



ISSUES OF DEMOCRACY

DECEMBER 2005

FOUNDATIONS OF

DEMOCRACY



**FREE MARKET OF IDEAS
ECONOMIC FREEDOM
CIVIC PARTICIPATION
RULE OF LAW
FREEDOM OF WORSHIP**

ISSUES OF DEMOCRACY



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ABOUT THIS ISSUE

People all over the world want to build futures for their families in free and open societies. This aspiration includes the desire to have basic human rights, participate in fair elections, practice one's religion, speak freely on public issues, and be certain that an impartial court system will decide violations of the law. In this journal we focus on several key components of genuine democracies and the experiences of various nations in fashioning the form of democracy that suits their cultures, protects minority populations, and helps all citizens fulfill their aspirations.

Ellen Hume, journalist and communications professor, draws on her experience conducting journalism and democracy workshops throughout the United States and in Ethiopia, Russia, Bosnia, Poland, and the Czech Republic to highlight the vital role of a free press.

Economist Ian Vásquez identifies the importance of economic freedom and its ability to counterbalance political power and nourish a pluralistic society. Vásquez presents evidence that in countries with the freest economies, citizens also enjoy comparatively high standards of living, and he discusses the interplay between the rule of law and economic freedom.

In a short interview, prize-winning Peruvian economist Hernando de Soto discusses the importance of a strong system of property rights to a democratic society.

Political science professor Ted G. Jelen describes the importance of respecting religious

diversity and the rights of religious minorities. Jelen writes that even the perception of religious discrimination has negative effects on successful diplomacy and healthy democratic practices.

Professor and author Ralph Ketcham writes about the responsibilities of citizens in a free society.

Lastly, U.S. District Court Judge Vicki Miles-LaGrange relates the fundamental precepts of the American judicial system and describes her participation in a groundbreaking judicial reform project in Rwanda.

As democracy spreads throughout the world, nations in transition will look to existing democracies for guidance. They must keep in mind that there is no simple model and that no one framework is applicable in its entirety to all countries. Some of the topics we've explored—how democracies respect the differences within their populations, the importance of a fair judicial process, economic freedom, and a free press—are, however, critical factors in any democratic society. We invite readers to continue their exploration of this dynamic subject by visiting the links included in the resources section. We hope this journal will provide insights and provoke discussion about the foundations of democracy that Americans hold dear.

The Editors



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FREEDOM OF THE PRESS

ELLEN HUME

An independent media sector ensures the free flow of information that is vital in a democratic society. Using examples from many nations, the author outlines four essential roles that a free press serves: holding government leaders accountable to the people, publicizing issues that need attention, educating citizens so they can make informed decisions, and connecting people with each other in civil society. Ellen Hume is director of the Center on Media and Society at the University of Massachusetts in Boston.



When one sees how the news media can challenge and expose even the richest and most powerful leaders in the world, one might wonder, why put up with a free press? Why not go back to the idea

of a government-controlled media, with limits on what people can say and publish and with control over the right to assemble?

The answer is that it is impossible to maximize political stability, economic growth, and democracy without the free flow of information.

Information is power. If a nation is to enjoy the political and economic advantages enabled by the rule of law, powerful institutions must be open to scrutiny by the people. If technology and science are to advance, ideas must be openly shared.

And if government is to be valued because it is accountable to the people, free and independent news media are essential to that process. That is why Thomas Jefferson, the primary drafter of the American Declaration of Independence, insisted that the U.S. Constitution include the public's right to free speech, a free press, and public assembly.

"Were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter," he wrote in 1787. That is not to say that the

newspapers were kind to him when he became president. He had his share of embarrassing exposés.

But Jefferson remained steadfast in supporting even painful scrutiny by the media, because he recognized that without such accountability and unfettered flow of ideas, a nation's creative growth is stunted and its people are not free.

An independent media sector serves four vital roles in a democracy. First, it is a watchdog on the powerful, holding them accountable to the people. Second, it casts a spotlight on issues that need attention. Third, it educates the citizens so they can make political choices. Fourth, it connects people with each other, helping to create the social "glue" that binds civil society.

HOLDING GOVERNMENT ACCOUNTABLE

The watchdog function is often the hardest to perform well. Government agencies and officials are not always willing to be transparent, especially if there is no tradition of public scrutiny. In post-Soviet Georgia, for example, Rustavi II television broadcast verified investigative reports about areas of government corruption. When the government tried to close down the television station rather than correct the problems, citizens assembled en masse to protest. Their demonstrations in defense of their independent media forced the government to dismiss corrupt members of the cabinet and allow Rustavi II back on the air.

Another example comes from India, where Bhartiya Janata Party President Bangaru Laxman was caught on videotape by an undercover tehelka.com Internet journalist, accepting money for what he thought was a weapons deal. The public outcry, after the sting, forced the ouster of several senior cabinet ministers.

Media that do an honest job of holding the government accountable can help support the rule of law and thereby create more stability for the country. That stability will make the country more attractive to long-term economic investment.

"Freedom of speech and exchange of information are not just luxuries, they are the currency on which global commerce, politics, and culture increasingly depend,"



AP/WWP Efreem Lukatsky

By holding governments accountable, media can create stability. Ukrainian journalists hold a banner that reads "free speech" at a rally in Kiev in March 2004, demanding that then-President Leonid Kuchma reopen the independent media outlets he closed prior to the presidential election there.

observed David Hoffman, the founder of Internews, an international nongovernmental agency that helps train and develop independent media in 50 countries.

PUBLICIZING ISSUES

Without a free and independent press sector, the full responsibility for public information and safety resides only in the government. This lack of public engagement can seriously undermine a country's security and economic growth.

For example, the Chinese media did not report the unfolding SARS epidemic in 2003 accurately, because they were following their government's wishes to minimize the crisis. Thus there were no warnings that the fatal disease was raging out of control in Beijing and other areas. Uninformed citizens continued risky



AP/WWP Photo

behaviors that spread the disease. Some people started to panic as the number of cases in their neighborhoods climbed. Tourists and

A Chinese teenager reads a newspaper near a billboard advising Beijingers to join the fight against SARS in Beijing, China, in April 2003. The Chinese media initially did not report the SARS epidemic accurately, and citizens unknowingly continued spreading the disease.

the international investment community grew jittery as well. When the independent *Wall Street Journal* newspaper went from hospital to hospital in Beijing, compiling the real numbers of SARS cases, some foreign investors lost faith in the Chinese government's official line and started pulling their employees out of the country. The government realized belatedly that it needed to inform the public about the real hazards and scope of the problem in order to stem the epidemic and restore government credibility. In this case, the independent foreign media held the government accountable on behalf of the people when the local media were not allowed to do so.

EDUCATING CITIZENS

When they are able to function freely, local newspapers and radio and television stations can be important building blocks of democracy. In addition to serving as a watchdog on local institutions and alerting the public to safety issues, they can help citizens understand and access their distant government.

When the four biggest banks in Uruguay closed during an economic crisis several years ago, for example, an elderly man in the town of Tucumã telephoned a local radio station for help. His wife was sick, and he could not get access to their bank account to pay the doctor. Radio Zorilla producers contacted his regional legislator, who put the man in touch with the finance ministry. The man learned that emergency legislation was being passed to give people like him access to their bank accounts.

It is routine for radio station producers in Tucumã to help connect the people of their town to government services and to each other. Listeners call in looking for hard-to-find books, lost dogs, jobs, and workers. Radio Zorilla is not just a community bulletin board and advocate with the government. It also offers newscasts, telephone call-in discussions, and interviews, according to Maria Martin, an American radio producer who spent time at the station and was impressed by its success.

Citizens in Angren, Uzbekistan, have a similar local media resource, a television station. They telephone TV-Orbita, which reports their complaints and other town problems on the television news. The news is watched by the authorities as well as the citizens. When the government tried to shut down the station at one point in order to control its political influence, the public and

sponsors protested, and the government had to let it reopen.

CONNECTING PEOPLE

Access to the local news can even save lives. When Hurricane Katrina was bearing down on New Orleans, Louisiana, in August 2005, local Vietnamese immigrant families were alerted by their low-power, Vietnamese-language community radio station about where to go to reach safety and find their Vietnamese-American neighbors.

When the Sultan Dam, two hours south of Kabul, Afghanistan, was starting to fail on March 29, 2005, the journalists of Radio Ghaznawiyaan called the provincial governor, who then issued a statement on the air that all the villagers needed to evacuate. That report reached the people before the dam broke and destroyed many of the village's shops and houses. "I was listening to Radio Ghaznawiyaan, and when it started to talk about the Sultan Water Dam, I turned the volume up and I understood that we had to run," said a resident. The



AP/WWP Marco Di Lauro

Parveen Hashafi auditions for a news reader job at Radio Afghanistan in Kabul in November 2001. Warnings broadcast on the radio just before the Sultan Dam broke in 2005 gave village residents time to evacuate, and days later, the radio station linked the two sides of the city that were separated by the flood.

quick action of the station saved many lives. Afterward the radio station continued to link the two sides of the city that were separated by the flood.

The World Bank tracks media openness as a positive factor in economic and political development. In its *World Development Report 2002*, it studied 97 countries and found that those with privately owned, local

independent media outlets had higher levels of education and health, less corruption, and more transparent economies.

To be sure, the free press does not always perform professionally, and there can be unintended consequences to opening up the media. But the more the news media offer balanced news and community discussions, the more the public values them. This civic information is the fuel of democracy. The people become better educated and take more responsibility for their own well being.

The media can act as a safety valve by offering a forum for diverse voices to be heard. This ability to broadcast and present various perspectives within a society is more important than one might think. Terrorism expert Jessica Stern has noted that terrorism is often fueled by humiliation, a feeling by people that they are not being included in the mainstream of society or treated with respect.

As David Hoffman of Internews points out, "There is ample evidence, from the Sandinistas of Nicaragua to the Albanian rebels in Macedonia, that bringing opposition groups into the body politic provides nonviolent alternatives to civil strife."

A second World Bank report, *Consultations With the Poor*, studied 20,000 poor people in 23 countries and found that what most "differentiates poor people from rich people is a lack of voice. The inability to be represented. The inability to convey to the people in authority what it is that they think. The inability to have a searchlight put on the conditions of inequality. These people interviewed do not have Ph.D.s but they have the knowledge of poverty, and the first thing they talked about is not money. It is lack of voice, it is lack of the ability to express themselves."

A vibrant media sector, with competing independent newspapers, radio, Internet Web sites, and television, allows those voices to be heard. These media can spotlight problems, encourage fellow citizens and government officials to address them, and empower even the destitute with real information. Everyone gains if the poor have a chance to improve their lot, taking part in the opportunities afforded by free speech, free press, and the right to assembly in democratic societies. ■

The opinions expressed in this article do not necessarily reflect the views or policies of the U.S. government.

THE CENTRAL ROLE OF ECONOMIC FREEDOM IN DEMOCRACY

IAN VÁSQUEZ

“Economic freedom allows for independent sources of wealth that serve both to counterbalance political power and to nourish a pluralistic society,” says author Ian Vásquez. In this article, he presents evidence that in countries with the freest economies, citizens also enjoy comparatively high standards of living, and he discusses the interplay between the rule of law and economic freedom. Vásquez is the director of the Project on Global Economic Liberty at the Cato Institute in Washington, D.C., and a term member of the Council on Foreign Relations.



Of the cherished liberties of a free society—economic, political, and civil—economic freedom holds a special place. It is not only an end in itself; economic freedom gives sustenance to the other freedoms. When personal choice, voluntary exchange,

and the protection of private property are not secure, it is difficult to imagine how political freedom or civil liberties can meaningfully be exercised.

In 1962, Nobel laureate in economics Milton Friedman observed:

History speaks with a single voice on the relation between political freedom and a free market. I know of no example in time or place of a society that has been marked by a large measure of political freedom, and that has not also used something comparable to a free market to organize the bulk of economic activity.

The collapse of central planning in Third World countries and of socialism itself in the past 20 years seems to support Friedman’s thesis. The rise in

economic freedom has accompanied that of political and civil freedom around the world, and both have been significant as countries have moved away from authoritarianism and opened their markets.

ECONOMIC FREEDOM

Economic freedom is a desirable end unto itself because it generally expands the range of choice of the individual, both as a consumer and as a producer. The larger role of economic freedom in society, however, is often under-appreciated, including by those who believe in political pluralism; human rights; and freedom of association, religion, and speech.

Yet the decentralization of economic decision-making supports civil society by creating the space in which organizations of all kinds can exist without depending on the state. A nation in which there is economic freedom is one in which the private sector can fund the institutions of civil society. Thus genuinely independent churches, opposition political parties, and a diversity of businesses and media are more likely to exist where economic power is not concentrated in the hands of bureaucrats or politicians.

By definition, economic liberalization implies a loss of full political control over the citizenry. That is something that authoritarian governments around the world have been finding out in the current era of globalization. Dictatorships have given way to democracies in countries that began liberalizing their markets as early as the 1960s and 1970s, including South Korea, Taiwan, Chile, and Indonesia. With the election of President Vicente Fox in 2000, Mexico’s market liberalization in the 1990s helped end more than 70 years of the PRI’s (Institutional Revolutionary Party’s) one-party rule, once referred to by Peruvian novelist Mario Vargas Llosa as “the perfect dictatorship.”

Economic freedom allows for independent sources of wealth to counterbalance political power and to nourish a pluralistic society. When the state owns or exerts undue control over banking, credit, telecommunications, or

newsprint, for example, it controls not only economic activity, but expression as well. It has taken the world far too long to recognize the truth in the statement of early 20th-century writer Hilaire Belloc that “the control of the production of wealth is the control of human life itself.”

Thus the dilemma that China’s Communist Party currently faces is familiar. To maintain social stability, China must continue the economic liberalization that has fueled more than two decades of high growth. But market reforms have given hundreds of millions of Chinese greater independence from the state and have created an emerging middle class that increasingly demands political freedom and representation. The party wishes to maintain political power, but economic liberalization is undermining that goal, while ending liberalization would reduce growth and cause instability.

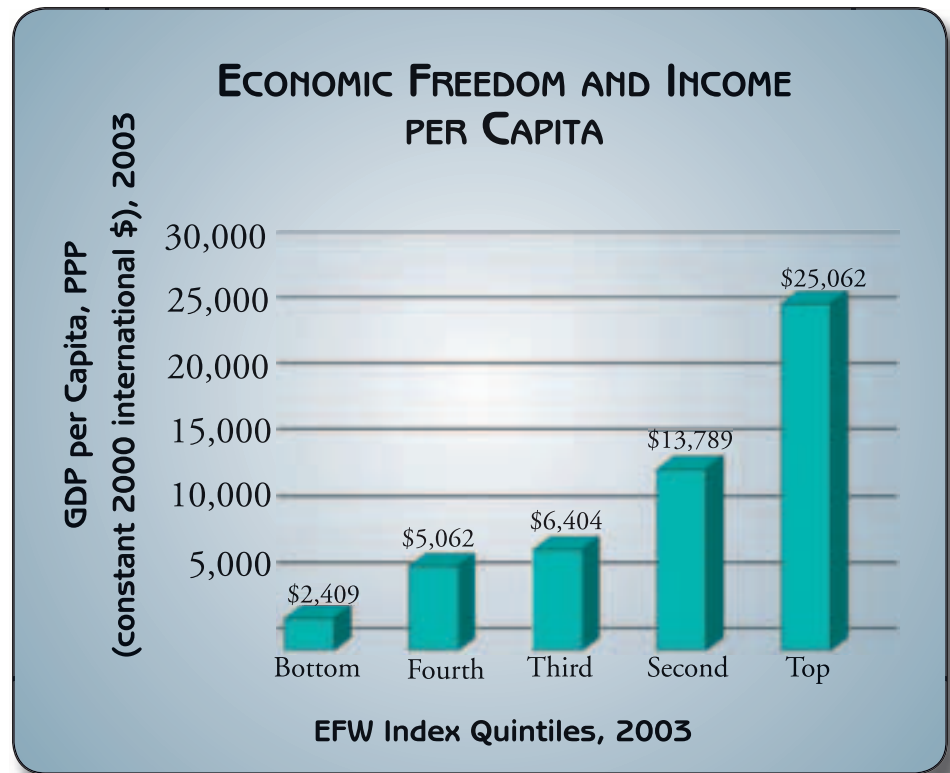
As in the case of China and countless other nations, economic freedom encourages political pluralism by promoting the growth that produces a middle class and citizens less dependent on the state. Empirical evidence supports that relationship.

The most comprehensive empirical study on the relationship between a country’s economic policies and institutions and a country’s level of prosperity is the Canadian Fraser Institute’s *Economic Freedom of the World* report. It looks at 38 components of economic freedom, ranging from the size of government to the rule of law to monetary and trade policy, in 127 countries over a period of more than 30 years. The study finds a strong relationship between economic freedom and prosperity. The freest economies have an average per capita income of \$25,062 compared with \$2,409 in the least free countries. Free economies also grow faster than less free economies. Per capita growth in the past 10 years was 2.5 percent in the most free countries, while it was 0.6 percent in the least free countries.

The Fraser study also found that economic freedom is strongly related to poverty reduction and other indicators of progress. The United

Nations’ Human Poverty Index is negatively correlated with the Fraser index of economic freedom. The income level of the poorest 10 percent of the population in the most economically free countries is \$6,451 compared to \$1,185 in the least free countries. People living in the top 20 percent of countries in terms of economic freedom, moreover, tend to live about 25 years longer than people in the bottom 20 percent. Lower infant mortality, higher literacy rates, lower corruption, and greater access to safe drinking water are also associated with increases in economic liberty. The UN’s Human Development Index correlates positively with greater economic freedom. Significantly, so too does Freedom House’s index of political and civil liberties: Countries with more economic freedom tend to have more of the other freedoms as well.

Self-sustaining growth has, in fact, long depended on an environment that encourages free enterprise and the protection of private property. The West’s escape from mass poverty in the 1800s occurred in such an environment, which in turn initiated the era of modern economic growth. Even before then, the emergence of a commercial class of farmers in England led to its representation in Parliament, where in the 17th century it successfully limited arbitrary confiscations of wealth by the crown—in short, the rise of commercial farmers helped establish constitutional monarchy. Credible



Adapted from Economic Freedom of the World: 2005 Annual Report



AP/WWP Yonhap, Choi Jae-koo

South Korean stock dealers cheer the KOSPI's record high at the Korea Exchange in Seoul in September 2005. Dictatorships have given way to democracies in countries that liberalized their markets as early as the 1960s and 1970s, including South Korea.

limitations on the power of government enhanced property rights and the rule of law, major factors in the rise of Great Britain as the world's preeminent economic and political power. As Great Britain grew wealthier, of course, it became a democracy.

More recent evidence supports the idea that growth and higher levels of income lead to, or at least help sustain, democracy. Political scientists Adam Przeworski and Fernando Limongi studied 135 countries between 1950 and 1990 and found that "per capita income is a good predictor of the stability of democracies." For example, they found that in countries with a per capita income below \$1,000 (in 1985 PPP dollars), democracies could on average expect to survive eight years. (PPP stands for purchasing power parity, a theory that states that exchange rates between currencies are in equilibrium when their purchasing power is the same in each of the two countries.) When incomes ranged between \$1,001 and \$2,000, the probability of democratic survival was 18 years. Those democracies in countries with incomes above \$6,055 could expect to last forever.

Economic freedom produces growth but does not always lead to democracy. Hong Kong and Singapore, among the world's freest economies, are notable examples. Nor is wealth alone always a product of economic freedom, as attested to by some resource-rich countries with relatively high incomes but where economic power is tightly controlled by the state; as expected, civil and political liberties are also severely limited in those countries. The central role of economic freedom in democracy, however, is clear. It can be a powerful force in

promoting democracy, and a good measure of economic freedom is necessary to sustain political freedom.

LIBERAL DEMOCRACY AND THE RULE OF LAW

Democracy is not a synonym of liberty. As we have seen, a democracy that is not accompanied by the other freedoms hardly succeeds in limiting the arbitrary power of political authorities, elected though they may be. Thus, much effort is currently being placed on promoting the rule of law—a central component of both liberal democracy and economic freedom.

It is axiomatic that the rule of law is necessary for a well-functioning democracy. Increasingly appreciated is the fact that the rule of law is also necessary for economic development. The *Economic Freedom of the World* report, for example, found that no country with a weak rule of law could sustain a solid rate of growth (more than 1.1 percent) once income per capita rose above \$3,400. In other words, once an economy reaches a certain level of development, improvements in the rule of law are essential to sustaining growth.

It is possible that, unlike tariff reductions or privatizations, the rule of law cannot be directly promoted. It may very well be that the rule of law happens after, or at about the same time that, other things are done right.

I advance a modest proposal. Instead of focusing on directly promoting the rule of law, we should be creating the environment within which the rule of law can evolve. Among other measures, that means promoting market reforms or economic freedom. For many poor countries, that includes reducing the size of government. The countries that today have a strong rule of law first established that institution and only later increased the size of their governments.

Unfortunately, too many poor countries are today trying to repeat that process in reverse. In countries as diverse as Brazil, Slovakia, the Republic of Congo, and Russia, for example, government spending as a share of gross domestic product exceeds 30 or 40 percent. Attempts to promote the rule of law where governments remain large are bound to fail or be exceedingly difficult. Indeed, although the trend during the past 20 years has been an increase in both economic and political freedom in the world, most countries still have a long way to travel down the path of economic freedom. Russia may have abandoned socialism, but it ranks 115 out of 127 countries in the *Economic Freedom of the World* index.

Author Fareed Zakaria observes, furthermore, that the majority of poor democracies in the world are illiberal



AP/WVVP Kaja-kadi Sepp

The Elcoteq mobile phone factory in Tallinn is a player in Estonia's bid for economic freedom, strengthening democracy there.

democracies—that is, political regimes in which liberties other than the freedom to choose who governs are not well established. He notes that in the West, the liberal constitutional tradition developed first and the transition to democracy developed later. In 1800, for example, only 2 percent of citizens voted in Great Britain, perhaps the most liberal society in the world at that time. Zakaria further points out that in non-Western nations that have

recently made a transition to liberal democracy, such as South Korea and Taiwan, capitalism and the rule of law also came first. That pattern may explain why regions like Latin America that have democratized first and then begun economic liberalization have had an especially challenging time at promoting economic freedom or growth.

Today, countries in Eastern and Central Europe, Latin America, and elsewhere are trying to achieve, with varying degrees of success, both democracy and economic freedom at the same time. In some cases, economic freedom has been rolled back or is no longer a priority, something that augurs poorly for democracy. In other cases, such as Estonia, economic freedom has steadily increased, thus strengthening democracy. Those of us who believe in democratic capitalism—whether we live in rich democracies, poor democracies, or autocratic states—should never lose sight of the central role of economic freedom in achieving a free society. ■

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PROPERTY RIGHTS AND DEMOCRACY ONE VIEW

Hernando de Soto is president of the Institute for Liberty and Democracy in Lima, Peru. As an advisor to Peruvian President Alberto Fujimori during the 1990s, de Soto helped initiate the economic reform programs that facilitated Peru's return to the international economic system. Following is an excerpt from a Center for International Private Enterprise (CIPE) interview with de Soto that discusses what he calls the strong relationship between property rights and democracy. The interview first appeared in Economic Reform Today (ERT), published by CIPE.

ERT: When you look at the Western democracies, all of them have strong systems protecting property rights. Is it important for emerging democracies to create such systems?

MR. DE SOTO: I think the first thing that is striking about the Western democracies is that they enjoy property rights. They may have different land-tenure and property rights systems, but they all have one thing in common: They protect the right of people to “transact” their property rights. It is not only important to know that if you are the original owner of something, you can enforce this right; but also, that if you decide to sell it, whoever buys it or uses it as collateral for commercial purposes feels secure about the transaction.

In many developing countries or emerging markets, property rights do exist. However, they do not have the complementary legal framework that is present in developed countries and that allows these property rights to become currency. This legal framework provides a kind of scaffolding which allows property to move to its highest valued use with a great deal of security.

In most of the emerging markets from Russia to Latin America, there are people today who own property that did not before. But the government machinery—the executive, legislative, and judicial branches—has not kept up with building the kind of framework and institutions needed to protect property rights....

In short, the important thing is whether there will be enough political savvy in emerging markets to create the legal framework that protects private property rights.... So the first step is one of discovering which property

rights exist. The second is to learn from the evolution of the various models used in the Western world and how organizations were created so as to best organize and protect these rights legally....

ERT: How would you describe the relationship of strong systems of property rights to democratic institutions?

MR. DE SOTO: The relationship between the two is very strong. Democracy has a lot to do with establishing a good system of property rights in the sense that it's not really possible to build such a system unless you know how people think about their relationship to objects, land, and assets at the grassroots level. Only after you do this can you incorporate property rights into a body of law that is truly effective.

In the United States, for example, throughout the 19th century and the beginning of the 20th century, there were various mechanisms that recognized the role of pioneers in staking out land claims even though initially the country didn't have a legal framework for them. Instead of keeping with the British tradition which accepted that the king and judge made law, the U.S. government accepted that people on the ground had their own ways of settling many property issues and had effectively built local social contracts. As a result, an effective nationwide property rights system was set up that worked, but not using the law brought over from England. Instead, it was built on a system of grassroots democracy and principles of equity that flowed from the fact that a lot of poor people in the U.S. went out and staked claims which were basically approved by the majority of the population. That's why they stuck....

If democracy is government by the people, it means among other things that people's social conventions are being acknowledged and protected. It means a country is in touch with evolving conventions, and has gradually woven these property rights into a more sophisticated and far-reaching social contract....

Excerpted from *Economic Reform Today, Property Rights and Democracy*, Number 1, 1996

For the full text of the interview see: <http://www.cipe.org/publications/fs/ert/e19/desoto.htm>

FREEDOM OF CONSCIENCE

TED G. JELEN

This article discusses the value that freedom of religion provides to a healthy democracy. The author describes religious institutions as an alternative source of ideas and social criticism and a training ground for democratic citizenship, and he makes the case for why democratic governments should encourage respect for religious diversity. Ted G. Jelen is a professor of political science at DePauw University in Greencastle, Indiana, and at the University of Nevada, Las Vegas.



Respect for freedom of conscience, which most often involves freedom of religion, has many salutary effects on democratic government. The consequences of religious liberty are generally positive: 1) Religion provides alternative sources of ideas, social criticism, and innovation for democratic governments; 2) Religious institutions provide experiences and skills that can be applied to democratic citizenship; and 3) Respect for the prerogatives of religious minorities can enhance the legitimacy of democratic governments domestically and internationally.

RELIGION AND THE STATE

In a healthy democratic regime, the state and religious institutions should retain a respectful independence from one another. This is not to say that there should be no contact between the secular realm of politics and the sacred space defined by religion, because there is considerable overlap between the two. However, a certain functional autonomy between church and state seems to have important benefits for the state.

Observers as diverse as French author and statesman Alexis de Tocqueville (1805-1859) and German political scientist Elisabeth Noelle-Neumann (1916-) have noted the conformist tendencies of democratic political cultures. That is, in societies that are highly egalitarian (in social

and legal senses), there is tremendous social pressure to conform to prevailing opinion. Noelle-Neumann has termed this phenomenon “the spiral of silence,” which closely resembles Tocqueville’s classic conception of the “tyranny of the majority.” Prevailing viewpoints often can have irresistible effects on public opinion and public policy.

Religion often provides a “prophetic voice” to public discourse. Religious values can allow stable, transcendent values to enter the democratic dialogue and to empower the expression of minority viewpoints. This is an important function in regimes in which public opinion is the ultimate authority, since the presentation of alternative perspectives often enhances the process of political deliberation. The fact that religious principles are grounded in beliefs that are not based on the social and political exigencies of the moment allows for such beliefs to serve as independent sources of criticism of the prevailing political mood.

To illustrate, widespread adherence to Roman Catholicism provided a plausible, alternative world view to citizens of Poland during the period of communist domination. The efforts at political socialization made by the communist regime were not particularly effective, and they were actively resisted by a politically assertive Catholicism. Indeed, the presence of a popular Catholicism may have permitted Poles to make a distinction between the Polish *state* (secular and socialistic) and the Polish *nation* (Catholic and potentially democratic). Similarly, in the early years of Ronald Reagan’s presidency (1981-1989) in the United States, policies such as nuclear disarmament and assistance to the poor fell out of favor in public discourse. The National Council of Catholic Bishops wrote pastoral letters concerning the immorality of nuclear war and asserting the moral imperatives underlying assistance to the poor. The spiritual and intellectual resources of the American church provided a necessary counterweight to economic and foreign policy conservatism.

There is, of course, nothing particularly novel about this insight. In his *Democracy in America*, Alexis de Tocqueville identified religion as one of the most important factors mitigating the tyranny of the majority

in the United States. As sources of transcendent values, which contain numerous moral imperatives related to public policy, religious traditions that are not identified with ruling regimes provide an important check on the conformist tendencies of democratic cultures.

PROTECTING RELIGIOUS DIVERSITY

Democratic governments should protect and encourage religious diversity. The public presence of multiple religious traditions enhances their potential to serve as social and political critics for at least three reasons.



AP/WWP Reed Saxon

Diverse clergy sing during an interfaith service at Our Lady of the Angels Cathedral in Los Angeles, California, in September 2002. One of the most important values of religious diversity for democratic discourse is that multiple voices may result in multiple perspectives being considered in public deliberation.

The most obvious value of religious diversity for democratic political discourse is that multiple voices may result in multiple perspectives being considered in public deliberation. For example, in contemporary Brazil, the Roman Catholic Church (especially at the level of the local parish) has been a source of social criticism of the structural sources of economic and political inequality (the tradition of “liberation theology”), while a growing movement of evangelical Protestantism has served to refocus attention on individual-level morality and family life.

Secondly, religious diversity has a positive effect on religious belief, participation, and membership. Sociologists of religion have suggested that denominational groups in competitive religious environments have strong incentives to make their respective traditions attractive to members and potential members. In such settings, overall religious participation is generally higher than in environments in which

one tradition has a monopoly. For example, religious involvement is generally higher in the religiously pluralistic United States than in Scandinavian nations with established churches. Similarly, in the post-communist period in predominantly Catholic Poland, church attendance and other measures of religious participation have declined markedly.

Why should this matter? Research literature suggests that participation in religious organizations is an important source of social capital, or the cognitive and social skills necessary for engagement in democratic politics. People in churches learn to work together to

achieve common goals, to mediate interpersonal conflict in constructive ways, and to choose among competing social goods. All of these skills are important for the development of democratic citizens. Indeed, some of this research has suggested that religious socialization is the only reliable source of social capital among otherwise disadvantaged citizens in the United States. Thus, religion, like other institutions in civil society, is an important source of citizenship training. More people are likely to avail themselves of the learning

opportunities provided by religious institutions in religiously diverse environments.

Finally, religious diversity can reduce the potential for serious religious-based political conflict. In societies which have more than one dominant religious tradition, citizens can demonize their counterparts in other traditions, increasing the possibility of intense and violent conflict. By contrast, in a more pluralistic environment, no religious tradition may attract a majority, which forces religious citizens who engage in politics to compromise in order to achieve partial political goals.

In the United States, for example, some religiously affiliated groups have criticized government policies on a variety of moral or lifestyle issues. However, their effectiveness has been limited by, among other things, theological differences within their own religious traditions. Internal controversies, then, over such matters as modernism, evolution, religious experience, and doctrinal interpretation have largely prevented the



AP/WWP Murad Sezer

Ali Bardakoglu, Turkey's Minister of Religious Affairs, in front of Jewish and Christian symbols at Mustafa Kemal University in Antakya, Turkey, in September 2005. Jewish, Christian, and Muslim religious leaders and academics from around the world gathered for the first-ever Hatay Meeting of Civilizations symposium near the Turkish-Syrian border.

formation of monolithic political coalitions. In brief, the doctrinal diversity within the religion practiced by a majority of Americans (Christianity) – as well as the tradition of respect for other religions, including Judaism and Islam – makes it unlikely that any single religious group will come to dominate political discourse in the United States.

RIGHTS OF RELIGIOUS MINORITIES

Religious traditions often make truth claims about ultimate realities, such as the nature of reality, the purposes of human existence, and explanations for the existence of evil in the world. Such assertions are not typically verifiable or refutable and, as such, are not subject to straightforward negotiation or compromise. From this, it follows that people or institutions in positions of political power (e.g., popular majorities in democracies) often are tempted to suppress alternative versions of religious truth or to restrict substantially the prerogatives of religious minorities. There are at least two reasons why political leaders in democratic governments should resist this temptation and should respect the rights of religious minorities to as great an extent as possible.

First, allowing religious freedom for members of minority religions, which may be socially or theologically marginalized, avoids the problem of equating full citizenship with membership in a particular religious tradition. To illustrate, if a person can be fully American without being a Christian, or fully Israeli without being

a Jew, members of religious traditions that fall out of the culturally dominant pattern are not confronted with the problem of divided loyalties. If there is no necessary connection between national citizenship and discipleship in a particular religious tradition, members of minority traditions are more likely to obey the law and to participate fully in the political life of the nation. Put another way, allowing religious liberty for religious minorities seems likely to enhance the legitimacy of government for members of such groups.

The issue of legitimacy is especially important for democratic regimes, because democracy is a persuasive system, which requires the active assent and participation of the governed. That is, democratic governments achieve their legitimacy by persuading citizens of their right and ability to govern. Democratic governments also require active participation, rather than passive compliance, on the part of their citizens, and such participation is arguably more difficult to achieve when certain members of the community are denied the ability to exercise fundamental aspects of their identities.

A second reason to respect the rights of religious minorities is the international aspect. The flexibility of national governments to engage in complex relations with other states is often limited by perceptions of religious discrimination on the part of the governments of those states. Viewed another way, a government that discriminates against certain religious minorities is often disadvantaged in its dealings with other states in which the marginal religious tradition is more politically consequential.

For example, in the early 1970s, the ability of U.S. President Richard Nixon to engage in détente with the Soviet Union was occasionally limited by the perception on the part of many Americans (including many members



AP/WWP Nati Harnik

On May 14, 2004, in Omaha, Nebraska, a Hindu priest lights a candle on the opening day of Nebraska's only Hindu temple.



AP/WWP Joe Marquette

Buddhist Monks stand in silence on the steps of the U.S. Capitol in Washington, D.C., in June 1998, during a rally calling for religious freedom in Tibet.

of Congress) that the U.S.S.R. discriminated against Jews. The “Jackson Amendment” (introduced by Senator Henry Jackson) sought to limit trade between the United States and the Soviet Union and to make such trade contingent on improvement in the Soviet observance of human rights. Clearly, the path to détente would have been considerably smoother were the Soviet Union not widely perceived as anti-Semitic. More recently, allegations of restrictions on Christian missionaries have made it difficult for President George W. Bush to engage in cooperative relations with states such as Jordan, Egypt, China, and North Korea. Evangelical Christians are an important component of the president’s Republican coalition in U.S. politics, and it is politically difficult for any president to pursue diplomatic policies at odds with the preferences of a key constituency.

Similarly, on a recent trip to Pakistan, I noted that my credibility as a representative of the United States was

compromised by the widespread belief that the American government, and the American people, were somehow “anti-Muslim” in the post-9/11 period. I found several audiences of university students unwilling to listen to my defense of the principle of religious liberty until I had addressed to their satisfaction that Muslims living in the United States were not the victims of legal discrimination at the hands of the government. On the other side of the Atlantic, France’s attempt to thwart religious divisiveness by banning Muslim girls from wearing headscarves along with Jewish boys from wearing skullcaps to public school may have caused a decline in the national prestige of France in the Middle East and elsewhere. Certain films perceived to be anti-Islam may have occasioned religiously motivated, political violence in the Netherlands.

In all these cases, the perception of discrimination is at least as important as the reality. To a considerable extent, successful diplomacy is contingent on goodwill between sovereign nations. The belief on the part of the citizens of some nations that their co-religionists are second-class citizens in other states can make the achievement of such goodwill problematic.

CONCLUSION

A vibrant, diverse, and pluralistic religious environment contributes to a healthy democratic society. While one should not exaggerate the importance of religion in democratic politics, religion can serve as a source of policy criticism, education for citizenship, and political legitimacy. ■

The opinions expressed in this article do not necessarily reflect the views or policies of the U.S. government.

CITIZENSHIP AND GOOD DEMOCRATIC GOVERNMENT

RALPH KETCHAM

The author examines two models for citizenship: one motivated by self-interest and the other driven by concern for the public good. “The public-spirited model,” he says, “requires that citizens with private interests also possess and modulate an understanding of and concern for the public good.” Ralph Ketcham is professor emeritus of history, public affairs, and political science at the Maxwell School of Citizenship and Public Affairs at Syracuse University in Syracuse, New York.



In a recent seminar at an American university, a participant from Vietnam was asked to respond to political scientist Robert Dahl’s view of democracy: that it be routinely responsive to the people, who “are free to develop and use peaceful means to criticize, pressure, and replace leadership.” In Dahl’s analysis, leaders are obliged to pay attention and respond to the varied voices and needs of the people, expressed not only through representative institutions, but through all the other peaceful ways—petitions, demonstrations, lobbying, advocating, etc.—available in a free and liberal society.

Political scientist John Mueller contributes to the discussion by explaining that the responsibilities of citizenship are minimal. “Democracy is really quite easy—any dimwit can do it. ... People do not need to be good or noble, but merely to calculate their best interests, and if so moved, to express them.” Generally apathetic and self-interested, democratic citizens need only to be able to assess reality and calculate their advantage to do their duty. The desire to pursue ideals, seek the public good, or otherwise be noble is, luckily, as unnecessary as it is largely absent from human motivation.

So how does the Vietnamese student respond? Does he see this concept of democracy and citizenship, often extolled as operational in the United States and other



AP/WWP Robert F. Bukaty

Volunteers sweep Canal Street during an organized public cleanup in New Orleans, Louisiana, in October 2005 following Hurricane Katrina.

“mature” democracies, as a model for his country? “Absolutely not,” he says, explaining his response in terms that echo a richer, stronger conception of citizenship and an understanding of democracy well beyond the procedural emphasis in the model of which he wanted no part. The idea of citizenship he had in mind was more public-spirited, resting on a different assessment of human capacity to think and act with public concerns deliberately in view. It also supposed that democratic government might work more in the “good and noble” ways disdained by the idea that democracy “is really quite easy,” and thus requires simply the self-interested access of all in some conflict-of-interest or politics-of-identity model.

The more public-spirited model of citizenship required going far beyond the various self-interested activities of voting, organizing, lobbying, demonstrating, and joining parties and special interest groups. Such activities are to be expected of members of a free society and, of course, are not to be prohibited. They express what British political theorist Harold Laski (1893-1950) called “the inexpugnable variety of human wills; ... a multiplicity of wills which have no common purpose.” The “latent causes” of this variety of wills, leading to “factions,” U.S. President James Madison (1751-1836) observed, “are . . .



AP/WWP Patricia McDonnell

Americorps members, who volunteer for one year of community service work in the United States, at a rally in Boston, Massachusetts, in October 2001.

sown in the nature of man, and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society.” Thus, diverse people in a free society would be encouraged in self-expression, creativity, and the pursuit of happiness and prosperity. There would be political benefit, as well, from the various interests (the more, the better) being compelled to interact and compromise with each other in ways that would prevent a tyrannical dominance by any one faction, or even coalition of factions: the blessings of a free, inclusive, varied, open, equitable society.

To the Vietnamese student, and to Madison as well, though, this was not wrong or to be prohibited or even discouraged, but rather was incomplete, and it was not really citizenship or meaningful government by consent at all. Citizenship required most fundamentally what 18th-century civic republican thinking understood as the only essential political virtue: that participants in government, leaders or commoners, at national or local levels, have the public good at least partially in mind, rather than seeking only partial, factional, or selfish ends. To be citizens, members of the polity required in some degree this public perspective beyond the self- or group-interested one, beyond the right to pursue private interests, which as dwellers in a free society, they, of course, possessed as well.

THE CITIZEN’S “DOUBLE OFFICE”

The public interest, in a way, rested on interest in the public, the capacity of every citizen, as Fukuzawa Yukichi instructed his countrymen in Meiji era Japan

(1868-1911) as the nation sought to understand western democracy, to hold “a double office.” Of course, as good subjects of the realm had always been obliged to do, the “new citizen” would obey the laws and follow the customs of the land, but as citizens they also held an office as participants in government. This required, Fukuzawa told his students at Keio University, that they develop a “spirit of independence,” attend to public affairs, and take part as discussants, voters, organizers, and officials in the nation’s public business. Thus they should “plan ... an undertaking for the benefit of the nation, write about and circulate your ideas to the public... and be eager to work for your country.” Above all, they should “acquire good judgment” to fulfill their office as citizen. Though it would be nearly a century before much of the Japanese polity would seek to embody these precepts, Fukuzawa clearly had in mind an office of citizenship far richer than the “minimal citizenship” called for in the conflict-of-interest model becoming dominant in the West.

American statesman Benjamin Franklin had much the same conception in mind when he told the Constitutional Convention of 1787, as it considered a proposal to “restrain the right of suffrage to freeholders,” that the key factor to keep in mind on qualification to vote was “the virtue and public spirit of our common people.” Thus he was skeptical of the freehold restraint because many non-freeholders might possess virtue and public spirit. Non-property holding sons of farmers, soldiers who had fought patriotically in the American Revolution, and artisans and tradesmen would, as examples, all likely be responsible voters and citizens. Another delegate explained “that every man having evidence of attachment to and permanent common interest with the society ought to share in all its rights and privileges.” Wealth and property ownership were poor markers for this essential quality, he noted. Furthermore, the experience of taking part in government, especially at the local level, would likely enlarge the public spirit of the common people and thus be a sort of training in becoming good citizens. Franklin disliked, he said, “every thing that tended to debase the spirit of the common people,” as he thought denying them suffrage would do. (Note, too, that none of Fukuzawa’s or Franklin’s criteria would exclude women, slaves, blacks, 18-year-olds, or Anglo-Americans, all generally denied suffrage and full citizenship in 18th-century America, once those categories would be understood as possessing the qualities of intelligence, reason, and political capacity, denied in them in 18th-century understanding. Full citizenship would necessarily apply, under the republican ideology

of Franklin, Thomas Jefferson, and other founders of the United States, as anthropological and cultural understandings of race, class, and gender progressed in later centuries. Every extension of the franchise over the next two centuries to blacks, women, former slaves, 18-year-olds (and in Britain to Catholics) occurred when those categories, formerly held not to have the requisite political intelligence and maturity, were (finally) understood to possess those capacities.)

Attention to these essential qualities of citizenship undergirded, of course, a rationale for democratic government quite different from that sustained in the minimal, conflict-of-interest model. It attended to both of the leading ideals of the American Declaration of Independence (1776): that all were created equal and endowed with unalienable rights and that governments derived “their just Powers from the Consent of the Governed.” The Declaration of Independence further stated as the first “injury and usurpation” of the king of Great Britain that “he has refused his Assent to Laws the most wholesome and necessary for the public Good.” That is, an essential part of a self-governing polity was that citizens must somehow be able to give their consent, express their thoughtful agreement to validate the acts of government, and that in justice no authority could stand between that consent and the enactment of laws “wholesome and necessary for the public good.” Without this active and constructive participation, citizens would be regarded, as Pericles had explained more than two millennia earlier in Athens, “not as unambitious but as useless.” Any dimwit, that is, cannot do it; Athenians “are able to judge and instead of looking on discussion as a stumbling block in the way of action [mere clashing factions?], we think it an indispensable preliminary to any wise action at all.”

To sustain this high ideal of citizenship it would be necessary to attend to many aspects of life if self-government were to be good government. How can this be? First, the polity must be free of foreign domination or domestic oppression; hence the energy for hundreds of revolutions against tyranny across time and around the world. But even if “successful” in defeating one tyrant (English Puritans and Cromwell in 1649; Russian communists and Lenin in 1917-1921; Ho Chi Minh in 1953 and 1975; in another way, even American arms versus Saddam Hussein in 2003, etc.), the problem remains of achieving good self-rule. American diplomat George Kennan noted in 1993 that of the many “disservices” of the Soviet regime to Russian society, one of the worst was “the fact that it left, as it departed, a



Courtesy of Spelman College

An educated citizenry is necessary for a working democracy: students at Spelman College in Atlanta, Georgia.

people so poorly qualified [note that word] to displace it with anything better.” The huge attention to and literature on this difficult and portentous question has been at the heart of discussions of citizenship, civil society, and good government at least since the time of Pericles and Aristotle, and including, especially in the United States, from Franklin’s worries in 1787, to writer Alexis de Tocqueville’s qualms about majority rule in the 1830s, to post-Darwinian arguments by social scientists that all government was simply self-interested groups struggling for power, and to contemporary concerns about the existence or creation of “social capital.” So again, what habits, what state of mind, what institutions might nourish the “virtue and public spirit” vital to the citizenry of aspiring, “transitional,” and mature democracies alike?

EDUCATION FOR CITIZENSHIP

Proponents of good government from Plato, Aristotle, Confucius, and Erasmus to John Locke, Thomas Jefferson, Horace Mann, John Dewey, and Vaclav Havel have been teachers, writers, and philosophers of education, intent on assuring that those who governed would be prepared for that demanding, public-spirited, and morally attuned task. All argue, as well, that rule by those not-so-qualified leads to bad government, whatever the number of people ruling. Aristotle’s classic analysis that government by one, a few, or the many could be good as in monarchy, aristocracy, or constitutional polity, or it could be bad as in tyranny, oligarchy, or democracy (mob rule under sway of demagogues in his meaning). The distinction is not how many rule, but how well they rule. In a way, the problem becomes much more

complicated, but no less important, when the number ruling is enlarged from one or a few to, as in a democracy, the largest number, all the citizens.

Thomas Jefferson, an author of the Declaration of Independence and the third U.S. president, proposed in 1776 that in the newly independent, self-governing state of Virginia there should be general (even universal) education, so that all “would be qualified to understand their rights, to maintain them, and to exercise with intelligence their parts in self-government.” American educator Horace Mann made the same point in 1848 when he argued that all should be taxed to support public schools, “because the general prevalence of ignorance, superstition, and vice, will breed Goth and Vandal at home, more fatal [in a democracy] to the public well-being than any Goth or Vandal from abroad.” John Dewey’s long career in the first half of the 20th century, linking democracy and education and seeking to transform American schools into “laboratories of democracy” where students would practice and “learn by doing” the attitudes and skills of democratic government, extended the same intention: Self-government, at any level, would work well and yield good results (in the public interest) only if the practitioners, from abroad or native-born, were educated (educated; drawn forth) to that responsibility.

Thus a system of schools and universities, public and/or private, with courses of study deliberately attuned to the encouragement of responsible citizenship and public-spirited leadership, is essential to good democratic government. Indeed, in some Asian societies, particularly, this equation has seemed so central that it has been thought necessary to defer democratic practices, people taking part in government, until all have been trained to literacy and attuned to questions of government by public discussion. Then it made sense that they be given the franchise; they would be qualified citizens rather than obedient subjects as had traditionally been their role. South Korea, Malaysia, and even China have exhibited this priority in their approaches to self-government, as did Japan in its first considerations of democracy.

THE RESPONSIBLE CITIZEN

At the conclusion of a study of the thought and career of Vaclav Havel, former president of the Czech Republic, Paul Berman in 1997 noted Havel’s observation that even with much talk about human rights, laws, constitutions, and nongovernmental organizations, many countries “yet fail to achieve very much democracy. And why was that?” “It is because,” Berman draws from Havel, “democracy



AP/WWP CTK, Stanislav Peska

Vaclav Havel, former president of the Czech Republic, speaks to the media after voting in Prague.

requires a certain kind of citizen. It requires citizens who feel responsible for something more than their own well-feathered little corner; citizens who want to participate in society’s affairs, who insist on it; citizens with backbones; citizens who hold their ideas of democracy at the deepest level” (what Pericles meant when he termed inactive citizens “useless”). The “certain kind of citizen” required for good democratic government is morally grounded in personal character and in concern for the public good, which leads to virtuous, public-spirited conduct at all levels of social discourse, including family, local affairs, national responsibility, and worldwide concern for peace and justice.

If this seems an impossible idealistic conception, unsuited to human nature, it may not be any more unrealistic than supposing that everything works out for the best when diverse and inclusive self-interests are simply allowed to clash in a conflict-of-interest, minimal citizenship model of public life. Furthermore, the public-spirited model requires that citizens with private interests also possess and modulate an understanding of and

concern for the public good. This model also assumes that some self-interest is an indelible part of human life and will always exist in some degree in human conduct, but that this is a quality to be restrained or disciplined, not celebrated, in private as well as public life. It accepts further that some human beings accomplish this restraint and modulation better than others (examples of this diversity, of course, abound in the histories of all people), and that social habits, religion, cultural values, and education can have a significant effect on how this works in any given society. A combination of the influences of

family values, social capital, media practices, schools, and political leadership can impact the quality of public life in any nation—and the beneficent impact, in terms of public spirit, can be felt microcosmically at any time or any place whenever a citizen develops and acts upon that spirit. ■

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ACCESS TO JUSTICE

Judicial Reform in Rwanda

VICKI MILES-LAGRANGE

An independent judiciary is necessary to ensure access to justice for all citizens, argues the author in this article. Judge Vicki Miles-LaGrange discusses her experience assisting judges in post-genocide Rwanda to reform the country's judicial system so that Rwandan citizens might have greater access to the law. Vicki Miles-LaGrange is a U.S. district judge for the Western District of Oklahoma and a former member of the U.S. Judicial Conference's International Judicial Relations Committee and chair of the committee's Africa Working Group (1999-2005).



The words “Equal Justice Under Law” are carved in stone above the entrance of the U.S. Supreme Court building in Washington, D.C. These words represent the promise of America to its people. Unless there is free and unrestricted access to our justice system for all people despite their place or position in life,

the U.S. promise of “equal justice under law” cannot be realized.

AN INDEPENDENT JUDICIARY AND ACCESS TO JUSTICE

One of the most important aspects of ensuring that all people gain equal access to the law is an independent judiciary. In the U.S. system of the administration of justice, no person can tell a judge how to decide a case, regardless of that person's position, power, or influence. The decision of a judge must be based upon the law and can be changed only by a higher court, whose decision must also be based upon the applicable law.

An independent judiciary is part of the greater “rule of law” system that exists in the United States and other democratic nations. According to the World Bank, the rule of law prevails where (1) the government itself is bound by the law, (2) every person in society is treated

equally under the law, (3) the human dignity of each individual is recognized and protected by law, and (4) justice is accessible to all. Accordingly, the rule of law requires “a judicial system that is independent and where courts can interpret and apply the laws and regulations in an impartial, predictable, efficient, and transparent manner. Consistent enforcement in turn provides for a stable institutional environment where the long-term consequences of economic decisions can be assessed.”

Some argue that the purpose of an independent judiciary is to limit government power and to protect the rights of individuals. Certain safeguards must be in place for a court to function independently. Organizationally, the transparency of the judicial appointment process and, subsequently, the ability of judges to be free from threats to job security or salary enhance the ability of the judicial branch to interpret the law without unnecessary interference from other branches of government or any individual. For example, the U.S. Constitution provides that federal judges “shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during that Continuance in Office.” Administratively, the independence of the judicial budget process from other branches and the transparency of procedures to discipline and remove judges also enhance the independence of the judiciary. Also, judicial codes of conduct for U.S. judges and lawyers provide minimum, uniform standards for their ethical conduct. Finally, the ability of judges to enforce their rulings through the power to hold violators in contempt of court seals the independence of the U.S. judiciary.

AN EXAMPLE: JUDICIAL REFORM IN RWANDA

Theoretically, many of these safeguards were adopted constitutionally and by legislative enactments during the process of law reform and law revision in Rwanda. The model developed by this tiny country in Africa set out to address the urgent need to rebuild the judicial system and to ensure that trials against thousands of

imprisoned genocide suspects can proceed according to due process of law. The state of the justice system in Rwanda in 2001 was a reflection of the country's history. Judicial institutions were marked by partisanship and corruption, staffed with many political appointees whose objective was to satisfy their appointing authority instead of following the law. The absence of competent judicial organs in post-independence Rwanda was one of the factors that contributed significantly to fostering the culture of impunity that led to the 1994 genocide in which more than one million Rwandans were slaughtered.

After the genocide, Rwandan society inevitably was traumatized by the absence of the rule of law, and it was burdened by a slack economy and weak institutions.

More than two million Hutu refugees and internally displaced people migrated to the neighboring countries of the Democratic Republic of the Congo, Burundi, and Tanzania. The post-genocide justice system in Rwanda was in a state of inertia. Many police and security forces had fled the country. There was a prison population of more than 100,000 genocide suspects. Very few judges, prosecutors, and lawyers were alive, and no bar associations were in existence.

In response to the situation, the Rwanda Law Reform Commission was established by legislation in July 2001. The commission is composed of Rwandan citizens from diverse professional and legal institutions, including the Supreme Court, the Ministry of Justice, Prosecution Services, the national university, and the bar association. The commission is mandated to propose an act to provide for the organization and jurisdiction of the Courts of Judicature; an act relating to the code of ethics for the judiciary; an act providing for the organization, functioning, and jurisdiction of the Superior Council of the Judiciary; an act to provide for the creation of a National Prosecution Authority; a Criminal Procedure

Act; and an act relating to the code of evidence.

Beginning in 2002, I was a U.S. delegate to a series of law reform and law revision initiatives in Rwanda. The First International Conference on Rwanda Law Reform and Law Revision, held that year, was created to promote an exchange of information. The conference was conducted under the auspices of the Rwanda Law Reform Commission and funded by the U.S. Embassy and the U.S. Agency for International Development (USAID). The participants included Rwandan judges, prosecutors, and lawyers, and representatives from Argentina, Burundi, Cameroon, Canada, Kenya, Mauritius, Senegal, South Africa, Tanzania, Uganda, and the United States.

The 2002 conference focused on law reform and revision, independence of the judiciary, and the rule of

law. Delegates presented recommendations through six working groups that addressed the issues of judicial independence, judicial ethics, judicial administration and the role of court administrators, governance of the judiciary, judicial recruiting and training, and the judicial budget process. The results of two of the groups' deliberations—the Judicial Independence Working Group and the Judicial Ethics

Working Group—are summarized in the accompanying sidebar.

RECOMMENDATIONS FOR CHANGE

The Second International Conference on Rwanda Law Reform and Law Revision took place in 2003. Its objective was to develop a framework for judicial reform in Rwanda that would be consistent with universal standards of a sound and effective judiciary. The conference presented recommendations for incorporation into both the constitution and the organic laws regarding the issues considered by the 2002 working groups. The participants included delegates from the nation-states represented at the 2002 conference plus delegates from



Courtesy Judge Vicki Miles-LaGrange

The author is seated second from the left at this seminar on judicial reform sponsored by the Legislative Reform Commission Panel. Participants included U.S. judicial delegates and other international judges.



Court of First Instance in session in Gitarama, Rwanda.

Courtesy Judge Vicki Miles-LaGrange

Denmark, Ethiopia, France, Germany, Guatemala, Malawi, Mali, the Netherlands, Nigeria, the United Kingdom, and Zambia.

The formal recommendations, unanimously presented by the international delegates to the conference, were as follows:

- The rank of judicial officers should be equivalent to that of senior members of the other branches of government and should be guaranteed in the organic law.
- The salary and benefits of a judge shall not be reduced while in office.
- There shall be established a department of finance and administration within the judiciary.
- There shall be a permanent staff of the judiciary whose terms and conditions of employment shall be determined by the judiciary.
- There shall be established a department of finance and administration within the Office of Public Prosecutor.
- An organic law shall be enacted to establish a permanent and independent Law Reform Commission, describing its composition, powers, and functions.
- The judiciary shall be granted the authority to draft all rules relating to court procedures and court operations, subject only to the approval of Parliament.
- Judges of the Supreme Court and of the high court may only be removed from office on account of incompetence or gross misconduct.
- A judge shall be removed following a resolution of the Senate passed by at least a two-thirds majority upon the recommendation of the Superior Council of the Judiciary.
- The judiciary shall have jurisdiction over all issues

of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as prescribed by law.

It was clear at the conclusion of the 2003 conference that training judges and prosecutors was critical, so that they could adequately fulfill their new assignments. A distinguished Rwandan jurist described the Rwandan judiciary as “not vibrant” and expressed concern that the average Rwandan jurist is fairly passive and lacking in self-confidence. Prior to the constitutional and legislative reforms, trial judges sat

in panels of three. They are now required to decide cases in single-judge

courts, which will require more self-confidence and the capacity to exert influence and command respect. Judges must now become accountable for increased competency, productivity, and ethical conduct because of the new powers and authorities vested in an independent judiciary. If an independent judiciary is to be truly established and sustained in Rwanda, fast-track judicial training and education in multiple areas is required.

As part of another visit to Rwanda in 2002, I served as a member of a team that developed a Judicial Education and Training Needs Assessment – Proposed Training Plan and Implementation Strategy. The purpose of the assignment was to gather information about the existing legal education and training of the Rwandan judiciary and to develop a plan for creating and implementing a judicial education and training program using those resources. The plan presented a process by which Rwandan judges of the ordinary courts might best be prepared to function effectively in the new environment anticipated in the proposed legislation. The preparation involved a much greater commitment to judicial education and training than previously existed. To the extent that all judge positions in the current court system would be abolished and a new system with new judge positions created upon passage, the Rwandan government had an unprecedented opportunity to evaluate objectively and select the most qualified candidates who could transform the judiciary into an independent and distinguished body trusted by the Rwandan people to establish, preserve, and enforce the rule of law.

Another interesting outcome of the Rwanda model



REUTERS/Antony Njuguna

In June 2002, Rwandans listen to the proceedings at a “Gacaca” court, a more informal alternative to the International Criminal Tribunal for Rwanda and the national Rwandan courts. Gacaca is a traditional form of justice that involves allowing the community to participate in the judgment and punishment of those accused of participating in the 1994 genocide.

is a constitutional provision that mandates that women must fill at least 30 percent of “posts in decision-making organs,” which presumably includes judges.

CONCLUSION

Judicial reform is ultimately aimed at enhancing independence and increasing efficiency, equity, and access to the legal system. It is imperative that the courts work operationally, administratively, competently, and ethically, if “equal justice under law” is ever truly to be a reality anywhere in the world.

If the judicial system is not in good working order, then justice is not being dispensed or administered. If the courts do not work properly, there can never be equal access to justice. ■

The opinions expressed in this article do not necessarily reflect the views or policies of the U.S. government.

FIRST INTERNATIONAL CONFERENCE ON RWANDA LAW REFORM AND LAW REVISION, 2002

Judicial Independence Working Group: Issues Addressed

- What is judicial independence? The group's definition includes the phrases "respect by people ... no threats by anyone ... financial security and control ... no interference by any other branch of government."

- Why is judicial independence important to the rule of law? Because of its direct relationship to whether the society has the rule of law to protect the liberties of the people. Judicial independence is key to public confidence in the judiciary, and it is important as a check on the excesses of the other branches of government. For example, if an official who is charged with collecting taxes does so in an unlawful manner, a litigant may bring the matter to court. The court, in this instance, should have the ability to order the official to comply with the law.

- What are the threats to the independence of the judiciary? They include the inability of judges to order a party to comply with their rulings, lack of tenure and security of office, and the conflict between career judges and term politicians.

- What should be done to ensure an independent judiciary? Institute judicial training; promulgate a code of conduct for judges; practice merit appointment of judges based on professional competence and moral character;

develop a transparent system for removal of judges, entrenched in the constitution; develop a culture of law, as opposed to a culture of power; and develop strategies designed to promote and encourage personal courage of judges.

- What should Rwanda retain to foster an independent judiciary? A constitution that provides for an independent judiciary; an independent system for recruitment (except for chief justice and deputy chief justice); and an independent disciplinary mechanism.

- What does Rwanda need? Fair compensation for judicial officers; separation of the prosecution from the judges; transparency in procedures; tenure for judicial officers; power of injunction and contempt of court; adequate equipment and facilities for judges; continuing legal education and ethics requirements for judges; financial independence of judicial budgets and salaries; establishment of a permanent law reform commission; establishment of first-degree administrative courts to decide conflicts with the executive branch; and adoption of a code of conduct for lawyers, prosecutors, and judges.

Judicial Ethics Working Group: Recommendations

- That the Rwanda Commission on Law Reform and Law Revision work in concert with the bar association, prosecutors, and judges to ensure the adoption of a code of conduct for judges, prosecutors, lawyers, and judicial support staff.

- That the professional and moral qualifications of a judicial candidate be evaluated through a background check prior to selection and that the state ensure that judges have the resources (training, housing, and salaries) to permit them to fulfill their professional obligations and respect the rules of ethics.

- That each judicial officer, prior to assuming office, be required to file a financial disclosure (of personal

holdings and liabilities) to fight corruption and to ensure transparency within the profession.

- That a committee be created within the judicial council to evaluate the professional qualifications of judges and to function as a disciplinary committee with the power to investigate ethical violations and to impose sanctions, if appropriate.

- That an association of judges be created to encourage mutual support and the exchange of ideas, particularly on questions related to ethics.

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INTERNET RESOURCES

Online sources for information to further understanding of the Foundations of Democracy

Democracy

Center for the Study of Democracy (CSD)

<http://www.democ.uci.edu/democ/>

Democracy Research Guide

<http://www.ned.org/research/demresources/intro.html>

Freedom House

<http://www.freedomhouse.org>

National Endowment for Democracy

<http://www.ned.org/>

Transparency International

<http://www.transparency.org>

Virtual Democracy Center

<http://democracy.state.gov/>

World Movement for Democracy

<http://www.wmd.org/>

Free Market of Ideas

Committee to Protect Journalists

<http://www.cpj.org>

First Amendment Center

<http://www.firstamendmentcenter.org/>

Global Media Development Report: The Media Missionaries

<http://www.ellenhume.com/articles/missionaries.pdf>

International Federation of Journalists (IFJ)

<http://www.ifj.org>

International Freedom of Expression eXchange (IFEX)

<http://www.ifex.org>

International Journalists' Network (IJNet)

<http://www.ijnnet.org/>

Press Freedom Survey

<http://www.freedomhouse.org/research/presssurvey.htm>

World Press Freedom Committee

<http://www.wpfc.org>

Economic Freedom

America's Accountability/Anti-Corruption Project (AAA)

<http://www.respondanet.com>

Anti-Corruption Gateway for Europe and Eurasia

<http://www.nobribes.org/>

The Center for Institutional Reform and the Informal Sector (IRIS) at the University of Maryland

<http://www.iris.umd.edu/>

Center for International Private Enterprise (CIPE)

<http://www.cipe.org>

Index of Economic Freedom

<http://www.heritage.org/research/features/index/downloads.cfm>

The Institute of Economic Affairs

<http://www.iea.org.uk>

World Bank Anti-Corruption and Governance

<http://www.worldbank.org/wbi/gac>

Civic Participation

Changemakers.net

www.changemakers.net

CIVNET/CIVITAS
<http://www.civnet.org>

International Foundation for Election Systems
<http://www.ifes.org/>

League of Women Voters
<http://www.lwv.org//AM/Template.cfm?Section=Home>

Rule of Law

National Constitution Center
<http://www.constitutioncenter.org/>

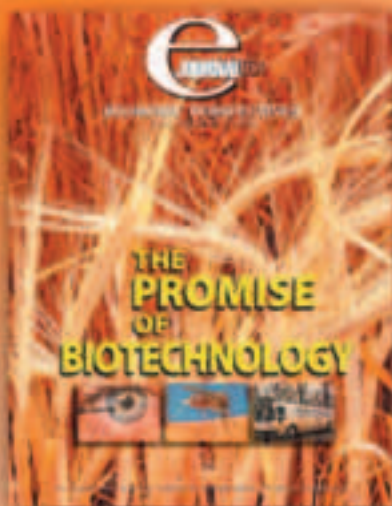
Rule of Law Links (U.S. Department of State)
http://usinfo.state.gov/dhr/democracy/rule_of_law/rulelaw_legal.html

Freedom of Worship

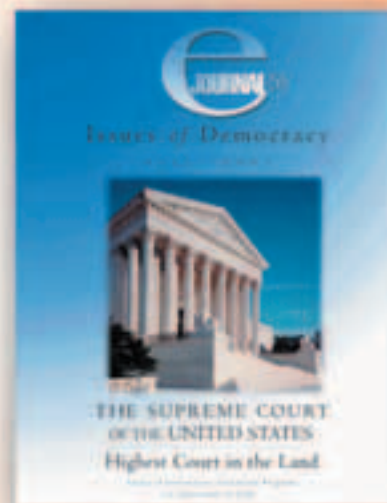
University of Minnesota: Freedom of Religion or Belief
<http://www1.umn.edu/humanrts/edumat/studyguides/religion.html>

The International Association for Religious Freedom
<http://www.iarf.net/>

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