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Non-Western Encounters with Democratization

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Chapter 1

A Universal Understanding of Democracy?

Cécile Vandewoude

The Arab Spring or Arab awakening refers to a series of protests and demonstrations throughout the Arab World that either brought about the exit from power of long-time autocrats, as in Tunisia, Libya and Egypt, or mobilized popular opposition to regimes, as witnessed in Jordan and Bahrain. It also led to pro-democratic stirrings, albeit to a lesser extent, in East Asia, such as the popular movement which took place under the Jasmine revolution label in China. These uprisings raise many questions of both political and legal nature including whether people and movements in the Arab World and China strive for democracy? If so, does the Chinese Jasmine revolution call for the same kind of democracy as the Arab Spring? And if yes, is this conception of democracy identical to the Western conception of democracy?

To grapple with this set of questions, I will start by outlining the classical theoretical framework on the meaning of democracy. The definitional debate took place both in political science and international law. Next, I examine whether scholars and the international community accept that there exists one sole definition of democracy applicable and relevant to all regions or whether there exists a variety of different definitions that are regionally distinct. Finally, I compare the demands to the definition(s) of democracy in order to provide a framework for thinking about democracy and democratic demands elucidated in the forthcoming chapters.

Democracy in Political Science: A Centuries-Old, Essentially Contested Concept

The concept of democracy has been the subject of fierce discussion during the course of several centuries. The discussion can be traced back to ancient Greece. Etymologically, the word is derived from the Greek ‘δημος’ and ‘κρατειν’ meaning respectively ‘people’ and ‘power’. In political science in general, the discussion of democracy deals with the organization of a state and the exercise of

power. The scope of the discussion is however very broad. The main issues that are discussed are the meaning of democracy, the sources or preconditions of democracy (Lipset, 1960; Huntington, 1993), the various forms of democracy (Dahl, 2005) and any consequences a democracy might generate (Kant, 1970).

Contrary to other political theories, such as for instance communism, democracy does not have a(ny) founding father(s). Consequently, democracy's scope and meaning has not been developed by a limited number of people during a limited period of time. Throughout its long history, the concept has had several different meanings, some of which would be considered contrary to today's interpretation (Crick, 2002; Dahl, Shapiro and Cheibub, 2003). Its current meaning is the result of a several centuries long evolution (Graham, 2006).

In current political discourse, there does not exist agreement on one particular definition of democracy (Dahl, Shapiro and Cheibub, 2003). All core concepts in political science, including democracy, are considered to be essentially contested concepts meaning that all elements used to define them are contested themselves (Devos, 2011). Given that so many different views exist, it is accepted that there will never exist a consensus on one particular definition (Devos, 2011). Consequently, many different views exist on how democracy should be defined and thus, on its meaning. Both the merits and possible flaws of the various theories have been acknowledged and well documented. The three most dominant views in political discourse with regard to the meaning of democracy are the procedural approach, the substantive and the deliberative approach (Dahl, Shapiro and Cheibub 2003; Marsh and Stoker, 2010; Devos, 2011). It should, however, be acknowledged that many theories cannot be easily divided into one of these three approaches. Many conceptions fall somewhere in between. A comprehensive account of all the different conceptions of democracy would lead us too far and therefore is not intended here. The following section will only briefly discuss the arguments set out by the most influential proponents of the three main theories.

Proponents of the procedural view emphasize practices and institutions that characterize democratic regimes, without specifying any outcome these regimes are supposed to bring about and without paying much attention to how preferences are formed. Influential proponents of such a minimalist conception are Joseph Schumpeter (1883–1950) and Adam Przeworski (born 1940).

Schumpeter justifies his choice for a procedural view by identifying what he considers to be flaws in Jean-Jacques Rousseau's interpretation of the social contract, who in turn was influenced by Thomas Hobbes (1588–1679), generally considered to be the founding father of contractarianism (Cudd, 2008; Hobbes, 1950). Contractarianists argued against the idea that monarchs were divinely empowered to legislate (Hobbes, 1950). Variations of Hobbes' contract theory can be found in the writings of John Locke (1632–1704), Immanuel Kant (1724–1804) and Jean-Jacques Rousseau (1712–1778), John Rawls (1921–2002) and David Gauthier (born 1932). The discussion of the differences between these theories falls outside the scope of this contribution. However, Rousseau's suggestion will be briefly outlined as it constitutes the starting point for Schumpeter's procedural view.

Rousseau argues that when people reach the point where the obstacles to their preservation in the state of nature prove greater than each individual's strength to preserve oneself in that state, the human race will perish if it does not change its mode of existence (1822, p. 21). Rousseau considers the only way for people to preserve themselves to be the union of their separate powers in a manner that they are strong enough to overcome any resistance and so that their powers are directed by a single motive and act in concert. He believes the social contract to be the perfect form of association which will defend the person and goods of each other with the collective force of all, and under which each individual, while uniting oneself with the others, obeys no one but oneself, and remains as free as before (1822, pp. 22–4). Thus, each person puts into the community his person and all his powers under the supreme direction of the general will (*la volonté générale* i.e. the public interest). Whoever refuses to obey the general will shall be compelled to do so by the whole body (i.e. the other members of the community) (1822, p. 31).

Schumpeter rephrases Rousseau's suggestion into following definition: the democratic method is that institutional arrangement for arriving at political decisions which realizes the common good by making the people itself decide issues through the election of individuals who are to assemble in order to carry out its will (Schumpeter, 1959). Schumpeter rejects this approach to democracy mainly for the reason that it assumes that 'the people' hold a definite and rational opinion over every individual question and that they give effect to this opinion by choosing representatives who will see to it that that opinion is carried out (1959, p. 269). Therefore, he defines the democratic method as that

institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote. Schumpeter's minimalist definition of democracy has proven very influential as it has been embraced by many other political scholars (Huntington, 1993; Lipset, 1960; Linz and Stepan, 1978; Powell, 1982; Vanhanen, 1990; Palma, 1991; Przeworski, 1999)

Adam Przeworski defended Schumpeter's minimalist approach but on other grounds (Przeworski, 1999). Similar to Schumpeter, he renounces the eighteenth-century theories for being 'consensualist'. He accepts two assumptions namely, one, that there are conflicts of values and interest in any society and, two, that people want to resolve these conflicts peacefully. Based on these assumptions he argues that the mere possibility of being able to change governments can avoid violence and secondly that being able to do so by voting has consequences on its own. First, the very prospect that governments may change can result in a peaceful regulation of conflicts. He distinguishes between two groups of people the 'winners' i.e. the incumbent government and the 'losers' i.e. the ones currently not in power. He argues that the incumbent rulers behave well in office due to electoral incentives i.e. the desire to be re-elected and because of the realization that should they lose the next elections they are in the same position as the losers are now. The losers accept the outcome of elections if they have a sufficient chance to win and a sufficiently large payoff in future elections. He refers to this situation as a 'self-enforcing equilibrium'. Secondly, Przeworski believes that voting induces compliance. Voting reveals information about passions, values, and interest and as such they inform the losers. Even if voting does not reveal a unique collective will, it does indicate limits to rule. He writes 'the miracle of democracy is that conflicting political forces obey the results of voting. Conflict are regulated, processed according to rules and thus limited. This is not consensus just limited conflict'.¹

The second view is the substantive view. Advocates of this view see procedures as necessary but insufficient to bring about democratic results. Influential proponents of the latter view include Larry Diamond who defends the idea of a liberal democracy (Diamond, 1999), Carole Pateman

¹ He does not believe that participation induces compliance.

arguing in favour of participative democracy (Pateman, 1970) and Robert Dahl who introduces the concept of polyarchal democracy (Dahl, 1956). The minimalist Schumpeterian conception of democracy has been criticized by other scholars as well (Karl, 1995; Schmitter and Karl, 1991; Diamond, 1999).

Carole Pateman calls for the re-appraisal of the early writings on democratic theory by defending the theory of participatory democracy (Pateman, 1970). The theory of participatory democracy is built round the central assertion that individuals and their institutions cannot be considered in isolation from one another. The existence of representative institutions at national level is not sufficient for democracy; for maximum participation by all the people at that level socialization or 'social training', for democracy must take place in other spheres in order that the necessary individual attitudes and psychological qualities can be developed.

Dahl stresses the need for realism as the modern world is not a world comprising perfect democracies, in which all citizens have roughly enough equal political resources and in which government is completely responsive to all citizens. Therefore, he introduces the concept polyarchy to characterize the more limited form of democracy that has been attained today. He defines democracy as a state of affairs constituting a limit and all actions approaching the limit are labelled maximizing actions. He offers a list of eight defining characteristics of a democracy, all being institutional arrangements focusing on the electoral process. The more one possesses these characteristic the more democratic one is, recognizing that democracy is a theoretical utopia which can never be fully reached. He thus argues that the democratic relationship is one of a number of social control techniques that in fact co-exist in modern democratic polities and that this diversity must be taken into account in a modern theory of democracy.

In addition to the procedural and the substantive view, there is a third view i.e. the deliberative view. Adherents of the deliberative view question preferences between the procedural and the substantive view, arguing that appropriately deliberative procedures transform them into felicitous ways for democracy. For instance, Amy Gutmann and Dennis Thompson defend deliberative democracy, being a form of democracy in which deliberation is essential to decision-making. The core idea is simple: when citizens or their representatives disagree morally they should continue to reason

together to reach mutually acceptable decisions (Gutmann and Thompson, 2000). In their minds, deliberation is the most appropriate way for citizens collectively to solve their moral disagreements not only about policies but also about the process by which policies should be adopted. Deliberation is not only a means to an end, but also a means for deciding what means are morally required to pursue our common ends. In the 'Voice of the People', James Fishkin demonstrates the viability of a different form of opinion polling and thus, in his mind, a different form of democracy (Fishkin, 2003). He admits that implementation of his idea is not inconceivable, but unlikely. However, the image helps to clarify an ideal, i.e. a picture of the reconstructed role of citizen (2003, p. 28).

In addition to the above outlined dichotomy between 'thin' or 'minimalist' and 'thick' of 'substantive' conceptions, the search for a definition is also complicated by the fact that there exist disagreement on whether democracy is a question 'of kind' or one 'of degree' (Sartori, 1987). The former interpretation is a binary one, i.e. a political system is either a democracy or not. The latter, in contrast, is gradual i.e. democracy is a question of degree (Petersen 2008) The lack of consensus on this issue is clearly visible if one compares, for instance, the writings of Joseph Schumpeter to the argumentation of Robert Dahl. Whereas the former labels a country democratic if free and fair elections are organized, the latter considers democracy to be an ideal which can never be fully realized. He believes that what we call democracies only possess 'a certain level of democracy'. While Schumpeter's and Dahl's conception may appear to be mutually exclusive, they do not have to be. Some authors adhere to both. For instance, Adam Przeworski argues that the struggle for democracy always takes place on two fronts: against the authoritarian regime for democracy and against one's allies for the best place under democracy (1991, pp. 51–2). Analogous, Petersen argues that democracy has two dimensions: a binary one, which differentiates between democracies and non-democracies and a graduation, which distinguishes between democracies of different quality (2008, p. 37).

The next section will examine if – and if yes, in what manner – these three views have influenced the definitional process in international law.

Democracy in International Law: A Recent but Contested Concept

Contrary to the long history of democracy theories in political science, the discussion on democracy in international law is a recent one. It was only after the Cold War that international law dared to address the issue of democracy which previously was considered to be a ‘domestic’ issue and thus one not subject to international scrutiny. Before the end of the Cold War, international law’s neutrality towards the legitimacy of regimes and the manner in which governments are formed was a principle firmly established in international law. Examples of this neutrality are plentiful (*Nicaragua v. United States of America*, 1986; *Great Britain v. Costa Rica*, 1923; Moore, 1906, Oppenheim, 1905). The ‘shift in attitude’ is explained by the events of 1989–1991 – also referred to as the ‘Third Wave of Democratization’ – which led to the embrace of democracy in many countries, primarily in Eastern Europe (Franck, 1992; Huntington, 1993)

While the discussion in political science focuses on the organization of a state and the exercise of power, the debate in international law primarily focuses on the ‘democratic entitlement’ or the ‘right to democracy’. In particular, the debate on democracy has focused on three aspects: the democratic entitlement’s content, its sources or normative status and its consequences. The expressions ‘democratic entitlement’, ‘right to democracy’, ‘norm of democratic governance’, ‘entitlement to a participatory electoral process’, ‘right to political participation’ and ‘electoral rights’ are used with relative interchangeability (Marks, 2000), adding significantly to the complexity of the debate.

Contrary to political science, where democracy constitutes an essentially contested concept, the theoretical feasibility of defining democracy in a manner that is universally acceptable appears to be generally acknowledged in international law. In the practice of states, as exercised within the United Nations the issue is not questioned.² To the contrary, within the United Nations framework democracy is defined as a universal value, which is said to mean two things: first, it is defined as a concept with an unchangeable core and second, the international community accepts that a democracy can take root anywhere. Furthermore, human rights bodies and scholars – when interpreting the phrase

² Whether democracy can constitute a right on the other hand has been questioned. Commission on Human Rights, press release, U.N. Doc. HR/CN/99/61 (27 April 1999).

‘necessary in a democratic society’ – have never questioned the feasibility of defining democracy in a manner than is acceptable to all (Garibaldi, 1984). Finally, in the writings of legal scholars on the democratic entitlement the issue barely has come up. The general focus of the debate on democracy is not on whether the concept can be defined in a universally acceptable manner, but on how it should be defined and on how the norm can be enforced (Franck 1993). It should however be acknowledged that a minority of legal scholars disagree as they consider democracy to be ‘the archetype of an essentially contested concept’ (Marks, [\(b\)](#) 1997). ‘As it means different things to different people’ they argue that ‘any attempts to define the concept would be meaningless at best and imperialistic at worst’ (Ghai, 1994).

Regardless of the fact that international law accepts the proposition that it is feasible to define democracy in a manner that is universal acceptable, at present there does not exist a consensus on such a universally accepted definition. However, similar to political science two main views can be discerned with regard to the democratic entitlement’s meaning, which will be discussed next. A view similar to the third view does appear to exist however it is considered to fall under the substantive view.

With regard to the democratic entitlement’s content, two views can be discerned: a procedural and a substantive one. Proponents of the procedural view take free and fair elections to be the decisive criterion of democracy, although they recognize the extent to which the conduct of free and fair elections presupposes other human rights in particular the freedom of expression, the freedom of thought and the freedom of assembly and association (Marks, 2000).

The theory of the democratic entitlement was first advanced in a seminal series of articles of which ‘The Emerging Right to Democratic Governance’ written by the late Professor Thomas Franck is the most famous (Franck, 1992; Franck, 1994–1995; Franck, 1993). In that article, Franck argues that before the Cold War ended, a government could only be legitimized through the will of its population (Franck, 1993). However, he believes that due to the mentality change, generated by the end of the Cold War, the legitimacy of all governments will be determined in the future exclusively through international rules and procedures (Franck, 1992). He believes that the international community will only bestow legitimacy on democracies. Whether a state is democratic or not will be

determined by reference to a global standard, the content of which will be defined by the international community (Franck, 1992). Franck argues that a consensus is emerging on the content of that global standard, i.e. the right to self-determination, the right to free and fair elections and the freedom of speech (Franck, 1992). In that article he thus appears to limit the meaning of the democratic entitlement to those three human rights. In a follow-on article, professor FRANCK elaborates further on the right's content by defining it as 'the right of people to participate, to be consulted, in the process by which political choices are made' (Franck, 1993). While acknowledging that some aspects of the right are already encompassed in existing human rights, he argues that the right to democracy 'seeks to extend the protected ambit of rights to ensure meaningful participation by the governed in the political consultation process that shapes the quality of their lives and societies' (Franck 1993). Key to the definition is the legitimacy of the process by which the rules are made and revised and not of any particular set of rules (Franck, 1993). For example, whether the people have a right to be consulted on a law or only as to the choice of lawmakers, is irrelevant to Franck as long as it is the people who choose, have a right to change, the terms on which they will participate (Franck, 1993). With regard to its implementation, Thomas Franck argues that efforts to implement the democratic entitlement need to be 'uncoupled, in the clearest fashion, from a long history of unilateral enforcement of a tainted, colonialist "civilizing" missions'; he thus urges that 'all states unambiguously renounce the use of unilateral, or even regional, military force to compel compliance' (Franck, 1992).

Similarly, Gregory Fox, in his article *The Right to Political Participation*³ argues that international scholars have come to use the term democracy to mean the essential procedures by which a democratic society functions (Fox, 2000). In his mind, the distinctive essence of democratic government is popular sovereignty i.e. the notion of citizen consent to the exercise of coercive power with a state (Fox, 2000). While he sees merit in the argumentation set forward by democratic consequentialists who argue that a whole range of civil rights and social prerequisites may be necessary for meaningful popular consent, he points out that the fact of consent lies at the heart of their

³ It should be noted that there exist two different versions of his article. Fox, (1992) and Fox, 2000.

theories. He observes that in the modern state, popular consent is made manifest through competitive elections. Consequently, international law's modest approach to democratization therefore has focused on electoral processes. However, this should not be interpreted to mean that other political or social rights are not as essential to the process of democratization. Fox clarifies that he does not consider elections to be synonymous with democracy; they are a necessary first step (Ebersole, 1992) or an 'essential democratic minimum' (Fox and Nolte, 2000). Elections are keystone rights as without them citizens are unlikely to secure other human rights (Ebersole, 1992). In later writings –co-authored with Georg Nolte – he elaborates further on what a more substantive definition of democracy might be, i.e. a conception of democracy by which citizens are enabled to enjoy certain essential rights, primary among them the right to vote for their leaders (Fox and Nolte, 2000).⁴ Fox and Nolte find support in customary international law for an account of democracy that tolerates only 'the tolerant' and is intolerant of anti-democratic actors. They consider restrictions on anti-democratic parties and individuals to be legitimate acts of self-protection. They thus find support for an account of democracy that rests on the liberal notion that government is legitimated not just procedurally but also to the extent that it fulfils its side of the social contract and protects' rights (Marks, 2000).

Other scholars tend to stress more the whole basket of human rights. James Crawford argues that the will of the people is the basis of the authority of government (Crawford, 2000). He also argues that the major human rights treaties spell out the essentials of democracy. The democratic society as envisioned in the human rights treaties is one which respects the basic rights of its members. In his view, democracy implies a range of rights to participate in public life, effective freedom of speech, the opportunity to organize political parties and other groups and so on. Michael Byers and Simon Chesterman state that 'the theory of the democratic entitlement argues in essence that the democratic entitlements spelt out in human rights treaties are at last achieving more than hortatory status' (Byers and Chesterman, 2000). In the same article, they question how a 'non-democratic regime even one established by a violent coup' could itself constitute a threat to international peace and security (2000,

⁴ [The "substantive character" of this definition is questioned by Brad Roth: "Yet in thus purporting to take a "substantive view" of democracy, they commit themselves to very little substance, perhaps recognizing that a truly substantive view would transform the democratic entitlement into precisely the ideological battleground I fear. They instead slide back into proceduralism by positing as "primary" among citizens' essential rights "the right to vote for their leasers \[...\]" \(Roth, 2000, \(a\)\).](#)

p. 260). Christina Cerna links democracy to human rights and argues that ‘democracy or the right to live under a democratic form of government became an international legal right in 1948’ (Cerna, 1994–1995). The international Bill of Human Rights incorporates, in her mind, the notion of a democratic state and human rights can only be protected under a democratic form of government. Evidence of a democratic government can be found in the presence of free and fair elections, an independent judiciary, freedom of political expression, equality before the law and due process (1994–1995, p. 295).

The procedural view is heavily criticized. Critique mainly focuses on the following three elements. First, it is stated that focusing on procedural elements does not take into account true popular will, as people could choose to elect a nondemocratic regime (Eckert, 1999). Proponents of the procedural view reply to this critique by stating that the right to free and fair elections and the right to self-determination cannot be exercised once and for all and thus a people has not a right to abolish the right to self-determination for future generations (Thornberry, 1993). Moreover, it is stated that a procedural view does not take into account the fact that elections alone are not sufficient to exercise genuine popular will. The exercise of genuine popular will requires the presence of certain conditions i.e. authoritative institutions to allow for knowing (based on good information), willing (not merely a choice among options imposed by the will of elites or circumstance) and intelligent (taken in circumstances that allow for proper reflection, including widely available education, a robust societal marketplace of ideas, and the absence of distortive economic pressures) collective choice. Whereas proponents of the procedural view would argue that an authoritarian regime can comply with the democratic entitlement if it organizes free and fair elections, proponents of the substantive view believe that an authoritarian regime can never satisfy the democratic entitlement given that it requires the presence of conditions requiring political transformation about which the populace was supposed to be empowered to choose (Fox and Roth, Introduction, 2000).

A variety of other authors from a wide diversity of traditions point to other limitations of the procedural approach. They also put a stronger emphasis on the will of the people by stressing the ‘self’ in ‘self-government’ and focus less on the element of ‘legitimizing of governance by others’ (Marks, 1997, (b)). Civic republican theorists criticize the procedural approach as resigns itself to high levels

of citizen passivity. They seek instead to develop proposals for enhancing direct participation by citizens in government. Theorists of civil society highlight that this notion of democracy presupposes weak structures of accountability in society (Beutz, 2003). They seek, instead to call attention to the importance of a vigorous and vigilant public sphere. Feminist theories highlight that this is way of understanding democracy predicates inequalities affecting the definition and exercise of the formal rights associated with citizenship (Otto, 1993). They seek instead to redress those asymmetries through alternative approaches to the conceptualization and realization of equality (Marks, 1997, [\(b\)](#)). And theorists of globalization highlight that this account of democracy takes for granted the undemocratic character of international and transnational decision-making (Marks, 1997, [\(b\)](#)). They seek instead to consider how democratic principles might be applied to the expanding arena of non-national political activity (Slaughter, 2000).

The second main point of criticism is that the democratic entitlement school attaches great normative value to democracy, as it is considered the *sine qua non* of governmental legitimacy (Fox and Roth, Introduction: 2000). They envision democracy as the sole political virtue. They, thus, disregard the element that what count as truly democratic are acts bringing about a democratic social reality. The latter insight inspiring supporters of the substantive view to eschew procedural elements when contrary to other political virtues.

A third point of criticism is aimed the low standard a procedural approach imposes on states and its inability to attain any of the goals of democracy. Susan Marks, for instance states ‘If states have reached a certain minimum threshold they would become immune from further critique, which is an undesirable consequence, given the tendency in international relations to idealize democracy’ (Marks, 1997, [\(a\)](#)). Brad Roth adds that ‘by focusing on procedural elements, the broader issues involving the ends of democracy and the problematic role of polyarchy are glossed over’ (Roth, 2000, [\(b\)](#)). Jackson Nyamuya Maogoto argues that while formal mechanisms may constitute necessary components of a democratic society, they fall short of being sufficient in achieving the substance of democracy. Apart from referring to the concept ‘universal sufferance’ he does not elaborate on the substantive meaning of democracy (Maogoto, 2003).

In order to remedy these concerns, Susan Marks defines democracy as ‘a general concept or ideal of self-rule on a footing of equality among citizens’ (Marks, 2000). Brad Roth proposes a teleological definition of democracy by identifying three normatively significant ends, by which progress towards democratization can be evaluated. These ends are:

the furtherance of broad popular empowerment with respect to the full range of social decisions that condition life in the society (‘substantive democracy’); the establishment of a government to which the populace may in some manner be said to have manifested consent (‘popular sovereignty’); and the establishment of a broadly recognized basis for and thereby limitation on, the legitimate exercise of power (‘constitutionalism’). (Roth, 2000, [\(b\)](#))

Udombana defines democracy as ‘an ideology’ (Udombana, 2002–2003) ‘connected to thoughts about ... aspirations, solidarity, virtue, faith, and the development of political identities in a civilized society’ (2002–2003, p. 1230). Democracy is a goal as well as a process, therefore there has to be continuous consultation, construction and reconstruction to meet changing needs and opinions (Udombana, 2002–2003). He also refers to democracy as ‘the right of peoples to make choices about the quality of their lives’ (2002–2003, p. 1230). The implementation of such a ‘right’ requires other elements such as equal access to information, equality before law enforcement agencies, and fair distribution of resources (2002–2003, p. 1230). He distinguished democracy from the democratic entitlement. His definition of the democratic entitlement is taken from a working paper presented to the Sub-Commission on the Promotion and Protection of Human Rights⁵:

the subjective capacity of individuals and peoples to demand of their rulers a political regime based on the rule of law and separation of powers, in which citizens can periodically elect their leaders and representatives in free and fair election, on the basis of the interaction between a number of political parties, full respect for the exercise of the freedoms of expression, the press, and association and the effective enjoyment of human rights. (2002–2003, pp. 1231–2)

⁵ Working Paper by Mr Manuel Rodriguez Cuadros on the Measures provided in the various international human rights instruments for the promotion and consolidation of democracy, in accordance with the mandate contained in decision 2000/116 of the Sub-Commission on the Promotion and Protection of Human Rights, U.N. Doc. E/CN.4/Sub.2/2001/32 (2001), p.17, § 81

Such substantive approaches to democracy are criticized for a variety of reasons. First, it is stated that substantive definitions are often over inclusive, meaning that they are too general to provide political guidance (Beutz, 2003). Moreover, they are not easily put into practice (2003, p. 401). Proponents of the procedural view justify their choice for elections as decisive element mainly on arguments of feasibility and workability. Franck for instance observes that his definition ‘represents the limit of what the still frail global system of states can be expected to accept’ (Ebersole, 1992). Fox echoes Schumpeter’s argument namely ‘that elections are something that international institutions can be very at monitoring and evaluating (1992, p. 270)’. Fox and Roth observe that the democratic entitlement school, by specifying the democratic entitlement without express reference to wider social goals, follows the contemporary comparative politics in literature in rejecting teleological definitions that render democratic performance inherently unmeasurable by social science techniques (Fox and Roth, Introduction, 2000). In addition, substantive conceptions are considered to be suspect of a neo-colonialist strategy and they presuppose a consensus on what constitutes just or fair outcomes and thus to impose particular substantive visions where they are neither appropriate nor useful (Beutz, 2003).

Democracy: Universal or Cultural Relative?

At present, the universality of human rights does not appear to be contested anymore, at least in principle. In 1993, the international community confirmed that ‘all human rights are universal, indivisible and interdependent and interrelated’.⁶ The Vienna Declaration further stated that

the international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

While some argue that arguments of cultural relativism have disappeared totally, others take a more nuanced view by arguing that such concerns still persist, they have merely switched focus. Instead of questioning whether human rights are universal, proponents tend to concentrate now on the

⁶ World Conference on Human Rights, Vienna Declaration and Program of Action, U.N. Doc. A/CONF.157/23 (1993), OP.

consequences that the universal character of human rights brings about (Brems, 2009). A distinction can be made between the position of Asian and African nations on one side and Arab nations on the other hand.

The main critique of Asian and African nations focuses on the Western emphasis on individual freedoms to the detriment of the community as a whole. They also challenge Western dominance in international affairs and claim a right to develop in a similar manner that Western nations have done so in the past. These concerns are generally translated into support for collective rights and the right to development, restrictions on individual rights in favour of the community and recognition of duties and responsibilities towards society in addition to rights and calls for an equitable international order.

In Asia, the debate is known as the debate on 'Asian Values'. China, Malaysia, Singapore and Indonesia are the thriving forces in this discussion. In the wake of the adoption of the Vienna Declaration and Program of Action in 1993 a myriad of Asian nations adopted what is known as the 'Bangkok Declaration' clearly outlining the concerns listed before. The most outstanding Asian values include the following: family, education, community, filial piety and loyalty, believe in thrift, indebtedness: obligation and duty to others, reciprocity and endurance (Zakaria, 1994; Hu, 2012).

In Africa a clear statements on African values can be found in the African Charter on Human and Peoples' Rights (the 'Banjul Declaration') which refers to the 'historical tradition and the values of African civilization' which should 'inspire and characterize' African reflection on the concept of human and peoples' rights.⁷ It recognizes on the one hand that fundamental human rights stem from the attitudes of human beings, which justifies their international protection, and on the other hand that the reality and respect of peoples' rights should necessarily guarantee human rights. And it considers that the enjoyment of rights and freedoms 'also implies the performance of duties on the part of everyone'. Unlike the American and European charters it stresses the right to development, and the duty of states, individually or collectively, to ensure the exercise of that right. The family is the custodian of 'morals and traditional values recognized by the community' but it is the duty of the state

⁷ African Charter on Human and Peoples' Rights (27 June 1981), 21 I.L.M. 58 (1982) (entered into force 21 October 1986)

to assist the family. All peoples shall have the right to the assistance of the state in their liberation struggle against foreign domination, be it political, economic or cultural. And states shall also undertake to eliminate all forms of foreign economic exploitation, particularly that practised by international monopolies.

Critique based on cultural relativist views expressed by Arab states differs from the arguments made by Asian and African states in the sense that it focuses on Islam, a cultural factor which is more dominant in Arab societies in comparison to the other cultural arguments made above. Various Arab nations have codified these concerns into an Arab Charter on Human Rights, the Preamble of which stressed the human relationship before God and the Arab Nations' conviction that God honoured the Arab World by making it the 'cradle of religions and civilizations'. It speaks of the pride in the Arab Nation's long history and its major role in disseminating centres of learning between East and West. It upholds the eternal principles of fraternity, equality and tolerance among human beings which were 'consecrated by the noble Islamic religion and the other divinely-revealed religions'. Four phenomena in particular – racism, Zionism, occupation and foreign domination – posed a challenge to human dignity and constituted a fundamental obstacle to the realization of the basic rights of peoples (Article 2 Arab Charter on Human Rights). The Charter seeks to achieve the entrenchment of the principle that all human rights are universal, indivisible, interdependent and interrelated within the context of the national identity of the Arab States (Article 1 Arab Charter on Human Rights). Similar to the African system, the Arab Charter also speaks of 'a balance between awareness of rights and respect for obligations' and proclaims the family to be 'the natural and fundamental group unit of society' (Article 33 Arab Charter on Human Rights). It also proclaims a collective right to resist foreign occupation (Article 2 Arab Charter on Human Rights)

Cultural relativist concerns based on Islam can be translated into the exclusion of certain groups of people from rights or rejecting the human rights body in total (Brems, 2009). The Arab Charter states for instance that 'men and women are equal in respect of human dignity, rights and obligations within the framework of the positive discrimination established in favor of women by the Islamic Shariah, other divine laws and by applicable laws and legal instruments' (Article 3 Arab Charter on Human Rights).

The discussion on democracy's universality has gone through a similar evolution. In the nineties, various nations openly questioned democracy's relevance for non-Western nations. In an interview with Foreign Affairs in 1994, Singapore's former prime minister, Lee Kuan Yew, stated that the United States should not 'foist [its] system indiscriminately on societies in which it will not work' (Zakaria, 1994). This quotation has been interpreted to imply that Western-style democracy does not apply to East Asia. Various Arab and African nations have also expressed similar concerns (Diamond and Platter, 2008; Shomar, 2005–2006).

At present, democracy's universality is not contested anymore, as the definition adopted by the United Nations illustrates.⁸ Within the United Nations states have further stated that The international community has recognized that democracy 'does not belong to any country or region' (G.A. Res 96 2000). The General Assembly and the former Commission on Human Rights have affirmed on various occasions that 'while democracies share common features, there is no single model of democracy' (G.A. Res 96 2000). This variety of models flows 'from national and regional particularities, the various historical, cultural and religious backgrounds, beliefs and traditions, and the diversity of economic, political, cultural, social and legal systems' (G.A. Res. 154 2001) and that 'these differences should be neither feared nor repressed, but recognized, respected and cherished as a precious asset of humanity' (C.H.R. Res. 36 2001). 'Each society and every context has its own indigenous and relevant democratic institutional traditions, and that while no single institution can claim democratic perfection, the combination of domestic democratic structures with universal democratic norms is a formidable tool in strengthening both the roots and the reach of democracy and in advancing a universal understanding of democracy' (C.H.R. Res. 41 2001). Therefore, the former Commission on Human Rights 'encouraged the development of broad-based democracy expertise drawn from all regions of the world' (C.H.R. Res. 41 2001).

The term 'universal' thus acknowledges first that democracy is a value belonging to all of humanity. Elements of the democratic spirit are traceable in the early thought of all major cultural traditions – African, Arab, Persian, Asian and European. The international community appears to

Opmerking [JF1]: Elaine. This quote is long enough for indent but I think it would look silly just to display this one with the other shorter extracts above let in text.

⁸ The definition has been confirmed at numerous occasions.

accept that democracy has evolved out of multiple sources and not solely out of European and American traditions. Second, the international community accepts that democracy can take root in any kind of society and as such it rejects claims that certain cultures are 'peculiarly hostile to democracy'. Third, the international community accepts that the term democracy can be defined in a manner that is universally acceptable. However, it does not endorse any particular model as a universal blueprint of democracy but does accept that the absence of such a universal model does not negate universal democracy.

The recognition of democracy as a universal value seems to suggest that concerns based on cultural relativism are no longer valid. This appears to be false. A similar argument as with regard to human rights can be made here i.e. the argument that the focus of the debate has shifted from questioning the universal desirability of democracy to questioning the universal application of the principle of democracy i.e. to the determination of the elements that are to be seen, by global consensus, as universal and which are to be regarded as particular expressions of democracy while remaining faithful to its universal elements (Brems, 2009; Ghai, 1994).

Conclusion

The Arab Spring and the Jasmine revolution raise many questions of both political and legal nature including questions regarding the manner in which the international community envisions democracy. This contribution started by sketching the theoretical framework on democracy and concluded that the two most dominant views both in legal and political scholarship are the substantive and the procedural approach. While at present none of the suggested and detailed definitions made under the substantive or procedural view is universally accepted, there does exist within the framework of the United Nations a definition of democracy. This definition, albeit very vague, appears to support the substantive view. It constitutes a minimalistic definition of democracy which applies equally to all regions. The argument that democracy is incompatible with certain cultures is not accepted anymore. The core norms listed in the definition should be considered invariant however they are subject to differing interpretations based on different cultures within the range laid down by these norms. This means that according this developing body of norms regarding democracy both the peoples of China

and the Arab uprising, in the event that they are demanding democracy, call for at least the minimum set of norms as set out in the definition.

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