) with the exception of Costa Rica and Uruguay, the support for democratic regimes is low and has significantly diminished during recent years.

I insist that in terms of the historical trajectories of democracy this is a rather unique pattern. In spite of the fact that a long-standing democracy, India, should have alerted theorists of this uniqueness, many existing theories of democracy are ill-prepared to deal with this kind of situation. In particular, a narrow focus on the regime may be permissible⁹¹ when it can be assumed that the effectiveness of civil and social citizenship is not particularly problematic. However, when these dimensions of citizenship are intermittent and unevenly distributed, as they are in Latin America, taking them into careful empirical and theoretical consideration is crucial, even for understanding the actual workings of the respective regimes.

Of course, severe deficits in civil and social rights do not afflict everyone in Latin America. Many members of the high and middle classes (intellectuals included) are better off under political democracy than under authoritarianism, if not all of them economically. This bifurcation of social conditions is not new for Latin America, but it is disturbing that in many of these countries it has worsened under political democracy. In spite of this, I suggest that a possible solution to this situation consists of using the reversal of the historical sequence as a springboard for expansion of the rights presently lacking. That is, instead of claiming, as some are doing currently, that the political rights of democracy are “purely formal,” they can be used for conquering other rights. This is what the feminist and some minority movements have done in the Northwest—use political rights as a basis for struggling for civil and social rights. This strategy has been anything but linear; it does not lend itself to the more sequential (male) processes I depicted above. Rather, it has consisted of a long moving back and forth, from and to political rights to social and civil ones. This is a dialectic of empowerment in one sphere of rights in order to push for conquests in other spheres (see also UNDP 2000a: 8 and 2000b). This possibility, which originates in the availability of political rights, is denied by authoritarian rule; however, it is uniquely offered by democracy through the political rights it enacts, even for those who suffer truncated social and civil rights.

Of course, deep poverty and inequality, and the patterns of social authoritarianism and exploitation that are built on them, are formidable obstacles to the unfolding of this dialectical process.⁹² In this respect I have an admittedly

insufficient and at best medium-term suggestion: place more emphasis than it has been the case until now in Latin America on struggles for the expansion of civil rights. The reason is that, probably even more than in the Northwest, whatever civil rights are gained may become an important lever for further political democratization and human development. Civil rights not only protect, they empower; they provide opportunities to act for attaining further rights. Civil rights thus make it possible (but I grant, just possible) for various collective and individual actors to autonomously define their identity and interests. The main facilitating factor of these struggles is furnished by the political rights—expression, association, movement, and the like—that a democratic regime must sanction and to a respectable extent (lest it lose its democratic character) uphold. Furthermore, successful extensions of civil rights initially based on the utilization of political rights tend to reinvigorate the latter; this in turn opens avenues for further struggles for other rights, including social ones. As UNDP (2000a), among others, has insisted, these rights—political, civil, and social—may be analytically separated, but in practice they presuppose each other. Usually advances in any of them make it possible for other rights to move in the same direction. Advances in civil rights, social rights, or political rights are valuable per se and because they are springboards for the conquest of other rights.

It seems to me that the convoluted process sketched above is the only path open to Latin America. It is a path open only under democratic conditions, but I do not believe that authoritarian ones will lead to better outcomes. That traversing this route will not be easy is shown, among other indications, by the fact that the public agenda in Latin America has been monopolized by economic policy issues (defined in a very technocratic and socially regressive way, in addition),⁹³ corruption scandals, and various kinds of violence. Additionally, governmental reactions to social violence often go in the direction of further curtailing the civil rights of the popular sector. The deprivations provoked by the lack of civil and social rights scarcely reach the public agenda, except as problems to be dealt with by the police or through temporary—and humiliating—handouts of some goods to segments (often clientelistically selected) of the popular sector.

It may be argued that the dispossession of the popular sector of basic civic and social rights is the same old story of Latin America. There is a new element, however. In the countries that fit the definition of political democracy, the popular sector now has political rights: they can assemble, express opinions and demands, and affiliate with political parties and social organizations. Their rights are important, because, in spite of social authoritarianism and manifold mistreatments, they may determine that these political democracies are not fake.

I am afraid that, in terms of human development and human rights, little progress has been achieved in Latin America under the existing democratic regimes.⁹⁴ This statement merits two caveats, however. One is that in some dimensions of social welfare (such as literacy, schooling, and infant mortality) some countries have improved their situation. But I do not know to what extent these changes are due to secular trends or to the impact of democratically elected governments. The second caveat is that at least in the aggregate and in the medium and long run, political democracy does seem to make a difference. Adam Przeworski and his collaborators undertook a massive study that included all the countries in the world for which there were some reasonably available data. They dichotomized these countries as either democracies (according to the kind of minimalist criteria I referred to in section 2) or authoritarian ones. On this basis, they asked if these regime types could account for various outcomes along a series of dimensions. Some findings were negative (for example, the rates of economic growth of countries that include democratic or authoritarian regimes are very similar), but other findings are significant and, indeed, worth noting. In particular,

[D]emocracies have lower birth rates and lower death rates. Women in democracies have fewer children. More children survive to adulthood. As adults, they live longer, years longer. . . . The observed differences in infant mortality are larger. . . . And the effect of regime on life expectancy is astonishing: The observed difference is enormous at each income level. (Przeworski et al. 2000: 264)

Furthermore, “average infant mortality is much higher under dictatorships.” In turn, “educational expenditures,” which are higher in democracies, “sharply decrease mortality under both regimes,” and the same happens with health expenditures, which under democracies are more than double that under authoritarian regimes—3.3% and 1.5% of gross domestic product (GDP), respectively (ibid., 237–39). Finally, “The effect of political regimes on the lives of women is glaring . . . under dictatorship women engage in gainful activities outside the household as frequently as under democracy. But in addition they bear many more children, see more of them die, and are themselves more likely to die” (ibid., 265).

Democracy does seem to make a difference in terms of various dimensions directly connected to human development (this research did not look at indicators directly relevant to human rights). At least as yet, however, these beneficial consequences are not visible in Latin America; furthermore, in some of the dimensions mentioned by Przeworski et al. (2000), regressions seem to have occurred.⁹⁵

Clearly, we confront a tall order in trying to overcome these deficiencies. Of course, the popular sector can hardly succeed alone. At the very least, it needs a friendly state, rather than the enemy it often is. Efforts to reform the state into one that is not only more efficacious but also more congenial to the agency of everyone are badly needed. This is true not only of state institutions but also of its legal system, for two reasons. One is that some rights still need to be inscribed, as demonstrated by existing discriminatory rules against women and various minorities as well as by police and judicial practices that foster gross violations of human rights and due process. The second reason is that many of the preexisting and new rights need to be implemented; the citizens of Latin America know too well about laws that are no more than a piece of paper. In order to overcome this legacy, not only better laws and courts are needed. As we saw in section 5, also necessary is a network of state institutions, both national and subnational, that is committed to implementing not just any law but a *democratic* rule of law.

Up to now I have not said much about another huge challenge facing Latin America: overcoming at least the most pressing human development needs of the popular sector. This is due to my belief that in order for these needs to be met, the enjoyment of political rights and important advances in civil rights are very important. Otherwise, the policies against poverty and inequality will continue being captured and distorted by ingrained practices of clientelism and paternalism. Democracy and its rights are important—probably, they are necessary conditions—for advances in human development that are not easily reversible and/or submerge the popular sector in further clientelistic dependency. Perhaps, during the convoluted process I have sketched, social agents emerge that are capable of designing, or supporting, alternatives that we cannot presently envisage.⁹⁶ For this to occur, we should remember that under the democratic regimes that presently exist in Latin America political rights are the only ones that the popular sector more or less fully enjoys. If, as I argue above, political democracy and its rights are public goods, it is our moral and political duty to help the popular sector use the levers of these rights for the conquest of other rights; any achievement in these matters sharpens the “weapons of the weak” for their uphill struggles.⁹⁷

10. Convergences and Overlaps

“No one . . . can fully enjoy *any* right that he is supposed to have if he lacks the essentials for a reasonably healthy and active life” (Shue 1996: 7, italics in the original). Consequently, “[I]t would be inconsistent to recognize rights

referred to life or to physical integrity when the means necessary for the enjoyment and exercise of these rights are omitted” (Vázquez 2001: 12, my translation). These remarks are sadly obvious. Whether it is human development, human rights, or political rights, these remarks refer to the capabilities that enable, or disable, agency. For exactly the same reasons we saw when discussing political rights, it is theoretically undecidable what would be a sufficient minimal set in terms of human development and human rights. Where and on the basis of what criteria could we draw a firm and clear line above which agency may be reasonably construed as enabled in terms of human development or human rights? As with political rights, there is not, and never will be, clear and firm generalized intersubjective agreement about a minimal sufficient set for the respective rights or capabilities. And, as with political rights, instead of artificially trying to set the respective external and internal boundaries for human development and human rights, the appropriate procedure is to analyze the reasons for and consequences of their undecidability.

Before moving in this direction, I illustrate my point with a couple of examples of the vacillations and ambiguities that provoke attempts at fixing those boundaries, from minimalist listings that are criticized as manifestly insufficient, to long listings that are criticized as including practically every good thing one might want for human beings.⁹⁸ These problems are observable even within the same author's work. Here I mention two authors who are deservedly influential in their respective fields. Henry Shue asserts that there are some “strategically critical rights” that are necessary “for the enjoyment of all other rights” and consist of “security, subsistence and liberty” (Shue 1996: 197, 20, and *passim*). As Shue develops his analysis, however, he adds a series of other rights that he sees as also necessary for a sufficient set (*ibid.*, 65 and *passim*).⁹⁹ On the other hand, in terms of human development Martha Nussbaum moves in the opposite direction. She begins with a complex list of “central human functional capabilities” (Nussbaum 2000b: 12).¹⁰⁰ Surely aware that this list is rather unwieldy, Nussbaum “minimalizes” it by asserting that there are two capabilities (“practical reason and affiliation”) that are even more central, “since they both organize and suffuse all the others, making their pursuit truly human” (Nussbaum 2000b: 79, 82).

In spite of these vacillations, these and other authors imply two points with which it would be hard to disagree. One is that the minimalist versions of these lists are insufficient for fully guaranteeing the goods posited by human development, human rights, or democracy; one can always name another right or capability that may be persuasively argued as also necessary for enabling agency in any of these three dimensions. The second point is that the

extended lists presented by Shue and Nussbaum (as well as, for that matter, UNDP) include rights and capabilities that are extremely important.¹⁰¹ Another point usually made is that the rights and/or capabilities of these lists are “equally fundamental” (UNDP 2000a: 12 and *passim* for this and similar expressions). Yet this is the problem, in part because it risks leaving us without practical and analytical guidance, and in part because it offers an easy target for those who deny the relevance and/or conceptual import of the very *problématique* of human development, human rights, and a theory of democracy that goes beyond the confines of the regime. Another problem with these listings of “equally fundamental” goods is that they may be quite discouraging. Where should we begin, if so many people are deprived of so many closely interconnected rights and capabilities?

At this moment it should be clear why I undertook a rather detailed discussion of political rights. I aimed at justifying two assertions: (a) the minimal sufficient set of these rights is theoretically undecidable, and (b) these rights (of expression, association, movement, and the like) are segments of broader and older civil rights.¹⁰² I also argued that these rights pertain to all human beings insofar as we re-cognize them as agents, and agency rights in the political sphere can hardly be effected if individuals lack the “basic” capabilities related to human development and/or the “basic” rights related to human rights’ approaches.¹⁰³

Perhaps I should take a moment to insist on the common grounding of democracy, human rights, and human development: They share, as the very foundation of their respective views, a moral conception of the human as an agent, and the three of them posit that this human condition originates not only moral claims but also universalistic rights, however undecidable may be the minimal sufficient set of these rights. A being endowed with practical reason has the right to be respected as such a being; she also has the right to the social provision of the conditions necessary for freely exercising the cognitive, moral, and sociability aspects of agency. Submitting this individual to, say, physical violence, or to the privation of basic material needs, or ignoring her political citizenship are all severe denials of her agency. This view has been explicit in the tradition of human rights. With regard to democracy, I have substantiated that even when looking at one of its aspects, the regime, we can see that agency is strongly—albeit implicitly—entailed. In relation to human development, its concern with capabilities can only be understood as they enable functionings that are adequate to agency. This grounding and its universalism has been explicit in the work of Sen and becomes clear in the crisp statement with which the 2000 *Human Development Report* begins: “Human rights and human development share a common vision and a common

purpose—to secure the freedom, well-being and dignity of all people everywhere” (UNDP 2000a: 1, *italics added*).

All these rights and capabilities associated with democracy, human rights, and human development directly pertain to, and enable, agency.¹⁰⁴ This is the nexus of these three currents. This is precisely why each, or a combination of two of them, may “push” toward the attainment of the other(s), or at least create opportunities for their attainment. We saw that in the originating countries the early achievement of civil rights (which contained important bundles of human rights), followed later by the conquest of political rights, greatly facilitated the attainment of social rights (which in turn contain significant elements of, and at the same time foster, human development). Yet, as we saw with Latin America, there are no historically or mechanically predetermined sequences in these matters. Another example of this is some East Asian countries—especially South Korea and Taiwan—that exhibit a sequence that differs both from the originating countries and Latin America. These countries first achieved a rather high degree of human development and only later attained quite extensive civil and political rights. In part because the common grounding among these three currents has not yet been adequately discussed, we know too little about the causal relations by which achievements in one or two of these dimensions push or at least create opportunities for advances in the other(s). But in light of their common grounding and the insights provided by sweeping historical generalizations such as the one I have just undertaken, I believe that it can be asserted that there exists, in Weberian terms, a strong elective affinity among these three currents.¹⁰⁵

Furthermore, as with political rights, the rights and capabilities implied by human rights and human development can only be derived inductively. Consequently, their minimal sufficient set¹⁰⁶ also is theoretically undecidable. On the other hand, and also as we saw with political rights, each of the capabilities and rights that seem reasonable candidates to be considered “basic” for human development and/or human rights are extremely important and as such should be empirically considered and theoretically thematized.

11. Struggles, Past and Future

The simultaneous undecidability and great importance of the rights and capabilities I have been discussing is, admittedly, a conundrum. One possibility, as I did with some examples in relation to political rights, is to proceed *a contrario*, identifying conditions of such deprivation that there can be little doubt concerning the denial of agency in terms of human development or

human rights. This is a useful step; yet it is a negative determination that does not tell us at what point the options for agency may be positively satisfied. Furthermore, the relevant criteria for human development, human rights, and democracy have changed greatly. We saw that even in the originating countries this historical variability creates vexing problems in establishing a minimal sufficient set of these rights; obviously, it would be even harder to determine this set for countries that command far less resources than the former.

All this surely bothers a geometric mind. We can advance some steps, however, by elaborating on some recent contributions. Sen has made the interesting observation that even in relation to theories of a conservative bent,

It may be useful to ask why it is that so many altogether different theories of the ethics of social arrangements have the common feature of demanding equality of something. . . . It is also of considerable pragmatic interest to note that impartiality and equal concern, in some form or other, provide a shared background to all the major ethical and political proposals . . . which continue to receive argued support and reasoned defense. . . . If a claim that inequality in some significant space is right (or good, or acceptable, or tolerable) it has to be defended by reason . . . [when this is the case] the argument takes the form of showing this inequality to be a consequence of *equality* in some other—more centrally important—space. (1992: 17–21, italics in the original)¹⁰⁷

This is a contemporary achievement. For a long time many theories postulated intrinsic human *inequality*; as I noted in a different but convergent context, serfs, workers, women, and many others were deemed to lack agency and hence to be intrinsically inferior to their “superiors.” I surmise that the tendency noted by Sen of all sorts of contemporary ethical theories to base themselves on some dimension of human equality is a reverberation of the historical process of extension of the attribution of agency to manifold social and political sites. In spite of the many horrors of the past century, this increasing indisputability that all humans are in some fundamental sense equal is a huge achievement. As a consequence, the universalistic view of agency postulated by human development, human rights, and democracy is not, in the contemporary world, an odd and isolated argument. In addition, I do not think that the universalistic equality that these currents postulate can be defeated by the extreme cultural relativism presently in vogue in some quarters.¹⁰⁸ Even in countries where, as in Latin America, this equality is factually denied in many ways, the equalizing view of agency entailed by their democratic regimes and legal systems is already there, amenable to being mobilized for the conquest of

the many rights still lacking; this is no more and no less than a possibility that may be effected by purposive political action.¹⁰⁹

The preceding assertions gloss over the philosophical and ethical discussions that center on equality and its trade-offs with liberty. These are extremely important issues that will forever engage theoretical discussions and political conflicts. I cannot deal with this matter in the present text. Furthermore, here I have in mind situations that are, in an important sense, previous to those discussions. In the Northwest these discussions usually deal with the question of which principles of liberty and/or equality should regulate the allocation of social goods once everyone, or most, has attained a basic level of rights and capabilities.¹¹⁰ In the situations I am referring to here, however, the main issue refers to those individuals—and there are many—who have not attained these basic rights and capabilities. This poses a sad but, in terms of the issues involved here, simpler question: Do good reasons exist—before the predicaments of liberty vs. equality under affluence are sharply posed—for asserting a universalistic right to the attainment of a basic level, or set, of rights and capabilities? I believe that these reasons do exist and that their grounding is agency. These reasons refer to a primary aspect of fairness—not full equality, but basic equalization. By *equalization* I mean the right of everyone to at least two things: (a) as we saw when dealing with state institutions and now more generally, to be treated with the fairness and consideration due to an agent; and (b) to attain and, if necessary, enjoy the social provision of a floor consisting of basic rights and capabilities that enable agency or, at the very least, not to suffer deprivations that clearly hamper agency.¹¹¹

Above this level we can, and should, have complicated disputes; yet whatever the answers to these disputes, the question remains as to whether there are not only moral duties to provide but also positive rights to claim basic agency-enabling rights and capabilities.

I will return to this point after noting another contribution by Sen. He argues that democratic “political and social participation has *intrinsic value* for human life and well-being,” as well as “*instrumental value* in enhancing the hearing that people get . . . in their claims to political attention (including claims of economic needs)” (1999a: 10, italics in the original). Sen further elaborates that democracy has *constructive value* because

Even the idea of “needs,” including the understanding of “economic needs,” requires public discussion and exchange of information, views, and analyses. . . . Political rights, including freedom of expression and discussion, are not only pivotal in inducing social responses to economic needs, they are also central to the conceptualization of economic needs themselves. (1999a: 11)

We may relate these observations to my discussion of the theoretical undecidability of the set of rights pertaining to democracy. In relation to this topic Jeremy Waldron comments that

Any theory of rights will face disagreements about the interests it identifies as rights, and the terms in which it identifies it. . . . In addition, theories of rights have to face up controversies about the forms of duty that they ground and the forms of moral priority they establish: absolute duties, prima facie duties, lexical priorities, weighted priorities, agent-relative side constraints, agent-relative prerogatives, and so on. (1999: 225, 226)

The content of rights, their degree of specificity, the scope of their reach, the relative priority of some rights over others, and other issues of this kind are and will be forever disputable—there are too many views and preferences, too many theories of what is just and/or fair, and too many social interests and positions for any of these issues to be clearly and firmly settled. This is a fact of social life. It should not be denied or regretted; it is a consequence of human agency and the diversity of life projects, views, interests, and social locations it sustains.

This fact is compounded by a practical problem that has been stressed by another recent contribution:¹¹² implementing rights, practically any right, requires complicated institutional arrangements, and these arrangements cost money, usually provided by taxes. Not only because of bias or neglect, some rights are not enacted, others are weakly or selectively implemented, and others are only partially implemented. Rights are not static; they “are constantly expanding and contracting under the impact of legislative and adjudicative action” (Holmes and Sunstein 1999: 104). Holmes and Sunstein focus on a rich country—the United States—when describing selectivity in the enactment and implementation of rights that result from various institutional and economic constraints; of course, these constraints are more acute in weaker states. Now I recapitulate the preceding discussion by means of some propositions.

- 20. *In any given historical circumstance, it is eminently disputable what rights, with what intensity, with what scope, and with what priorities are enacted and implemented.*
- 21. *This fact is in part due to institutional and economic constraints, but it also results from the social diversity entailed by agency and the manifold views, lifestyles, and interests it generates, both (statically) at any given moment and (dynamically) as those characteristics unfold and change over time.*

What is the answer to these problems and restrictions? Quite simply, democracy. The crucial issue is who decides, how, and on what grounds which rights are enacted and implemented and with what intensity and scope while other rights are not inscribed or remain *letra muerta*. Even if grounded in universal characteristics of human beings, what claim-needs become rights, to what extent they are implemented, and in what trade-offs with other rights and obligations is a social and political construction. A very important matter is who concurs to this construction and how (including, indeed, those claim-needs that do not succeed in being inscribed as rights).¹¹³ The mutual agency recognitions demanded by political citizenship are crucial here.¹¹⁴ This is a space for political participation, backed by the rights attached to a democratic regime. It is in this space that, at least in the originating countries, many need-claims of workers, peasants, women, and others were transformed into actionable rights, thus furthering democratization against the sometimes stiff resistance of the privileged.¹¹⁵ I noted that currently, however, the struggles in the originating countries around needs, claims, and rights presuppose that almost everyone is above a basic floor of rights and capabilities. Indeed, this is not the case in Latin America and other regions of the South and East. This lends special urgency and dramatism to arguments and struggles about which rights should be enacted and implemented in these countries. The very possibility of agency is often at stake there. I also noted that in some countries, whether by means of authoritarian repression or because of severe deprivations suffered by the popular sector, their need-claims scarcely reach the public agenda. This is a reflection of the inequality of these countries. Few issues get onto the public agenda other than those that interest the dominant sectors and classes, except concerns for “public security,” which often entail the criminalization of poverty and, with it, further regressions in the civil rights of the popular sector.

Paradoxically, it is in the countries where broad public discussion about need-claims is most needed that it is more difficult to incorporate these issues into the public agenda. The resulting deafness of the agenda is an indication of the low quality of these democracies—it strongly suggests that many of those who are political citizens lack basic social and civil rights and capabilities. I argued above that the answer to this situation is more, better-quality democracy. The rights of political citizenship plus whatever civil rights do exist in a given case, in addition to appropriate political alliances (see O'Donnell 1998b), are the initial levers for this surely long and arduous task. Curiously, perhaps, the main theme of this task is the very issue I argued is theoretically undecidable: what would be “a decent social minimum” (Nussbaum 2000a: 125) in terms of a basic set of human development capabilities and human

rights? Furthermore, if a country is poor and has an anemic state and a truncated legal system, which sequences and trajectories would be adequate for the achievement of that minimum?¹¹⁶

As should be clear by now, we cannot know in advance the answer to these questions. It would be a presumptuous intellectualistic fallacy to try to predetermine what *menu* of rights will or should be demanded by what deprived groups, sectors, or classes in a given country and period. All we can do, I believe, is try to clarify these issues and insist on the potential importance of the—few, but as I have argued, not insignificant—rights that political democracy entails. For these purposes, furthermore, we do know two helpful things. One is that, as we saw in relation to these rights, we can derive, inductively and *a contrario sensu*, conditions that beyond a reasonable doubt hamper agency, whether it is defined in terms of human rights or human development. Being subject to physical violence, the recurrent fear of violence, hunger or malnutrition, serious preventable diseases, or severe inherited incapacities are, among others, strong candidates for being considered deprivations of basic rights and capabilities.

We have reached a point I want to stress. In relation to political rights, the undecidability of their minimal sufficient set did not deter us from identifying some rights (such as expression, association, and movement) about which we can confidently make an empirical, inductively derived, causal proposition: *If* these rights are lacking, *or if* they are severely curtailed, *then* a democratic regime and its component of political citizenship do not exist. In the same sense, the impossibility of determining a minimal sufficient set for human development and human rights should not deter us from establishing conditions that, on the basis of available knowledge,¹¹⁷ allow us to confidently assert that they severely hamper the agency of those suffering these conditions. Furthermore, most of these conditions probably would have to be asserted *a contrario*, at least until we have more and better knowledge. For example, in terms of human development, physicians and biologists know quite well the minimal nutritional requirements of various social categories (pregnant and nursing mothers, children at various ages, manual laborers, etc.), as well as the tragic consequences that deprivation of the respective requirements bring for their victims and their offspring.¹¹⁸ In terms of human rights, for example, we can identify practices of domestic violence, police torture, or other severe mistreatments that clearly deny agency. Fortunately, currently there are many institutions—public, private, and international—gathering all kinds of relevant data; perhaps the time has come for some institution (maybe UNDP?) to take the lead in coordinating the sharing and harmonization of these data.¹¹⁹ The second thing we know is that it is not just isolated individuals

who are suffering these deprivations and needs; these are *social matters*, to be dealt with in terms of the acknowledgement of collective and public responsibilities.¹²⁰

On the basis of evidence of these kinds of deprivations and their consequences, a strong argument may be made that a country's resources should be primarily allocated to overcoming them. We can be guaranteed that alternative arguments will be made, such as, for example, allocating most of these resources to improve health and education services for the middle sectors so a better-trained and healthier workforce will improve economic growth rates, which presumably will also benefit those who suffer severe deprivations. Furthermore, these are *political* questions, informed by different values, ideologies, and social locations and by more or less implicit theories about the workings of a given society and, presently, increasingly also about the workings of the whole world. These discussions define what are the "real" (that is, socially defined) needs that a country faces, ignores, and represses. Politics, democratic politics included, is as much consensus as it is conflict. Pushing some issues onto a public agenda that closely reflects existing social inequalities, arguing that some needs are positive rights, and debating about the relative priorities of various kinds of rights are all conflictive matters—the more so the more unequal a society is and the more accustomed its dominant sectors and classes are to their privileges.

At this point an intersection among democracy, human development, and human rights may be highlighted: Except perhaps for some truly exceptional individuals, the effectuation of political rights requires that at least some basic human capabilities and human rights have been achieved;¹²¹ conversely, the struggles for achieving those rights and capabilities benefit from the universalistic rights and potential empowerments furnished by political democracy. It could be said that I have just stated an unbreakable vicious circle, but an alternative view is the dialectical one I sketched in section 9. This view recognizes democracy's peculiar dynamics and historical openness. The always possible extension or retraction¹²² of political, social, and human rights and—encompassing them all—the issue of the capabilities that enable agency are the field on which, under democracy, political competition has been and will continue being played. This is the main reason why variations and changes over time in the quality of democracy are consequential, both as a result and as a propeller of struggles for human development and human rights.¹²³

Truly, we saw that a democratic regime may coexist with severe human development deprivations as well as with the curtailment of important civil rights; furthermore, pending future and much needed research, we cannot say that a democratic regime in any strict sense *causes* advances in human

development or human rights. Yet these three currents have a strong elective affinity.¹²⁴ Because they are based on the same view of the human being they, so to speak, invoke each other. For example, historically advances in the material conditions of the popular sector made it much more difficult for those in power to resist their demands for political citizenship; the extension of the latter provided to women and some minorities an important springboard for acquiring civil and social rights; the broad effectuation of civil rights furthered the conquest of social and political rights; the availability of political rights has prevented famines, which happen quite often under authoritarian rule; etc. These are just examples; these and others that may be brought to bear suggest that under the metaphor of elective affinity lies important empirical relations. I believe that the driving force of these relations is ultimately moral—the recognition that an agent should not be deprived of *any* of the basic rights and capabilities, however theoretically undecidable, postulated by these three currents. These currents have different intellectual origins, different moments of emergence, different institutional settings in which they are practiced, and different disciplinary specializations and literatures. I insist, however, that they all are based on the same conception of the human being. This is why they tend to converge in their theoretical and—hopefully, increasingly—in their practical concerns.¹²⁵ They have a strong elective affinity because they see the human being as an agent carrier of rights that define, and support, his/her very distinctiveness as a human being. As a consequence of both the above-noted differences and this basic agreement, students and practitioners of each of these currents do well to focus principally on some aspects of those rights; on the other hand, the three currents have much to gain, practically and theoretically, carefully exploring the overlaps that their common grounding unavoidably (and, indeed, fortunately) generates. This is, I believe, a much-needed conversation, to which I hope this volume will contribute.

12. Fourth Excursus on Assessing the Quality of Democracy

From the preceding section it follows that an assessment of the quality of democracy should not be indifferent to the extent to which some basic aspects of human development and human rights have been achieved, nor to the number and social characteristics of those who are deprived. Simply put, severe deprivations in these matters mean that except for exceptional individuals, their political agency is disabled. Insofar as democracy entails political citizenship, including its participatory rights, it includes the expectation that everyone is at least above a floor of basic human capabilities and

human rights that enables them, if they wish, to exercise their political citizenship.¹²⁶

For the reasons stated in the preceding section, I include some examples of the relevant human development and human rights dimensions with no claim that they constitute a complete listing.

With regard to (basically) human development

1. Number, percent, social position, gender, age, and geographical location of individuals lacking minimally adequate food intake, shelter, clothing, health services, and drinkable water.
2. Number, percent, social position, gender, age, and geographical location of individuals affected by lack of access to health services, by preventable diseases, and by inherited or acquired disabilities due to any of the deprivations listed in the present items.
3. Number, percent, social position, gender, age, and geographical location of full and functional illiterates and rates of enrollment and desertion at various educational levels.
4. Number, proportion, social position, gender, age, and geographical location of individuals who are unemployed or working in informal sectors of the economy that do not recognize basic civil and/or labor rights such as the ones listed above.

With regard to (basically) human rights

1. Number, social position, gender, age, and geographical location of individuals who are and/or have been victimized by physical violence, including domestic and police-perpetrated violence.
2. Number and geographical location of various crimes, especially homicides and armed robberies.
3. If foreigners are assigned the same civil and social rights as citizens, if at least at the local level they can participate in political affairs, and if they are treated by state agents and citizens with due consideration and respect.

The above are just examples, but their very listing recommends some practical criteria. Even though it is no small task to gather (or, when available, to organize) the kind of data implied by the previous excursi, they pertain quite naturally to an inquiry into the quality of democracy. Instead, the data implied by the items listed in the present excursus are the main empirical field of institutions working on human development and on human rights. These

institutions, especially if persuaded of the intimate connections that exist between their concerns and democracy, may be amenable to share their data with those who wish to assess the quality of democracy. The latter, of course, should be willing to share their own data with those institutions.

13. Some Precisions on the Quality of Democracy

At this point, after the final excursus, I summarize my views about the conceptualization of the *quality of democracy*. By this I mean *different degrees of democraticness*, referring to the items (or as the Costa Rican citizen audit proposes, standards) such as the ones I have proposed here. These items may be seen as vectors that tap dimensions that, depending on the data feasible for each, may be arranged in some scale or ordering.¹²⁷ The distance to the level established by the respective standard or, eventually, from a "bottom" indicating the absence of the given factor or dimension would establish (or allow a reasoned assessment of) the relative democraticness of that dimension. The overall result would be a series of vectors¹²⁸—of course, some of them better measured than others—of relative democraticness. In turn, the relationships among these vectors should not be presupposed; rather, it is an empirical matter for the study of which the disaggregation of the vectors (and their component variables) is a necessary step.¹²⁹ As the citizen audit has skillfully done in Costa Rica, and with the experience derived from this innovative experiment, similar assessments in other countries (or, for that matter, regions or cities) would provide much new and useful knowledge about the workings—both achievements and failures—of a given democracy. Furthermore, with good methodological care important aspects of these data may be comparable across cases.

I must now make explicit a personal bias: The more democraticness one finds, the better. This does not ignore, as I already mentioned, that there are trade-offs, nor that seldom if ever all good things come together. But still I believe that *in dubio pro democracy*; that is, trade-offs against a given democratic dimension ought to be carefully justified. Furthermore, these justifications must be given publicly, a fair chance for public debate should be offered, and the decision to accept the trade-off must be made by legally authorized institutions proceeding according to democratic rules¹³⁰ (or, as with the examples I presented above of making some foreign currency or national security decisions, by institutions that have been properly authorized to this effect and whose authority can be challenged by democratic means).

Now I must qualify my assertion that *in dubio pro democracy*. I believe that this is a valid general yardstick, but it does not preclude the theoretical and, indeed, eminently political discussion about two questions: How much democracy, and democracy where? In relation to these questions, a radical democrat will want to advance homogeneously in all the vectors of democratization, while, at the other extreme, a conservative democrat will prefer low, or even zero, levels of advancement in some of these vectors.¹³¹ The personal bias I have confessed does not aim at precluding this issue, which is at the very core of what democratic politics (and, in fact, politics in general) is about. To what social spheres beyond the regime should democratic mechanisms of decision making and the principle and rights of citizenship extend? What costs in terms of trade-offs with other social goals are we willing to pay for advances in democratization? Should democratic mechanisms and principles of citizenship be extended to, say, the internal workings of political parties, trade unions, and business associations, but not to, say, business corporations, universities, international organizations, and families? Can there exist a reasonably consistent and broadly accepted criteria concerning where to apply and where not to apply those mechanisms and principles? And, perhaps even more puzzling, who, and with what decision-making processes (democratic or otherwise), should decide this kind of issue?

Dealing satisfactorily with these themes demands as yet unwritten theories of democracy.¹³² Furthermore, I take it that these theories would have to take into consideration that we may be dealing with the ultimate undecidable, the final distillation of all the other undecidables. A conception of democracy that claims to be consistent must be grounded, as we saw above, in the conception of agency as it is entailed by a democratic regime and its universalistic wager. The theoretical undecidability of political and other rights gives democracy its peculiar dynamics and historical openness. As a consequence, sincere democrats of various persuasions will forever debate where, how, and why the boundaries of democracy (and, indeed, of politics in general) should be located. The content of these debates will not be determined by theoretical arguments alone; they will be strongly influenced by ideological, practical, and prudential considerations, such as the resources and the degree of inequality of the country, the international context, and the political alliances that support the given positions. Obviously, these matters are well beyond the present text. Yet two important points can be made. One is that an audit of the quality of a given democracy should be useful to everyone, including those who believe that advances in some of its vectors are undesirable. The audit generates public information for the use of citizens who may validly disagree as to

how much democracy and in what social locations they prefer.¹³³ The second point is that, as you may have noticed in excursus 3 (as well as in the standards of the audit discussed in Vargas Cullell's chapter in this volume), I do not assume that democratic mechanisms are adequate for all social institutions. In this chapter, however, the discussion of agency as existing in all social spheres, not just the regime, has supported the expectation that in nondemocratic social institutions the civil and labor rights of their members are respected—because agency is *always* involved, the absence of democratic mechanisms or of citizenship in a given social situation does not justify despotic or arbitrary rule.

Now I include some comments on the various levels implied by my suggestions about the items, or standards, with which the quality of democracy may be assessed. I take it that the regime, as well as the attitudes and opinions of the citizens toward democracy and some general aspects of politics (excursus 1), are not problematic topics to be assessed.¹³⁴ On the other hand, the discussion of the democraticness of the state institutions and the legal system (excursus 2) took us beyond the regime-centered views current in mainstream political science. I hope I have shown, however, that this is an extremely important aspect of democracy; consequently, in spite of difficulties in collecting data, I am persuaded that every effort should be made to gauge this level, too.¹³⁵ In turn, based on the argument that certain characteristics of the social context are (at least) a necessary condition of democracy, and that variations in those characteristics presumably have a strong positive relationship with the quality of democracy, in excursus 3 I include some items geared toward assessing some of those characteristics. Finally, the crucial connection that I argued exists among democracy, human development, and human rights led me to excursus 4. With this level I trespassed current conceptions of democracy even further than I did with the state. I believe, however, that my discussion of the various aspects of citizenship, as well as of the common grounding on agency of these currents, justifies the inclusion of this level in an assessment of the quality of democracy; in particular, the deprivation of basic conditions (once again, however theoretically undecidable) of human development and human rights means, as I have argued, the factual disabling of political citizenship. Obviously, the items of excursus 4 can also be specifically assessed in terms of human development or human rights. This does not sound problematic to me. Due to the strong elective affinities among these currents, such assessments should not be seen as incompatible or competitive with those that an audit of the quality of democracy may also make;¹³⁶ rather, looking at human development and human rights *also* from the angle of democracy would both express and reinforce these affinities.

14. Epistemic Notes on Assessing the Quality of Democracy

In the "Decalogue" of the audit of democracy I prepared for the March 2001 San José workshop (reproduced in *Proyecto Estado de la Nación 2001: 35–36*), I argue that a proper procedure for assessing the quality of democracy would combine "internal" and "external" approaches. By the latter I mean that a combination of expert and politically aware citizens establishes the basic defining characteristics of a democratic regime as well as aspirations, or standards, that may be reasonably posited in terms of improving the quality of a given democracy.¹³⁷ On the other hand, an audit of this kind should invite the citizens themselves to voice their views, both in terms of the failings and achievements of their democracy and of the aspirations they hold for it. Of course, this side of the audit is difficult to gauge empirically; fortunately, it inspired the imaginative methodological combinations and the extensive research efforts of the Costa Rican citizen audit.

The rationale for this double approach should be quite obvious. On the one hand, a purely external view easily risks being too abstract, too technical, and/or too distant from how the citizenry evaluates its own democracy. On the other hand, a purely internal approach, especially in countries where democracy suffers serious deficiencies, risks gathering opinions mostly from people who are poorly informed and/or are expressions of the adaptive preferences of severely deprived individuals.¹³⁸ This is why the Costa Rican audit claims that it is not a theoretical (or academic) exercise oriented toward formulating, testing, and revising theoretical propositions. It is an exercise in evaluation—properly, an audit. Yet this exercise is not raw empiricism; it is theoretically informed by concepts about what are a democracy and its several dimensions. This initial theoretical—or external—moment leads to an internal one, which consists of gauging, with as much detail and care as possible, how citizens view the democracy existing in their country. In turn, in a third stage these views return to the citizen audit and are assigned conceptual locations that, as noted, are theoretically guided.¹³⁹ After this stage of incorporating and conceptually locating the "internal" information, it is analyzed in terms of its distance in relation to criteria, or standards, that theory and comparative observations suggest are in principle feasible and desirable features of a democracy of good quality.¹⁴⁰

These complicated but indispensable movements (to and from internal and external views, and to and from empirical data and theoretically informed concepts) prohibits, as already noted, the audit from being considered a theoretical or academic undertaking and product per se.¹⁴¹ It is, as the authors of the Costa Rican audit correctly argue, an instrument with which the citizens evaluate their own democracy.¹⁴² In fact, the audit is an attempt to enrich the

public sphere and a contribution toward expanding the restricted public agenda that afflicts many countries. For this reason it is crucial that, after the steps I have described, the main results of the audit “return” to the citizenry by means that are widely available and easily understandable.¹⁴³

These are the ideas on which, inspired by the Costa Rican audit, I based my “Decalogue.” After writing it I came across a text by Sen that I found extremely useful. In this text Sen discusses a problem that by now it should be clear is homologous to the one I am dealing with here: how to assess, in terms of their capabilities and functionings, the “real interests” of individuals. Sen also reaches the conclusion that both internal and external perspectives are needed. As to the former, Sen observes that due to a variety of reasons individuals may be subject to “objective illusions”—beliefs “that are formed on the basis of a limited class of positional observations,” and although they have “some claim to being objective in their own terms,” they are in fact mistaken. Sen’s main examples concern beliefs about the relative sizes of the sun and the moon, but they easily could be extended, as he does in other contexts, to the characteristics of a given society. On the other hand, Sen notes that from the external point of view there can never be truly objective knowledge. It is always a “positional objectivity,” due to unavoidable “parametric dependence of observation and inference on the position of the observer;” this can be alleviated but never eliminated by “transpositional assessment[s]—drawing on but going beyond *different positional observations*” (Sen 1993: 130, italics added).¹⁴⁴ All knowledge is perspectival, as it “takes place within the framework of contemporary standards and beliefs” (Hamilton 1999: 527).¹⁴⁵ Yet the external point of view is indispensable for “evaluat[ing] issues like well-being and the standard of living as outcomes . . . [as these matters are] tested in the light of additional information and different positions” (Hamilton 1999: 530, commenting on Sen’s views).

It is clear that neither an internal or an external perspective suffices for assessing human interests. In part for this reason, Sen implies (and Hamilton 1999 concurs) that there is not, and there never can be, a firm and generally intersubjectively agreed upon theory of human interests, basic or otherwise. This is another theoretical undecidable; more precisely, it is another facet of the undecidability that we first found when discussing political rights and then encountered several times throughout this chapter.

On the other hand, the views of these authors do not lead them (and mine does not either) to value relativism; all of us are discussing very real human interests—and consequent rights—that pertain to the agency that is a universal attribute of every human being. Furthermore, Sen argues, as does the Costa Rican audit, that the internal and external perspectives should engage in a dialogue during which, while learning much from the internal side, the external

perspective may dispel some of the objective illusions of the former. Because of the need for this interactive process, Sen asserts, as we saw, the more than instrumental value of democracy and within it the crucial “role of practical reason in public discourse” (Sen 1995, 1999b; see also Nussbaum 2000b). Obviously, for this to happen it is helpful that everyone has the political rights attached to a democratic regime, even if some suffer severe deprivation of other rights.

15. Some Conclusions

There are rights that, at least in terms of their formal validity, are not problematic. Under a democratic regime, the rights of political participation as well as those of expression, association, movement, and the like must exist by definition of that regime. Furthermore, the historical core of civil and human rights (to life, physical integrity, protection from and redress of various kinds of violence, movement, freedom of religious belief, and the like) has been enacted by the legal systems of practically all countries in the modern world. Today not many would argue, at least publicly, that these are not valid and actionable rights,¹⁴⁶ although in most of Latin America they are far from being fully implemented. The more complicated issue refers to human development, especially with respect to those who “die so slowly that none call it a murder” (Samuel Taylor Coleridge, quoted in Shue 1996: 58). Many contemporary theorists argue that these are unfortunate facts that may give raise to a moral claim for the provision of the needed capabilities. But these theorists deny that these facts ground positive rights, that is, actionable claims against the state and eventually society. Some of these arguments deny the validity of such claims; others point out the impossibility of achieving general agreement on what would be a proper set of such rights; others point out the factual impossibility of satisfying the corresponding needs, especially but not exclusively in poor countries; and still others point out that the deadweight costs of taxing the rich and eventually weakening their property rights would overcome, even for the very poor, the gains obtained by trying to attend to their needs.

Solely or in combination, these arguments have dominated the public agenda in the past two decades, both in rich and poor countries. Seen from the perspective of agency and its minimum enabling capabilities, however, I find it hard to deny that the achievement of these capabilities is a right. At this point we find ourselves back at the issue of democracy and its quality. We saw that the issue of what political rights, human development capabilities, and human and civil rights are inscribed and implemented as such rights, in what sequences, and with what trade-offs has been and will continue being the very stuff of

democratic struggles. These are political processes that eventually lead to collective decisions enacted by the state and its legal system. History attests that no "full" package of these capabilities and rights has ever been simultaneously enacted, not to mention implemented. This fact shows that, as I already argued, it is inappropriate to ask for a priori specification of a minimal sufficient set of these rights and/or capabilities; it also shows that it is unfair to dismiss claims that do not purport to simultaneously achieve a "full package" of these goods. History also attests that the resources necessary for achieving *some* of these rights and capabilities were disputed and redefined through the conflictive and sometimes convoluted processes I sketched in sections 4 and 5.¹⁴⁷ Furthermore, the sequences of acquisition of some of these rights and capabilities, and their specific content and scope, have varied even among the originating countries.¹⁴⁸ In these cases, democratic politics under various kinds of circumstances and political alliances led to prioritizing some need-claims over others that were arguably no less basic than the former. These struggles were not deterred by the presumed injustice of only attending to some need-claims, or by predictions that assigning the necessary resources would provoke catastrophic economic consequences. In turn, gains in some of these rights enabled further struggles for other rights. These are the ways, frustrating at times and seldom linear, in which democratic politics work—but only when they work close to their best.

The great impulse for these processes has been the recurrent discovery and reinstatement, in various times and circumstances, of the moral import of democracy. This import never could have emerged from a conception of democracy as merely a set of procedures and institutions; rather, these procedures and institutions have mattered as one of the avenues—in the political realm—through which human beings may exercise and eventually develop their agency. Since classical Athens, albeit restricted to a segment of the population, up to contemporary times, when it has become inclusive, political citizenship has been based on the view that the respective individuals are actual or at least prospective agents. It is this view that lends to democracy its great normative import: Even if at times obfuscated or neglected, or dampened by appalling inequalities in the society in which it exists, the normative component of democracy always may be resurrected by appeal to the dignity and respect that the agent/citizen inherently deserves. It is for this reason that

[N]o theory of democracy that failed to give the egalitarian idea a central place could possibly yield a faithful representation of the extraordinary grip of democracy in the modern political imagination. . . . We must keep in mind that historically a main goal of democratic movements has

been to seek redress in the political sphere for the effects of inequalities in the economy and society. (Beitz 1989: xi, xvi)¹⁴⁹

For these potentialities to operate in Latin America, it will be crucial to increase the numbers and the organization of those who have capabilities for actually participating in politics, and, consequently, for broadening the public agenda so as to include their need-claims in it. In the process, what need-claims will be given priority will have to be decided according to the specific characteristics of each country, not only as a consequence of the existing objective needs but also of the relation of forces expressed, and mobilized, by various political alliances. Due to the extension and severity of the deprivations existing in most Latin American countries, for the foreseeable future the prioritization of some need-claims will entail the tragic postponement of other, also very important, rights and capabilities. Yet insofar as these processes are geared by a universalistic recognition of agency and its social, civil, and political rights, they will keep on the public agenda the need to continue struggling for the achievement of at least a decent social minimum for everyone.¹⁵⁰ If and as long as this happens, the quality of these democracies will concomitantly improve. For these purposes—and hopes—audits of the kind that has been carried out in Costa Rica should be helpful.

NOTES

This chapter benefited greatly from the discussion and written comments (the revised versions of which are printed in this volume) by participants in the Heredia workshop. Later on, I received further comments on this same text from Osvaldo Iazzetta, Gabriela Ippolito, Scott Mainwaring, and Jorge Vargas Cullell. To all of them my deep appreciation.

1. In their comments, Manuel Alcántara and Terry Lynn Karl criticize the omission of the impacts of globalization from my discussion. I believe this criticism is well taken. Yet methodologically I find it preferable to start by conceptualizing state/national units as the background against which the (differential, across issues and cases) impacts of globalization may be assessed. Still, as these commentators note, I do not undertake this further step in the present text.

2. As Juan Méndez notes in his comments, however, there are areas of problematic intersection between, especially, human rights and democracy. These are problems that deserve further discussion, to which I hope Méndez's comments and this chapter contribute.

3. Although some human rights organizations such as Amnesty International are reluctant to make this move, there is a distinct trend in the human rights movement to include social, economic, and cultural rights in their mandate.

4. In terms of human development, perhaps there is no more eloquent (albeit implicit) assertion of this universalism than the recent incorporation of the Gender-Related and Gender Empowerment data into the *Human Development Reports*. The obvious basis for this incorporation is the universalistic belief that women have no fewer rights than men and that the specific deprivations to which women are often subject merits special consideration and duties from the state and other social actors. Of course, this belief runs counter to views that are still deeply ingrained in not a few parts of the world.

5. I say "mainly" because, for example, cognitive impairment may be the consequence of malnutrition of the mother during gestation.

6. Here I am asserting that at the moment of vote counting, each vote should be computed as one (or, in the case of plural voting, in the same quantity as every other vote). In saying this I am glossing over the problem resulting from rules of vote aggregation in which votes cast in certain districts weigh more, in some cases significantly more, than in other districts (in relation to Latin America and the severe overrepresentation of some districts in some of these countries, see Snyder and Samuels 2001, and Calvo and Abal Medina 2001). At some point overrepresentation becomes so pronounced that any semblance of voting equality is eliminated; before this point, I believe it can be asserted that the lower the level of overrepresentation (that is, the more each vote counts as truly equal to all others), the better the quality of a given democratic election.

7. I use the term "originating countries" as a shorthand for designating the countries located in the northwestern quadrant of the world, plus, with some geographical license, Australia and New Zealand.

8. As with markets, few elections, if any, are completely fair or competitive (as the 2000 presidential election in the United States patently showed); see Elklit and Svensson 1997. This caveat points to the issue of the varying quality or degrees of democratization of the regime, which I discuss below.

9. For discussion of these and other definitions, see O'Donnell 2000.

10. This likelihood of endurance does not mean that after N rounds of such elections a democracy has "consolidated" (as argued, for example, in Huntington 1991), or that other aspects of the regime (as they are deemed to exist in the originating countries) are institutionalized or in the process of becoming so. For discussion of these matters, see O'Donnell 1996 (also published in O'Donnell 1999a).

11. Even if agents anticipate that elections at t_1 will be fair, if they believe that there is a significant likelihood that elections at t_2 will not be fair—by a regression explored in prisoner's dilemmas with fixed numbers of iterations—agents already will make these kinds of extra-electoral investments at t_1 .

12. This is, with slight changes, the definition offered in O'Donnell and Schmitter 1986: 73n1. For a useful discussion of this concept, see Mazzuca 1998 and 1999.

13. For apposite discussion of this matter, see Lechner 2000 and his comments in this volume. See also Berger and Luckman 1966.

14. In some countries these egos may be numerous, even though they are legally constrained to accept the wager. In a survey I conducted in the metropolitan area of São Paulo, Brazil (December 1991–January 1992, n : 800), an astounding 79% responded "No" to the question "Do Brazilians know how to vote?"; this rose to 84% among respondents with secondary education and higher (in the context it was clear to respondents that the question referred not to the mechanics of voting but to their evaluation of the choices other voters make among competing parties and candidates).

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

16. The reader has surely noticed that I have been mentioning both "rights" and "freedoms." The reason of this usage will become clear.

17. Of course, this is not the only reason why these rights are important. I return to this topic.

18. This is just one reason for this conundrum; I will discuss others.

19. In contrast, this issue has generated a large body of work among legal theorists. I will return to some aspects of this literature and its unfortunate split from most of political science and political sociology.

20. From a different but convergent angle, I have found useful the discussion of undecidability in Mouffe 1996 and 2000. On the other hand, for reasons that I hope will be clear, I disagree with Pablo da Silveira's argument that asserting this kind of undecidability necessarily entails subscribing to theories that are "purely culturalist" or "reduce rights to the logic of interest." On this matter, see also comments in this volume.

21. We will see that there is a double dimension to this. On the one hand, at an individual level, these are *rights* that are universalistically assigned; on the other hand, at a macro level, these are *freedoms* that characterize and co-constitute the social context in which these individuals are immersed.

22. For instance, Holmes and Sunstein (1999: 104) note that "What freedom of speech means for contemporary American jurisprudence is not what it meant fifty or one hundred years ago."

23. Among which, in addition, quite significant differences persist currently as to the scope of some of these rights.

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

25. I have also taken into account the useful "checklist for election assessment" furnished by Elklit and Svensson 1997.

26. I agree with the comments of Michael Coppedge that in the present and future excursi, the criteria proposed here are variables, about which we are interested in assessing the degree to which they are effective in each case. This, in turn, as Coppedge and Sebastián Mazzuca (see his comments) argue, is a necessary step for exploring the causal relationships that may exist among these analytically and empirically disaggregated factors. This clarification has seemed to me necessary because the original version of this text may have induced in these authors the mistaken view that we disagree on this matter.

27. The authors of the Costa Rican audit have done extremely careful and useful work in characterizing these and other items as *standards* and in explaining the rationale for this criterion. Here I can do no better than refer to Vargas Cullrell's chapter in this volume.

28. I have taken this item from the comments of Terry Lynn Karl.

29. I have taken this clause from Coppedge's comments.

30. For example, can the executive unilaterally decide this matter, and in what policy areas?

31. For explication and discussion of these terms, see O'Donnell 1998a, 2002, and 2003.

32. In her comments Maria Herminia Tavares de Almeida agrees with this point, asserting that "from the point of view of the quality of democracy, there is no way to decide, for example, between the Westminster model of fusion of powers and the model of separation of powers with checks and balances." In private communications, Coppedge has disagreed, stating that the more proportional (and, hence, antimajoritarian) an electoral system, the more democratic it is.

33. On this distinction, see the comments by Mazzuca; some of the topics he deals with in his comments go beyond the scope of my discussion here.

34. For a discussion of the various dimensions of publicness in democracy, see Iazzetta 2003.

35. In spite of frequent assertions to the contrary, not even in terms of universal male suffrage is the United States an exception to this. The early existence of this suffrage at the federal level was made purely nominal by the severe restrictions imposed on African Americans and Native Americans, especially in the South. Consequently, the achievement of inclusive political democracy in the United States must be dated to World War II or as late as the 1960s, in the aftermath of the civil rights movement.

36. On catastrophic predictions, see Hirschman 1991 and Rosanvallon 1992. As a British politician opposing the Reform Act of 1867 put it, "Because I am a liberal . . . I regard as one of the greatest dangers a proposal . . . to transfer power from the hands of property and intelligence, and to place it in the hands of men whose whole life is necessarily occupied in daily struggles for existence" (Robert Lowe, cited in Hirschman 1991: 94). See Goldstein 1983 for a discussion of violent resistance to extending political rights.

37. As Dahl says, "The burden of proof [of lack of agency] would always lie with a claim to an exception, and no exception would be admissible, either morally or legally,

in the absence of a very compelling showing" (1989: 108). Actually, this principle was first formulated, in terms similar to Dahl's, by John Stuart Mill (1962: 206 and *passim*).

38. Waldron comments that "The identification of someone as a right-bearer expresses a measure of confidence in that person's moral capabilities—in particular his capacity to think responsibly about the moral relation between his interests and the interests of others" (1999: 282).

39. The rediscovery of the Codes of Justinian in the eleventh century was particularly important to this process. As Berman notes, part of this importance was due to the fact that Roman law "had achieved a very high level of sophistication in the field of contracts" (1993: 245). From a different theoretical perspective, Anderson (1974) agrees, adding that Roman law conceptions of free disposition of land were also fundamental.

40. Rosanvallon comments that before the advent of liberalism, "This view of the autonomy of the will certainly appeared already juridically formulated in the civil law (*droit civil*)" (1992: 111, my translation). This, in turn, was part of broader changes in the conception of morality; as Schneewind notes, "During the 17th and 18th centuries established conceptions of morality as obedience came to be increasingly contested by emerging conceptions of morality as self-governance . . . centered on the belief that all normal individuals are equally able to live together in a morality of self-governance" (1998: 27).

41. "The result of contractual freedom, then, is in the first place the opening of the opportunity to use, by clever utilization of property ownership in the market, these resources without legal restraints as means for the achievement of power over others. The parties interested in power in the market thus are also interested in such a legal order . . . coercion is exercised to a considerable extent by the private owners of the means of production and acquisition, to whom the law guarantees their property. . . . In the labor market, it is left to the 'free' discretion of the parties to accept the conditions imposed by those who are economically stronger by virtue of the legal guarantee of their property." The author of these lines is Weber (1968: 730–31), not Marx.

42. In addition, political citizenship was extended after vigorous educational efforts were launched to make sure that these sectors would become "truly deserving citizens," that is, responsible agents. This had important democratizing effects in the long run, but for an account of the initial defensiveness of these efforts in France (which to my knowledge were not different from the other originating countries), see Rosanvallon 1992. In this respect it is significant the close attention that Condorcet, Locke, Rousseau, Adam Smith, and other towering members of the Enlightenment paid to education as a crucial medium for enabling agency in the political realm.

43. In relation to England, Marshall notes that by the 1830s "the civil rights attached to the status of freedom had already acquired sufficient substance to justify us in speaking of a general status of citizenship" (1964: 78). This also became true, at various times, in the other originating countries.

44. As Marshall notes, "The story of civil rights in their formative period is one of the gradual addition of new rights to a status that already existed and was held to

appertain to all adult members of the community" (1964: 18). These civil rights are, in his classic definition, "The rights necessary for individual freedom—liberty of person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and right to justice" (1964: 10–11).

45. Jones puts it well: "Political authority is authority wielded over, and on behalf of, human individuals with rights" (1994: 88).

46. From now on, except when otherwise noted, "capabilities" refers to both the subjective ability to exercise practical reason by making reasonably autonomous and considered choices and the range of choice that the individual actually confronts; in addition to the works of Sen, for apposite discussion of this matter see Raz 1986.

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

48. Furthermore, even before these relatively recent developments, this kind of legal system strongly implied—and even required—the presumption of agency for the validity of many legally grounded obligations. This can be seen in the evolution of criminal law away from establishing or allowing sanctions to collectivities and toward individual responsibility (see Lacey 2001). The same presumption also can be seen in relation to legislation referring to individuals not considered to be properly legal persons (such as minors) and their "re-presentation" by someone who may be thus legally construed.

49. According to Marshall, social rights include "from the right to a modicum of economic welfare and security to the right to a share to the full in the social heritage and to live the life of a civilized being according to the standard prevailing in the society" (1964: 72).

50. For example, the contemporary neoconservative offensive aims at eroding these partially equalizing measures. In most of contemporary Latin America, which has been shaken by severe economic crises and endowed with weak legal and welfare systems, the consequences of this offensive have been particularly devastating.

51. Weber (1968) dubbed these processes of "materialization" of the law, as they introduced nonuniversalistic criteria of substantive justice to formal-rational law. Recently, criticisms of the "legal pollution" (Teubner 1986 and Preuss 1986) produced by these developments have become widespread from both the right and left. This literature is not central to my present analysis. I note, however, that these criticisms seriously neglect the equalizing advances achieved in many respects by these developments. These criticisms should be tempered by the much more unfavorable situation of the poor and various discriminated sectors in countries, as in Latin America, where welfare policies and their consequent social rights were only partially adopted or implemented.

52. As Méndez notes in his comments, these should not be seen simply as aspirations but as demands for actionable rights.

53. As Gabriela Ippolito puts it in her comments, this assertion implies bringing a classic topic—the issue of the social conditions of democracy—back into central focus in the theory of democracy; as she asserts, "what is at issue in many of these countries is the very meaning of citizenship."

54. This issue was not ignored in the cradle of democracy. In his excellent study of Athenian democracy, Hansen (1991) argues that Athens became fully democratized only when it was decided that participants in the sessions of the assembly, the council, and other institutions would be paid the equivalent of a daily average wage. This decision entailed explicit recognition of the issue of capabilities I am discussing, as it was specifically aimed at facilitating the political participation of poor citizens. On his part, Aristotle (1968) recommended subsidizing the political participation of the poor in order to assure the effectiveness of their citizenship.

55. Of course, among the ratifiers are governments that blatantly ignore many of the rights involved. Yet, instead of using this fact for dismissing the significance of these treaties and covenants, I believe it should be seen as a tribute, even if a cynical one, paid to the moral force of the rights proclaimed in these international instruments.

56. For concurrent views about the legal system as a part of the state, see Bobbio 1989 and, of course, Weber 1968. In this section I present a rather cursory discussion of the state, which I am intending to complement by means of work presently in progress.

57. See especially Holmes and Sunstein 1999; Raz 1986; Sen 1984a, 1984b, 1985a, 1985b; and Skinner 1984.

58. Or, more or less equivalently (see O'Donnell 1999b), under a democratic rule of law. In my opinion, this kind of legal system, if effectively implemented, is "an intrinsic normative good." This phrase comes from the comments by Karl, although she means it critically, probably because she does not recognize that I am referring specifically to an *effective* and *democratic* kind of rule of law, not just any version of it.

59. This is what some German theorists have labeled the "indisponibility" of the legal system for the rulers; see especially Preuss 1996a, 1996b; Habermas 1996, 1988.

60. On this matter, from various but concurrent perspectives, see Fuller 1964; Garzón Valdés 1993; Habermas 1996; Hart 1961; and Kelsen 1967.

61. This useful concept has been proposed by Smulovitz and Peruzzotti 2000. See O'Donnell 2002 on the mutually supportive relationships between societal and horizontal accountability.

62. In all other political types somebody (a dictator, a vanguard party, a military junta, a theocracy, etc.) may unilaterally void or suspend whatever rights exist, including those that regulate their roles. There are, however, some hybrid cases. I refer to those where formally (as in Chile) or informally (as in Guatemala) the armed forces retain uncontrolled policy areas, as well as veto powers over some decisions by civilian authorities. The least that can be said about this matter is that it seriously hinders the democratic quality of the respective regimes.

63. A *contrario*, Méndez, O'Donnell, and Pinheiro 1999 conclusively shows that in Latin America this interlacing is repeatedly interrupted and the law consequently rendered ineffective; see also Brinks 2002, Domingo 1999, Domingo and Seider 2001, Garzón Valdés 1999, Hinton 2003, and Stanley 2003.

64. As Ippolito notes in her comments, the issue of foreigners, particularly the rights assigned to them and the treatment they receive from the state and from citizens,

should be considered an important issue in the assessment of the quality of a democracy. I recognize that the present text does not pay sufficient attention to this issue.

65. In line with this point, Ronald Dworkin asserts that "a particular demand of political morality . . . requires governments to speak with one voice, to act in a principled and coherent manner toward all its citizens, [and] to extend to everyone the substantive standards of justice or fairness it uses for some" (1986: 165).

66. The *Auditoría* (Proyecto Estado de la Nación 2001: 195, 200) has a thoughtful discussion of this matter; for sound empirical reasons, the authors decided to focus on various situations of mistreatment by state institutions. They further argue that "[T]he opposite of mistreatment of the citizen is not 'good treatment,' but democratic treatment which occurs, precisely, when the [state] institutions respect the rights and the dignity of the persons" (199).

67. Summarizing a series of studies in the United States, Tyler concurs: "To be treated with dignity and respect assures citizens that they are important and valued members of society, entitled to recognition of their status and rights. This [is a] recognition of one's inclusion in society" (2000: 990). On his part, Margalit (1996) sees this kind of treatment as the distinctive characteristic of a "decent society."

68. Even in situations where this inequality is sharpest (such as imprisonment), the moral duty of still respecting the agency of the subject remains. Nowadays this is usually also a legal duty, even if it is too often ignored.

69. In relation to social policies, Ippolito (in her comments) argues that "how the state gives what it gives" (italics in the original) is no less important than *what* the state gives.

70. For the concept of "problematic frontiers" between state and society, see Oszlak and O'Donnell 1984. Here I refer to situations where various kinds of mistreatment are frequent (if not systematic) and those who suffer it are dealing with issues (health, employment, issuance of documents, and the like) that are important for them. For the interesting and innovative method see Proyecto Estado de la Nación 2001: vol. 2.

71. Sen concurs: "Individual freedom is quintessentially a social product" (1999a: 31).

72. This point is made by, especially, Berlin 1969. Berlin's work has raised a series of interesting—and complicated—discussions about "value pluralism" (see, among others, Gray 2000 and Newey 1998), which I must sidestep here.

73. As Raz puts it: "A moral theory which recognizes the value of autonomy [that is, agency] inevitably upholds a pluralist view. It admits the value of a large number of greatly differing pursuits among which individuals are free to choose" (1986: 381) because "the routes open to be used in our lives are both incompatible and valuable" (1994: 119).

74. On the limitations of tolerance as a proper moral attitude toward agents and their rights, see Garzón Valdés 2001.

75. Of course, the extent to which this possibility is effected varies significantly from case to case; I discuss some of the relevant factors below.

76. Norbert Lechner's comments include a suggestive listing of "social capabilities that influence citizens' action." From a somewhat different but in this sense convergent

standpoint, Rawls argues that "These goods . . . are things citizens need as free and equal persons, and claims to these goods are counted as appropriate claims" (1993: 180).

77. Notice, too, that for this same reason such a context is congenial to the exercise of vertical societal accountability.

78. Alan Gewirth's "ethical rationalism" (1978) and the discussions it has generated (Regis 1984) are relevant to this point, but I cannot elaborate here.

79. In this and the next paragraph I am taking into account criticisms that Vargas Cullerell made to a previous version of this chapter.

80. I have mentioned Raz's arguments in this respect; from various perspectives valuable concurrent arguments about the "social side" of rights may be found in Garzón Valdés 1993, Habermas 1996, and Waldron 1999.

81. I exclude from this classification El Salvador, Honduras, Nicaragua, and most Caribbean countries for the simple if not too satisfactory reason that I do not know enough about them. Furthermore, as the discussion at the workshop and several written comments make clear, this typology needs further refining and specification.

82. I owe the caveat concerning candidates of leftist parties to the comments of Manuel Alcántara.

83. These two countries score similarly to the democracies in the Northwest. In the 1990s the average support for democracy in these countries, elicited by a question similar to that in table 1, was 83% (Dalton 1999: 70, average calculated from data in table 3.5). I excluded Northern Ireland from this list—score of 65%—due to the peculiar circumstances of this region.

84. In their comments, Catherine Conaghan and Osvaldo Iazzetta usefully elaborate on these matters.

85. See O'Donnell 1993, where I draw a metaphorical map of "blue, green, and brown areas," in which the latter are where state legality is barely effective, if at all.

86. The reports of various human rights organizations repeatedly and abundantly document the permanent threat of violence to which these people are subjected. For Brazil see, among others, Dellasoppa, Bercovich, and Arriaga 1999, who document that the incidence of violent deaths in the poorest areas of the São Paulo metropolitan region is sixteen times higher than in the most affluent ones; for data on Argentina see, among others, CELS 1998. More generally, a study of several data sets on violent crime found in all of them a persistent and often strong positive correlation between violence and poverty and income inequality (Hsieh and Pugh 1993). The poor, of course, are the main victims of this violence.

87. This is another aspect that its narrow concentration on the national regime has led mainstream contemporary political science, with few exceptions, to ignore. This omission is empirically and theoretically costly; even approaches exclusively centered on the national regime would do well to consider the impacts of subnational authoritarian regimes on the workings of the former.

88. For a chapter in the sociology of knowledge, this assumption ignores no less than the experience of the United States, where for a long time the subnational regimes of the South were clearly authoritarian, even though they held (nonfair) elections.

89. As implied in the preceding note, neither of these sequences applies to the United States and the peculiar problems raised by slavery, but I will not deal with this exception here.

90. I should note that, basically for this reason, during the discussions of the workshop several participants questioned my inclusion of Chile in the same group as Costa Rica and Uruguay. I am unsure about this matter.

91. The extent and in relation to what cases of the originating countries this may be permissible is a moot question that I cannot discuss here.

92. This point is stressed by Karl in her comments.

93. Catherine Conaghan (in her comments) puts it well: "Policies promoting democratic development and economic development cannot and should not be segregated. . . . With good reason, people become skeptical about the authenticity of democracy when essential decisions affecting their quality of life are simply imposed by governments responding to the strictures of international financial institutions."

94. As Osvaldo Iazzetta discusses in his comments, this is the sad paradox of a cycle politically inclusive and socially exclusionary.

95. The tone of these assertions is tentative because important data-gathering efforts are pending in Latin America. It is important to collect and make compatible the large quantities of relevant data existing in various state, international, and private institutions.

96. In O'Donnell 1998b and 2001 I discuss some possible political coalitions related to this point.

97. See Scott 1985. The seminal argument for the positive uses of the law in the struggles of the popular sector is Thompson 1975.

98. Indeed, the *Human Development Reports* have been criticized in this respect, to my mind not without reason.

99. Among these rights are participation, freedom of physical movement, and due process or fair trial.

100. These capabilities, which Nussbaum also deems as rights, are to "life; bodily health; senses, imagination and thoughts; emotions; practical reason; affiliation; other species; play; and control over one's environment" (2000b: 78–80; 1997: 287–89) (some of these rights have their own subcategories). In addition, Nussbaum further distinguishes among basic, internal, and combined capabilities (2000b: 84, 85).

101. UNDP 2000a begins with a rather minimal list ("the three essential capabilities are for people to lead a long and healthy life, to be knowledgeable, and to have access to the resources needed for a decent standard of living" [17]). Throughout the report, however, a series of other capabilities and rights is added to the list (see, for example, 2, 8, 19, and 77).

102. As stated above, in the originating countries these rights were effected as civil ones long before they were "promoted" to the condition of political rights. I also noted that, quite obviously, these rights are exercised in manifold social locations, well beyond the regime.

103. Habermas puts it well: "Without basic rights that secure the private autonomy of citizens, there also would not be any medium for the legal institutionalization of

the conditions under which these citizens could make use of their public autonomy" (1999: 332).

104. This, I take it, is abundantly obvious, even by the definition of its subject matter, in the case of human rights. With respect to human development, even if less explicit, the same conception clearly can be detected in assertions such as "Human development . . . is a process of enhancing human capabilities—to expand choices and opportunities so that each person can lead a life of respect and value" (UNDP 2000a: 2, italics added).

105. I thought that in the version I presented to the workshop it was obvious that the above statement is intended to open, not foreclose, the way to the empirical exploration of the actual relationships of these and other dimensions. Some of the comments, however, have made me aware of the need to make this point more explicit.

106. Above I defined this minimal sufficient set as those rights that would be necessary and jointly sufficient for guaranteeing the existence and institutionalized persistence of a democratic regime. I also discussed various reasons that make it impossible to ever achieve generalized intersubjective agreement on a clear and firm definition of this set.

107. Specifically, Sen is discussing Robert Nozick's (1974) theory of justice. Consider, consistent with Sen's remarks, the roundabout ways (often involving views of a mythical, fully competitive market, the benefits of which would extend to everyone in due time) in which the present status quo is defended in contemporary Latin America.

108. I do not have space here to deal with this issue. For solid arguments against the anti-universalism of extreme cultural relativism, see especially Franck 2001; Garzón Valdés 1993; Nussbaum 2000b; Sen 1999a, 1999b, and 2000b; and Stepan 2000. See also Touraine 1997: "There is no multicultural society possible without universalistic principles that allow communication among socially and culturally different individuals and groups" (206, my translation).

109. I agree with the caution expressed by Karl (see her comments) to the effect that "a positive and self-reinforcing cycle, however hopeful and morally satisfying, cannot be taken for granted. This is especially true when the construction of the rule of law must be devoted to reshaping, redefining, and enhancing the interests of the broad majority of the population in highly unequal societies—and not just the status of corporations through the reform of commercial law or the protection of propertied interests through criminal law."

110. Concurrently, Dasgupta comments: "Much contemporary ethics assumes at the start of the inquiry that these [basic] needs have been met" (1993: 45). This assumption is explicit in the work of political philosophy which arguably has been the most influential in the last decades, at least in the Anglo-Saxon world. See Rawls 1971: 152, 542–43; his theory of justice is deemed to apply to countries where "only the less urgent material wants remain to be satisfied" [542]. For a restatement of this assumption see Rawls 2001.) In turn, albeit less explicitly, the same assumption is clearly entailed in the work of Habermas, probably the most influential contemporary continental European political philosopher (see, for example, Habermas 1999). The issue that remains is what can be said about countries, even ones that include a democratic regime, that do not meet this assumption.

111. This is what the Costa Rican audit calls "habilitación ciudadana mínima."

112. Holmes and Sunstein 1999; see also the comments of Conaghan, Iazzetta, and Tavares de Almeida.

113. Concerning this issue I have benefited from the comments by Laurence Whitehead. His emphasis on the socially defined character of rights, with which I agree, should dispel the view that mine is a version of "liberal individualism," as Karl fears in her comments. The fact that one of the analytical levels of a theory is centered on individuals does not make it necessarily "individualistic." Norbert Lechner's comments include apposite reflections on the inherent sociability of individual agency.

114. For an interesting analysis that stresses this aspect, see Ackerman 1980.

115. The fundamental work on these matters is Rueschemeyer, Stephens, and Stephens 1992. For Latin America and the labor movement, see Collier and Berins Collier 1991.

116. As Tavares de Almeida argues in her comments, even within Latin America there are significant variations in this matter, which would have to be taken into account when plotting possible sequences and trajectories. This important problem, which requires looking at each country individually, exceeds the possibilities of the present text.

117. This is the same situation we encountered in relation to political rights. For human development and human rights, however, the kinds of knowledge required are more varied and complicated—not only law and social science but also medical/biological and psychological knowledge for assessing, for example, the consequences of various material deprivations or types of violence.

118. For data and discussion of the situation of Latin America concerning this and related matters see Bartell and A. O'Donnell 2000. For discussion of these issues in general, see Dasgupta, who comments, "It is often said that even when a person owns no physical assets she owns one asset that is inalienable, namely *labour power* . . . [I] have revealed the important truth that this is false. . . . Conversion of potential into actual labour power can be realized if the person finds the means of making the conversion, not otherwise. Nutrition and health-care are the necessary means to this" (1993: 474).

119. Indeed, the international and national *Human Development Reports* are important steps in this direction, but to my knowledge even the data resulting from them still need to be put together and made compatible. Furthermore, the coverage of these data is still quite limited. On its part, I am impressed by the capacity of the World Bank to gather or (directly or indirectly) purchase various kinds of data; yet these data are not available in their original form for analysis by outside researchers (an important accountability issue?), and the view of development that guides their collection is quite different from the one articulated here and in the *Human Development Reports*.

120. Weale (1983) correctly insists on this point. On this basis, Weale proposes what may well be a useful rule of thumb: "The basic criterion of a social minimum . . . is that when it is satisfied persons should be able to meet the obligations that are conventionally expected of all persons in that society as producers, citizens, neighbors,

friends, and parents" (1983: 35). This in turn is based on "the principle that government should secure the conditions of equal autonomy for all persons subject to its jurisdiction" (42).

121. Some empirical studies are of considerable interest in this respect. In particular, Norman Frohlich and Joe Oppenheimer (1992) undertook a series of experiments to determine prevailing views of distributive justice. They asked their subjects (undergraduates in Canada, Poland, and the United States) to try to reach unanimous agreement as to what principle would generate "the most just distribution of income" in a society in which the subjects do not know in advance in what position they will be (Rawls's [1971] "veil of ignorance"). The principles were (1) "Maximize the floor (or lowest) income in the society"; (2) "Maximize the average income" (Harsanyi's [1975] principle of "maximum average utility"); (3) "Maximize the average income only after guaranteeing that the difference between the poorest and richest individuals . . . is no greater than a specified amount" (Rawls's [1971] "difference principle"); (4) "Maximize the average income only after a certain specified minimum income is guaranteed for everyone"; or (5) any other principle the subjects wished to formulate (Frohlich and Oppenheimer 1992: 35). The authors conducted a total of seventy-six relevant experiments; a remarkable 78% of these groups agreed on choosing criterion 4 without a ceiling; that is, establishing a guaranteed minimum for everyone and beyond it no restriction on how well-off some of them could be (*ibid.*, 59). Notice that this is equivalent to choosing the basic rights and capabilities I have been discussing. Furthermore, Frohlich and Oppenheimer report that "democracy matter[ed]" in their experiments: the more open and extended discussions were during the experiments, the firmer and more stable the support for this principle was. See their study for further details. For a thoughtful argument in favor of this "floor" criterion, see Waldron 1999.

122. In his comments Whitehead rightly stresses that in Latin America whatever rights are conquered tend to be more easily reversed or cancelled than in the originating countries; as he graphically puts it, in the former "rights that seemed to be assured can abruptly evaporate."

123. I have not had space here to deal with important and complex issues of legal and cultural pluralism. Let me just note that, in contemporary times, democracies have dealt with these issues much more decently than authoritarian regimes. Of course, much remains to be done, and the intersection of the rule of law (even a democratic one) with communal legal systems (especially of indigenous communities) does not prevent the emergence of extremely complex and, at times, conflictive problems. Yet I take it that a rule of law of this kind should be able to deal with these matters in the universalistically decent and respectful ways that is demanded by its own premises.

124. I am using *elective affinity* in the sense originally used by Goethe, from whom Weber borrowed this metaphor: two or more components that do not cause each other but that exert strong and—to use a contemporary term—synergistic mutual influence.

125. I refer again to the comments by Méndez, who points to several problematic issues that will have to be dealt with if these convergences are to bear full fruit.

126. Remember that this consideration was made as early as Athens and that it drove the development of the welfare state in the originating countries.

127. This procedure is tantamount to the "precising" of a definition that Collier and Levitsky (1997) have usefully discussed.

128. Or the "map" of peaks, valleys, holes, and other geographical images that the Costa Rican audit (Proyecto Estado de la Nación 2001: 46 and passim) has imaginatively drawn with its data.

129. Thus, in spite of some misunderstandings that my original text has apparently provoked, I agree with the general bent of the comments by Alcántara, Mazzuca, Gerardo Munck, and Coppedge. For example, the latter argues that "we need not formulate any absolute right or list of absolute rights; we only need to know how much of each good corresponds to what degree of democracy." On the other hand, a major methodological issue that this chapter and the following comments leave pending is if it would be possible or convenient to reduce these vectors to some kind of index (see the comments by Munck and the literature cited therein).

130. By "democratic rules" I mean that the pertinent public institutions have proceeded in ways that correspond to the respective items in the preceding excursi.

131. For example, conservatives might assert that democracy is exclusively about the regime and that, even within it, increased participation would hamper the achievement of other values, such as political stability, the efficacy of economic policy, and others.

132. Another way to deal with this problem is to simply abstain from discussing these issues as relevant to a theory of politics and/or democracy. See, for example, the great care with which, in his various adjustments to his "theory of justice," Rawls has consistently argued that it does not apply to social institutions such as the ones I enumerate above (for a recent statement see Rawls 2001).

133. This point is usefully stressed in the comments of Conaghan and Lechner.

134. Even though, as noted, some may disagree as to the desirability of advancing in the democraticness of some of these items.

135. Indeed, the Costa Rican audit is an excellent example of how, with a good dose of imagination and effort, some of these difficulties may be overcome.

136. Furthermore, as I suggest above, there is every reason to foster cooperation in gathering, analyzing, and making compatible data among the respective institutions.

137. In making these recommendations and the ones that follow, I am closely following the criteria used by the Costa Rican audit (Proyecto Estado de la Nación 2001: 30–31), including its setting of standards for both the *Umbral Mínimo de Garantías Democráticas* and the *Umbral Superior de Calidad Democrática*. For more and valuable details I refer the reader to these two volumes as well as to the paper that their coauthors prepared for our workshop.

138. On adaptive (or endogenous) preferences see the seminal work of Elster (1985). Sen has emphasized this matter in several of his works as part of his critique of utilitarianism in its various versions and of Rawls's primary goods. In particular, Sen correctly warns against taking at face value the modest preferences that might be

expressed by severely deprived individuals. As he wryly comments, "The hopeless underdog loses the courage to desire a better deal and learns to take pleasure from small mercies. . . . The deprivations appear muffled and muted in the metric of utilities" (Sen 1984b: 512; see also Sen 1985a, and 1992).

139. These conceptual locations are exemplified by the standards used by the citizen audit and by the items I include in the excursi.

140. I should point out that this is my own reconstruction of the logic of the methodological steps adopted by the audit.

141. I say *per se* because the data, methodological experimentation, and revision of conceptual categories induced by the incorporation of internal views all constitute a very rich mine for fostering theoretical/academic research and advances.

142. Or, as I put in the "Decalogue," *un juego de espejos* (a "hall of mirrors") for this purpose (Proyecto Estado de la Nación 2001).

143. The efforts that the leaders of the Costa Rican audit are making in this direction are one of the many commendable aspects of this undertaking.

144. A good example of transpositional objectivity *avant la lettre* is the various methodologies and the combination of judgments by experts and well-informed citizens used in the audit.

145. This is a useful article for the interpretation of this and related aspects of Sen's work.

146. Although, disturbingly, in Latin America various studies and media reports show in several countries quite broad support for the arbitrary detention, torture, and even lynching of suspected criminals. Furthermore, demagogic politicians and mass media feed these feelings and the fear of social violence that underlies them.

147. Tilly has produced valuable works on this and related matters; see especially 1998, 1999a, and 1999b. Tilly concludes that "rights [are] historical products, outcomes of struggle" (1998: 5). For relevant references to Latin America, see Huber, Rueschemeyer, and Stephens 1997 and Huber and Stephens 1999; more generally in relation to the Latin American popular sector see Alvarez, Dagnino, and Escobar 1998 and Foweraker and Landman 1997.

148. A relevant example is the important differences in the welfare state and its policies exhibited among these countries.

149. Concurrently, Sartori comments that "What democracy is cannot be separated from what democracy *should be* . . . in a democracy the tension between facts and values reaches the highest point" (1967: 4; italics in the original), while Shapiro notes "[D]emocracy's historical association with opposition to unjust social arrangements" (1996: 6). In the same vein we see also Furet 1998 and Rosanvallon 1995.

150. In her comments, Tavares de Almeida draws an appropriate corollary: "The quality of democracy is not . . . an inquiry externally imposed by political scientists or philosophers. It is a question that springs from the very functioning of democratic systems. . . . it is a question that emerges from the comparison between democratic ideals and values with the reality of polyarchies."

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chapter 2

Democracy and the Quality of Democracy

Empirical Findings and Methodological and Theoretical Issues Drawn from the Citizen Audit of the Quality of Democracy in Costa Rica

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This chapter analyzes the complex links between democracy and issues surrounding the quality of democracy based on the experience and potential of the Citizen Audit of the Quality of Democracy in Costa Rica (hereafter referred to as the citizen audit). The audit is a tool for identifying (and acting upon) the problems of a democracy within an entire country or part of it. It contributes to this aim by assessing the current state of affairs, developing a system whereby democratic performance is observed and surveyed, and generating deliberation processes. This assessment leads to issues that are relevant to comparative democratic theory and methodology, but which have not received enough attention by scholars. The following discussion relies heavily on the lessons learned through the audit carried out in Costa Rica between