

# Social and Cultural Preconditions of Democracy

## A Framework for Discussion<sup>1</sup>

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### **I. Making Democracy Work: Markets and Civil Society**

#### *1.0 Introduction: Democratic Interests and Democratic Virtues*

The viability of a democratic political order depends at least on two preconditions: (i) the citizens must recognise the fundamental principles of the political constitution of this order as being in their common interest; (ii) the fundamental principles of the political constitution must be secured by an intrinsic commitment of the citizens. These two conditions are not identical and their fulfilment is not necessarily linked with each other. Whereas it is plausible that an intrinsic commitment to the principles of a democratic order can only evolve when the political constitution is in the interest of the citizens, a political constitution which is in the interest of the citizens will not automatically be supported by an intrinsic commitment to obey its principles. Citizens who are driven by purely opportunistic behaviour will disobey rules and norms if it is advantageous for them in the concrete situation, even when the general efficacy of these rules and norms is in their personal interest.

In recent years the research on the impact of social capital on the working of democracy has shed new light especially on the determinants for the fulfilment of the second precondition: the focus of this research is on the societal factors which promote an intrinsic commitment to a democratic constitution and thereby contribute to the stability of its principles and norms. This research has provided a lot of evidence that

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widespread social networks and well-functioning private associations in a vibrant civil society are necessary foundations for the development of essential civic virtues such as the readiness to participate actively in the democratic process and to contribute one's share to those public goods which cannot be provided by formal institutions (cf. Banfield 1958; Putnam 1993; 2000; 2001; Newton 1997; Braithwaite/Levi (eds.) 1998; Warren (eds.) 1999; Baurmann 1999; 2000a; 2002; Fukuyama 2000; Ostrom/Ahn (eds.) 2003).

However, social capital theory is weak in two respects: first, the exact mechanism by which private associations promote civic engagement and democratic commitment is not yet fully understood. It is in particular unclear which forms and variants of social capital produce the desirable effects and which not. Second, social capital theory has not yet addressed the first and more fundamental problem that the evolvement of an intrinsic commitment to democratic political norms is hardly possible at all if the members of a society do not recognise a democratic constitution as being in their genuine interest. Instead, social capital theory takes it more or less as granted that a democratic political order is in the interest of the vast majority of the population of all modern societies. But this is not self-evident. Actual developments in the world remind us that identifying one's interest with a democratic political order is far from automatic. In the following we will argue that social capital theory has the potential to make progress in both dimensions. It can advance the analyses of the varieties of social capital and of the different impact of the variants for the democratic process. It can also help to answer the question as to which factors are relevant for ensuring that a democratic political order is in the common interest of the members of a society. The potential of social capital theory in regard to the second problem is connected with the fact that the shape and distribution of political interests in a population is significantly influenced by the social structure of a society. A society with deep cleavages between certain classes or groups, a society which is dominated by a powerful aristocratic or clerical elite or a society which is divided by unresolvable ideological or religious conflicts is not favourable to the emergence of a strong and unquestioning sense of common interest in a democratic constitution which guarantees pluralism und liberalism. An important part of the social structure of any society is the amount and the form of social capital existing in that society. Therefore social capital is also a genuine part of the factors that are relevant for the kind of political interests which are dominant in a society as a whole as well as in its different groups

and parts. On this view social capital is not only a resource by which individual and collective interests can be *realized*. It is also a social force that to a great extent *shapes* individual and collective interests. Social capital is not only relevant to making democracy work, but also to making democracy first of all a political order which is in the common interest of the members of a society.

In this regard it would be not very favourable if, for example, a society is characterized by a multitude of organized pressure groups which compete for political power for the sole purpose of redistributing economical wealth in their own direction, if separated ethnic or religious groups fight for political and cultural supremacy, or if functioning social networks are only available to a small elite which dominates an isolated and powerless population. If in a society dense social networks are centred solely around competing groups and exclude access to these networks for outsiders then this kind of social capital will create structures in which the respective group interests will not so easily harmonize around a democratic constitution.

A democratic political order has many features which potentially can come into conflict with the interests of some or even the majority of the members of a society. But if we look especially at the principles of a liberal democracy in a modern society then one characteristic of a democratic constitution seems to be particularly significant. The rules and norms which structure the institutions in such a democracy share an important property: they incorporate the principle of *political and legal equality*. The citizens of a modern, pluralistic democracy despite their many potential differences in culture, ethnicity, religion, wealth or abilities enjoy the same fundamental rights and privileges. They are all included within the set of beneficiaries of the constitutional order. It is a central feature of the political principles and norms of a liberal democracy that they are *universalistic*. They consider the interests of all citizens with equal weight and they are applied to all members of a society in a non-discriminatory way (cf. Baurmann 1997b)

From this fundamental quality of a modern democracy it follows that an interest in the existence of such a political order must include as one element an interest in *universalistic norms* as constitutional principles. That a democratic political order will be in the interest of all citizens, therefore, does not only presuppose that every citizen has a personal interest in the benefits of the political and civil rights which are typical of a democratic society, but that every citizen also has a personal interest that *all the other citizens also* should enjoy the benefits of those rights.

Each and every citizen must have a personal interest in universalistic political principles and norms which do not discriminate between individuals and groups but treat all citizens the same – despite their cultural, religious, ethnic, economic or intellectual differences.

This demand can lead especially in a pluralistic and heterogeneous society to a considerable tension between the two preconditions of a working democracy: an intrinsic commitment to norms may be easier to produce and to maintain if there is a direct and recognizable connection of these norms to the homogenous interests of a certain group of individuals. But if a democracy demands an acceptance and commitment to norms which promote indiscriminately the interests of “all” in a pluralistic society with many heterogeneous interests then such acceptance and commitment may appear as a sacrifice one has to make for people with whom one has no direct social bond.

So if both conditions are met we may face a fragile constellation that is dependent on an equilibrium of many interrelated factors. It seems that in this bundle social capital plays a crucial role. The question whether the members of a society develop a genuine interest in a political order with *universalistic* norms is apparently largely influenced by the social relations and networks in which the individuals are embedded. Commitment to the norms and rules of a society is learned through participation in social capital. This is the lesson social capital theory is teaching us. But if this learning process should include the commitment to universalistic norms and rules then we must be aware of the fact that not any variant of social capital will do the job. We must take a closer look at which kind of social capital is relevant here.

We will start with a short recapitulation of the arguments which speak in favour of the relevance of civic virtues und intrinsic commitment for the working of democracy (1.1) and why the social capital of a society is a main factor in the production of such virtues and attitudes (1.2). After this we explain that it is of central importance to distinguish between different variants of social capital (1.3) and that the most relevant dimension for classification is the distinction between universalistic and particularistic social capital (1.4). In conclusion we argue on this basis for the thesis that in order for social capital to become a supportive factor for democracy it is crucial that it is embedded in a strong market-economy (1.5).

### *1.1 Economising on Virtue or Taking Virtues Seriously?*

Virtue and morality are scarce goods. It is therefore expedient to be sparing with them. This principle of “economising on virtue” (cf. Bren-

nan 1995) not only applies to the relationship between single individuals but, as the Scottish moral philosophers have taught us, should also be a guideline for the creation of social institutions. The market serves as a paradigmatic example of an arena where the participants' virtues and morals are largely dispensable, and yet where the result of their actions serves everyone's interest and, thereby, the public welfare. Institutions of this kind relieve individuals of the burden of moral duties and reduce the need for moral norms as well as for investments to enforce them.

The classical authors of the Scottish Enlightenment were optimistic that this principle could also be transferred to political norms and institutions. Even within the difficult realm of state power, it seemed possible to invent institutions through which an "invisible hand" would aggregate the general pursuit of individual interests to a common good (cf. Hirschman 1977). This prospect was particularly attractive, as one could discard the – possibly futile – Platonic task of controlling the personal ambition of state rulers by instructing them in virtuousness and morality. If, instead, there were ways of shaping the institutional framework of political action so that it would be to the rulers' own advantage to take care of their subjects and the common weal, then trust in politics would become independent of the character of the politicians. In this case the particularly difficult task of instigating moral norms for politicians would be superfluous.

The hope of being able to rely on the "morality" of the political institutions rather than on the morality of the politicians still plays a prominent role in modern political science and social theory and, moreover, in public opinion too. Especially the modern democratic state with its institutionalized possibility of voting politicians out of office, its protection of basic rights, and its ingenious system of the separation of powers and "checks and balances" seems to be the perfect example of a system which, by means of cleverly constructed mechanisms, prevents state rulers from misusing their power for their own private aims.

In recent years, however, the insight has grown among social theorists that the principle of "economising on virtue" has its limits and that we cannot solve all the problems of social and political order by well-designed institutions and their incentives (cf. Baumann 2000b). This is especially true of a democratic society. The functioning of democracy is, to a large extent, not only dependent on the behaviour of politicians or civil servants acting directly under the rules of state institutions but more on the attitudes and the spontaneous behaviour of the citizens outside formal institutions. Many social scientists today believe that because of this democracy must be rooted in genuine civic virtues and commit-

ment which cannot be traced back to rational opportunistic behaviour under some artificially created extrinsic incentives (cf. Putnam 1993; Fukuyama 1995; Pettit 1997; Warren (eds.) 1999; Brennan/Lomasky 1993; Brennan/Hamlin 2000; Cook (eds.) 2001; Dekker/Uslander (eds.) 2001; Brennan/Pettit 2004).

Civic virtues and commitment seem to be especially important in regard to three core-areas of the democratic process:

- i) Public deliberation.
- ii) Political participation.
- iii) Collective decisions.

It is scarcely conceivable that a democracy can work well if all citizens would only act as purely opportunistic actors in these arenas. Public deliberation about common issues demands informed participants who are ready to invest time, energy and good will. Deliberative processes concerning political issues will be more efficient the more the participants are motivated to argue according to general standards instead of solely promoting their individual interests. Active participation in political processes presupposes the motivation to contribute to public goods both in the context of individual action and in the context of collective action. Collective decisions in democracies must be protected against a tyranny of the majority on the one hand and, on the other hand, accepted and observed by the minority. Both demands imply commitment to the constitutional order, to political norms and to substantive ethical principles (cf. Buchanan/Congleton 1998; Baumann 2003).

However, there can be no doubt that institutions and the incentives they create matter; and that different institutions will produce different outcomes. Institutional rules influence the behaviour of actors inside and outside the institution – direct democracy, for example, has consequences for the behaviour of voters and politicians which differ significantly from the consequences of representative democracy. But the effects of institutional design are dependent not only on the properties of the institutions themselves. Every institution is embedded in a social environment and the overall impact of an institution is not the result of an endogenous equilibrium produced only by the incentives of the institution and the given preferences of the actors. This impact is always a result of an equilibrium which emerges from the characteristics of the institution *and* exogenous forces and conditions. So the same institutional system can have very different outcomes depending on the social context in

which it is implemented. The “rules of the game” always include more than deliberately created rules of institutions. “Design principles” for institutions clearly are relevant for institutional stability and performance – but their exact consequences are not context-independent (cf. Ostrom 1990; Ostrom/Ahn 2003).

Emphasizing that civic virtues are important for making democracy work is therefore not tantamount to assuming that institutions and institutional design are irrelevant. To some degree the opposite is true: civic virtues do not make institutions superfluous but can serve as a basis for making institutions even more successful. We can reach more efficient equilibria by institutional devices if we can trust in the virtues and intrinsic motivation of the actors: it becomes easier to create and change institutions, the demand for hierarchy and control in institutions decreases, the tension between formal and informal institutional processes diminishes, institutional norms and rules are more readily followed and the commitment to collective decisions under institutional rules increases (cf. Baumann 2002c)

If the outlined thesis is right, the working of democracy demands a stable equilibrium between proper institutional design and a suitable social environment in which supporting civic virtues play a central role. Institutions can bring about a lot of things – but whether they do so in a desirable way is greatly influenced by factors outside the institutions themselves. The efficiency of democratic institutions, their stability, their legitimacy and conformity to their norms and rules can only be realized if they are properly implanted in their social soil. It is true that societies can be changed and shaped with the help of institutions, but how successful this is and what kinds of institutions are necessary cannot be answered in general terms. We cannot simply replace the moral fabric of a society and its spontaneous forces by the incentives of a cleverly designed institutional framework. The working of a democracy cannot only be based on extrinsically motivated compliance with formal rules but also requires an intrinsically entrenched commitment to fundamental political norms and substantial ethical principles: we have to take virtues seriously!

### *1.2 Bowling Together: Democracy and Social Capital*

The view that civic virtues are essential prerequisites of a stable political order and a good government has a long history. The same is true of a family of theories about the factors which promote the desired virtues in a society. These theories, which go back to Aristotle, were

ingeniously renewed in Tocqueville's analysis of democracy in America and in our time have been put in the context of social philosophy by the communitarians (cf. MacIntyre 1981; Etzioni 1993). In the last ten years, however, a new and promising variant of these theories has been developed by the political scientist Robert Putnam in his pioneering books *Making Democracy Work* (1993) and *Bowling Alone* (2000) which initiated a large number of theoretical and empirical studies on the social and cultural fundamentals of democracy.

Put in a nutshell, these theories share the assumption that civic virtues are the product of a particular sort of social relationship between the members of a society. According to this assumption these relationships constitute a special area of a "civil society" whose dynamics is rooted in the aspirations and values of the citizens as private actors. As participants in this kind of private relationship people will develop capacities and dispositions which are beneficial to the society as a whole and will spill over into the public sphere.

To Aristotle this function is fulfilled by friendships which motivate individuals to behave altruistically towards each other and to jointly promote the values of their community. Tocqueville extended Aristotle's view to include all personal relationships which are part of a collective enterprise that people privately and voluntarily initiate to realize a common aim. From his observations he draws the conclusion that by taking part in such associational groups, individuals will overcome short-sighted egoism and will learn to contribute to collective goods, trust each other and discuss and peacefully solve issues of common interest. For Tocqueville the concrete aims, sizes and structures of associational groups are secondary. Whether they are established to build a bridge for the village, to come together to pray or to collect money for an opera, they will all have beneficial influences on the behaviour and character of their members changing them into virtuous citizens who feel responsible for the common welfare.

Whereas the communitarians in some respects go back to Aristotle in emphasizing the importance of common values, uniform convictions and shared traditions in a society as a whole as the basis of civic virtues, the modern theories in the political and social sciences are more in the spirit of Tocqueville, focussing as they do on the variety and diversity of associational activities. They have coined the term "social capital" to summarize the different forms of association civil society can produce through the private initiative of the citizens. The exponents of social capital theory believe that there are manifold kinds of social relation-



ships which – although, maybe to different degrees – have the capacity to create those special bonds between their participants which promote the development of civic virtues: from the weak ties of loose social networks in neighbourhoods, from bowling and bird-watching, soccer-clubs and bible-circles to political parties, NGOs and spontaneous social movements.

Social capital theory assumes that the varieties of civil society provide the most important resources for making democracy work, because only in small settings can people learn what is relevant for the society as a whole. Informed deliberation, active participation and producing and accepting collective decisions are as important for the working of a small private association as for democracy in its entirety. Without being able to overcome the free-rider problem and act successfully as a collective, being fair towards minorities and feeling committed to the rules of a group, most joint enterprises would not get off the ground. So at the heart of modern social capital theory is the link between the vibrancy of different forms of associational life and a high level of civic engagement and democratic participation.

Social capital theorists name at least three social phenomena which they see as typical results of a flourishing civil society and which are assumed to be directly connected with the development and reinforcement of civic virtues:

- i) Social networks of strong and weak ties.
- ii) Norms of reciprocity and trust.
- iii) Commitment to common aims.

According to this view, social networks are not only important to provide individuals with access to different kinds of valuable resources (cf. Coleman, J. S. 1987; 1988; Granovetter 1973; 1985). Networking also teaches the virtue of sociability and the capacity to create and maintain cooperative, friendly and sometimes even altruistic relationships. Effective norms of reciprocity and trust promote the virtue of carrying out exchange relations and of maintaining cooperation under risk and uncertainty (cf. Gambetta (eds.) 1988; Misztal 1996; Fukuyama 1995; Woolcock 1998; Woolcock/Narayan 2000; Dasgupta 2000; Lahno 2002; Uslaner 2002). Commitment to common aims embodies the virtue of not behaving as a free-rider but contributing to collective goods even when the individual contribution is marginal and insignificant (cf. Baumann 2000a; 2002).

It is a plausible assumption that virtues like these are, in principle, also of a high value for democracy as a whole. The quality of public deliberation, political participation and collective decisions will improve if people are connected by the ties of encompassing social networks, practice mutual reciprocity, trust each other and feel an intrinsic commitment to common aims. The crucial premise of social capital theory is, however, that there is indeed a spill-over, a transfer from the context of the privately organized associational life to the society as a whole: the virtues which are learned in the context of 10 will be generalized to the context of 10 Million!

This assumption is dependent on two separate premises: the first presupposes that personal attitudes and dispositions are better learned in small groups than in (very) large groups; the second implies that what is learned and developed in small groups to the advantage of these groups and their members will keep its positive impact in the context of large groups and for the society as a whole. Whereas the first thesis seems reasonably plausible, the second needs further clarification and explanation. The exact mechanisms by which membership in associations of civil society leads to a high level of civic engagement and high quality democratic politics are not yet clearly understood. We must get more insight into which forms and elements of private associations promote the desirable transfer and which do not. Of course, there is undeniable empirical evidence that there are important differences between various forms of social capital in this respect and that not every jointly celebrated Bible or Koran study is conducive to democracy.

### *1.3 Making Democracy Worse: the Dark Side of Social Capital*

Timothy McVeigh and his co-conspirators in the Oklahoma City bombing were members of a bowling league: they were not, unfortunately, “bowling alone” (cf. Levi 1996). Osama Bin Laden is not acting as an isolated mad man but is firmly embedded in a well-functioning network of internationally acting terrorists. These extreme examples make clear that being intrinsically devoted to a common aim, developing trust relationships and overcoming free-rider problems by membership in some kind of group is not automatically desirable for people outside the group or the political order of a society. The public good for the group could be a public bad for the community. Even when we think of less dramatic possibilities than in the Oklahoma City bombing or in the case of Al Quaida, differential mobilization of the population by ethnic,

racial, religious, or other ascriptive criteria can lead to very particularistic demands and will undermine rather than support democracy (cf. Hardin 1995). A rich network of civic activities alone is no guarantee of a flourishing democracy. It can be both a source of trust and a source of distrust. Instead of promoting the recognition and realization of common goods it can produce insurmountable conflicts by shaping and organizing antagonistic interests and locking them in an inextricable equilibrium of continuous power struggle and mutual hostility. So if we want to have insight into the potentially positive relationship between democracy and social capital, we have to learn more about the special kind of social capital which is necessary here.

Putnam claims as a central result of his studies in Italy that the malfunctions of democratic institutions in Southern Italy were chiefly a consequence of a low level of social capital (cf. Putnam 1993). To generalize this correlation would be misleading. It is not the case that societies with no democracy or with a malfunctioning democracy always display a low level of social capital. The stability of autocratic and despotic regimes often has two faces: on the one side there may exist a fragmented civil society in which more or less isolated individuals live within weak social networks and must endure an underdeveloped associational life – a situation which is often the intentional outcome of a political strategy of the rulers who want to prevent the emergence of a strong civil society. But on the other side the members of the ruling oligarchy themselves may be integrated in a social and political network which guarantees a sufficient degree of mutual trust and reciprocity inside the political elite to enable the efficient realization of their collective goods. On this basis the commitment among them can be strong enough to overcome short-term opportunistic and selfish behaviour and achieve beneficial cooperation – which does not exclude the fact that the aim of this cooperation is to suppress and exploit the rest of the society.

Instead of being supportive of democratic processes high levels of social capital can also be a difficult obstacle in the transitional phase from traditional societies to modern democracies. Afghanistan and Albania, for example, are not societies with an especially low level of social capital. In both societies there are at least partially well-functioning social networks, relations of trust and reciprocity and the capacity for collective action embodied in traditional structures of families, kinship, clans and tribes – all of them embedded in a highly respected social and religious tradition which contains values and norms with a considerable degree of legitimacy. The problem for democracy here is clearly not a

problem of lacking social capital – the problem is the lack of the *right kind* of social capital. Moreover the problem is worsened by the fact that the “wrong kind” of social capital not only prevents the development of civic virtues which are necessary for the democratic process. The wrong kind of social capital can also structure the society in a way that a democratic political order is not at all in the common interest of the people. Established traditional institutions can secure particularistic rights and privileges which would be removed by the universalistic norms of a democratic political order. Social capital is not only a relevant factor for the existence and distribution of civic virtues and intrinsic commitment in a society, but also for the existence and distribution of certain political interests. It both helps (and hinders) democracy is working, but also helps (and hinders) democracy operating as a public good!

We have to acknowledge that social capital can have a dark, even sinister side (cf. Hardin 1995; 1999; Levi 1996; Portes/Landolt 1996; Adler/Kwon 2000). Networks, reciprocity, trust and altruistic behaviour are good only in the right context. Indeed, some of the communities that have been able to educate their members successfully to behave unselfishly and to sacrifice their individual interests to the common cause are responsible for the largest catastrophes in the history of human mankind.

Equally, democratic suboptimality is not always combined with low levels of social capital – as is maybe the case in Southern Italy. Even there the low level of social capital in one area is not by chance connected with a high level of social capital in another area: the Mafia *is* a form of social capital, it embodies a highly efficient social network, creates strong norms of trust and reciprocity, and very successfully overcomes collective action problems of all sorts (cf. Gambetta 1993).

However, it is not necessary to refer to the Mafia to prove that well-developed forms of social capital could make democracy worse instead of making it work. Nepotism, corruption, rent-seeking, partisanship or free-riding are all forms of behaviour which are detrimental and destructive to democracy. *And* they are all forms of behaviour which are, as a rule, more successful if carried out in a group as a collective enterprise than as an individual effort (cf. Baurmann 2005). Therefore we find that empirically all manner of social capital is built around those activities – ranging from loose networks which bring a few people together for a short period of time, to small associations with horizontal relations between members connected by trust and reciprocity, up to large organisations with formal rules and a strict hierarchy. The more developed and

the more efficient those forms of social capital are, the worse for the outsiders and for democracy as a whole.

The dark side of social capital is not always connected with obviously condemnable behaviour like trying to free-ride, bribe or seek rents at public expense. Negative externalities where social capital is used to facilitate collusion among a group can also be generated when particularistic demands are put forward which cannot always be judged as morally wrong at the outset. Mobilization of people to realize their religious visions or to promote the interests of their race or ethnicity can be rooted in moral convictions and personal virtues and can create social capital in a paradigmatic form. Groups and associations like these will often embody dense social networks, high levels of personal trust, altruistically driven reciprocity and generosity and a strong intrinsic motivation to make sacrifices for the common good.

These forms of social capital will, nevertheless, more often subvert rather than strengthen democracy. The reason for this is obvious: associations like these are not “bridging” and “outward-orientated” (cf. Putnam/Goss 2001), but centred around people of the same kind or origin and promoting goods which are exclusively valuable to the members of the group. The more successful these associations are the less their members will have the incentive to cooperate and bargain with other groups on a common basis but will see the chance to enforce their particularistic interests at the expense of others. Thus social capital in this variant erects barriers of mistrust between people instead of uniting them and contributes to aims and goods which can very easily conflict with the aims and goods of the society as a whole. Associational groups of this kind will trigger a vicious circle because they undermine shared interests in a society and thereby create incentives for other groups – who, by themselves, would have no genuine reason to develop in this way – also to concentrate exclusively on *their* members and *their* particularistic interests.

Even if an association and the activity of its members have no negative effects on the surrounding society, it is not easy to answer the question under which conditions they will have *positive* effects. The assumption that membership in one kind of group leads to overcoming free-rider problems in another is not self-evident. The causal chain between bird-watching and political activism is not very close. There is a wide gap between various kinds of social clubs and organizations for political action. A number of comparative studies on social capital of recent years indeed suggest that the kind of social capital that is possibly typical of

an “individualistic” society – informal activities and “events” which are restricted to single issues and do not demand a lasting commitment – may hardly produce any positive spill-over into other areas of civic or political engagement (cf. Putnam (ed.) 2001).

To make the theory of social capital more precise regarding this crucial point, it is necessary to identify the characteristics of the associational groups that are valuable to society and democracy as a whole (cf. Stolle/Rochon 1998; Curtis/Baer/Grabb 2001; Warren 2001; Paxton 2002). Three modifications to our previous list seem to be important in this respect. To contribute to a commitment to the political norms of a democratic order and to promote the overall democratic process social capital should:

- i) create *bridging* social networks;
- ii) establish norms of *generalized* reciprocity and *generalized* trust;
- iii) promote commitment to *public* goods.

Social capital can have a dark side because, contrary to these demands, it can embody networks which are not bridges between different kinds of people bringing them together to promote joint interests, but are tools of separation erecting borders and barriers and providing an exclusive resource to a special group. Instead of encouraging reciprocal and trustworthy behaviour beyond the confines of a group or association, social capital can contribute to a restriction of reciprocity and trust and lead to an increase of opportunism and distrust outside the respective groups. Social capital can lack positive spill-over effects because it only promotes commitment to the “club” good of a group rather than to the public good of the surrounding society as a whole (cf. Stolle 1998).

#### *1.4. Mafia and Mazda: Particularism and Universalism*

Social capital is always embodied in social relationships which do not encompass a society as a whole – at least in societies with a large number of members. This was already true for the Aristotelian polis: not every citizen of Athens could be a friend of everyone else. The circle of friends is always limited. Therefore Aristotle’s idea that friendship was important for the community of Athens already presupposes that people are formed in their behaviour and character by their intimate personal relations in a way that is also beneficial for people with whom they are not befriended. The same point is central to Tocqueville’s theory:

associational life in America could foster democracy because in small settings people learn social skills and adopt virtues which are also of central importance to their behaviour as citizens of the “big” country as a whole. Equally the communitarians or the social capital theorists must rely essentially on the thesis that members of communities or associations are shaped in their behaviour in a way that is advantageous beyond the group of which they are members. So if social capital be deemed useful for society or democracy as a whole, the crucial question is not only how networks, reciprocity, trust or commitment might develop, but how *bridging* networks, *generalized* reciprocity and trust, and commitment to genuine *public* issues can be developed and maintained.

We can summarize the crucial differences by referring to the alternative between *particularism* and *universalism*. A group is all the more particularistic, the more its networks, its norms of reciprocity and trust and its aims are confined to the members of the group, whereas a group is all the more universalistic, the more its networks, its norms of reciprocity and trust and its aims transgress the confines of the group and encompass other citizens and groups in a society (cf. Baurmann 1997b; Baurmann/Lahno 2002). The different qualities of the respective forms of social capital can be illustrated by two paradigmatic examples which represent extremes on the continuum between particularism and universalism: the *Mafia* and the international company *Mazda*.

The *Mafia* creates two sorts of social networks: one is strictly confined to the members of the group and is carefully isolated from outsiders. As a rule, it is important that the members of the in-group share essential personal traits and already belong to a common social framework: the same family, kinship, clan or village (“Corleone”). The Mafia tries to utilize the already existing “strong” ties between them as building blocks for the Mafia-network. The very function of this network is to offer social capital only to the members of the “family” and to form a constant threat to outsiders. This kind of network does not connect different sorts of people in a mutually beneficial way but is rather an instrument to divide people and to produce benefits for one group at the expense of the other.

The same holds true for the second sort of social network which is created by the Mafia: this network is designed to guarantee a reliable contact to external allies, helpers and victims of the Mafia. Although this network transgresses the confines of the organization, it does not help to create social bonds or reciprocal exchange between insiders and outsiders. It is also only a tool of suppression and extortion and thus

does not help to create but to destroy forms of a spontaneously emerging civil society. Moreover, the Mafia has a manifest interest to undermine all kinds of social networks in its environment which are not controlled by its own forces.

Norms of reciprocity and trust play a key role in the fabric of the Mafia. Its “code of honour” is legendary and compels the members of the Mafia to adhere to a strictly enforced normative order. It is no contradiction in this respect that reciprocity and trust inside the Mafia can become very fragile. But the main thing here is the fact that, like the Mafia-created networks, the Mafia-engendered reciprocity and trust and their potential to promote benevolent social relations are also strictly confined to the Mafia-members and designed to exclude outsiders. That is, of course, a trivial consequence of the fact that the Mafia acts illegally and secretly and that its aim is not to cooperate fairly with other people but to use its power to exploit and suppress them. Therefore its internal reciprocity and trust are not only beneficial to the Mafia itself but also hinder reciprocal relations outside the Mafia, thereby producing massive mistrust in the social environment.

Last but not least the common good for the Mafia is a public bad for the society. Insofar as the Mafia successfully promotes personal virtues and commitment to overcome collective goods problems, these dispositions are not beneficial to public goods in general. The virtue of a Mafia member must be a strictly biased virtue which is solely orientated towards the particularistic good of the Mafia. Benevolence towards the Mafia and its members must be combined with hostility towards people and potential victims outside the Mafia. It is conceivable that the Mafia could restrain opportunistic behaviour among its members to a certain extent and in this respect actually produce “real” virtues based on genuine intrinsic motivation. This however would not be an advantage for the society. The more effective the Mafia is in producing particularistically orientated virtues and commitment, the more effective it will be as a collective and the more harmful to all others.

It should be clear that an established Mafia-organization not only promotes virtues and commitment of a kind which are not desirable for a democracy. If the Mafia is powerful enough to serve the interests of its members successfully the Mafiosi will not belong to the group of people who naturally develop a special interest in the universalistic principles of a democratic order. Universalistic principles of peaceful cooperation and equal rights are not in the interest of individuals who belong to a powerful collective that realizes its aims and aspirations by force and fraud.



Now let's look at the other side of the continuum. *Mazda*, as a world-wide operating company, also creates two sorts of social networks: one is the firm-internal network which embodies special ties between the members of the company. But unlike Mafia membership, Mazda membership is not restricted to people who already belong to a common social framework and possess identical personal traits of kinship, origin or culture. In contrast, Mazda exemplifies social capital with a high degree of "bridging" qualities. That means that members of the Mazda-"family" include people from different social backgrounds, nations, ethnicities and races, uniting many of them for the first time. The company-network of Mazda is highly inclusive and serves as a device to overcome manifold differences between people in order to create a mutually beneficial cooperative relationship.

The same applies to the second sort of social network which is established by Mazda. This network serves to facilitate a reliable contact to business partners, consumers, competitors, public administrators or politicians. This network transcends the confines of the company and must encompass all sorts of people in a myriad of social contexts. Because the network is used to build cooperative relationships, it fosters social bonds and beneficial exchange between the participants. By its weak ties it creates a kind of skeleton on which the flesh of a civil society can grow – far beyond the borders of the company itself.

Norms of reciprocity and trust are as fundamental to a company like Mazda as they are to the Mafia. But there is an essential difference: the norms of reciprocal and trustworthy behaviour in a company cannot be particularistic in the sense that they only include people of a narrowly defined nature. Mazda as an internationally operating company is dependent on its capacity to employ a wide range of people of different nationalities, cultures, races or social classes. It is of vital importance to Mazda that its chances to employ persons despite their social or cultural diversity will be enhanced and protected by their inclusion in the norms of reciprocity and trust. The same applies to persons outside the company who, as consumers or business partners, are relevant to the company's ends. In regard to them too, Mazda is interested in reciprocal and trust-based cooperative relationships. Under these conditions, when looking for suitable employees, a company like Mazda has good reasons not to look for people who practice their virtues only with respect to a particular group of persons, but for people who are disposed to behaving reciprocally and in a trustworthy manner generally – and therefore Mazda also has good reasons to promote norms of reciprocity and trust with universal scope.

The common good for the Mafia is a public bad for society and vice versa. Mafia-style personal virtues and commitment are therefore not desirable for the community as a whole. The common good for Mazda is not simply identical with the common good for society either. But the common good for Mazda is not dependent on creating a public bad for the rest of society – as in the case of Mafia. Producing public goods for society as a whole is not threatening for Mazda. On the contrary, in regard to many genuine public goods – secure property rights, political stability, sound politics, rule of law, efficient public administration – companies like Mazda belong to the group of direct beneficiaries of these goods. Thus Mazda does not have incentives to promote intrinsic motivation and commitment to overcome collective action problems solely in regard to company-specific goods. Of course, a specific loyalty to the aims of the firm will be demanded. But this kind of loyalty is not necessarily combined with disloyalty to the common welfare and is not discarded by others who themselves show a special loyalty to some other groups or associations. There is no reason for a company like Mazda to promote a strictly particularistic commitment to the interests of the firm alone. As the case of the Mafia makes clear, such particularistic commitments have their own risks for the beneficiaries because they can be easily shifted from one sub-group to the other.

If this analysis is accurate then companies like Mazda incorporate social capital which promote virtues and commitment of a kind which are desirable for a democracy and support the stability of its political order. Mazda-like social capital also shapes the political interests of its members in a way that is fundamental for the existence of a durable democracy: the members of a successfully operating firm will realize their aims and aspirations by exchanges and transactions in the market-place and not by force of arms or political power. Therefore, in contrast to the members of the Mafia, the members of Mazda *will* belong to the group of people who naturally develop a genuine interest in the universalistic principles of a modern democratic order and the rule of law. These principles guarantee peaceful cooperation and equal rights as necessary preconditions for an efficient and expanding market.

The examples of Mafia and Mazda illustrate, by means of extreme cases, the mechanisms by which social capital may produce detrimental or beneficial spill-over effects on the surrounding society depending on its place on the continuum from particularism to universalism. The more particularist associational groups are in regard to their networks, norms and commitment, the less they will contribute to social relations

and personal dispositions serving the whole society. Particularist variants of social capital tend to be dangerous for the rest of the society and undermine political stability and democracy. The more universalistic social capital is, on the other hand, the more it will produce networks, norms and virtues that will not only serve the purposes of its direct beneficiaries, but also shape and promote a general interest in democratic political order (cf. Baumann 1997b; 2000a; 2002).

### *1.5 Bowling, Bombing and Booming: Why Markets Matter*

The vast majority of social capital theorists hesitate to consider market relations and firms as variants of social capital relevant to the vitality of the democratic process. This seems to be a serious shortcoming as it is obvious that networks, norms of reciprocity and trust, and commitment to common aims play an essential role in the functioning of market exchanges and for the personal relations in firms. It is not true that reciprocity, trust and commitment in economic relations are just parasitic on the production of these goods in other social areas. Closer inspection reveals that the relations of people in economic transactions embody endogenous forces to produce reciprocity, trust and commitment. This is true both of market exchanges as such and for relations inside commercial organizations. Indeed, the idea that the kind of highly universalistic social capital of special relevance to society is predominantly produced in economic contexts has much force (cf. Baumann 1997a; 1997b; 2002).

On the other hand, the general neglect of “economic” social capital the social capital theoretists needs to be taken seriously. They make clear that social capital in the non-commercial civil society can not be entirely replaced by social capital in the economic realm. Mazda is not enough: the bird-watchers are still indispensable. There are a couple of aspects which are relevant here. Firstly, firms are not usually created by their employees to realize their personal aims, but by an entrepreneur. Secondly, the professional and social relations in a firm are not egalitarian, but more or less hierarchical. Thirdly, the aim of a company is not to produce a public good, but to make profit in the marketplace.

These three typical features of firm-related social capital are assumed to limit its positive side effects for society as a whole. The fact that the employees of a firm act as agents on behalf of a principal at best creates a kind of indirect loyalty to the aims of the firm. Such loyalty is mediated by a contractual relation and triggers virtues like honesty, reliability or

a sense of duty. What is missing is the special virtue which is embodied in the commitment to a self-chosen aim and a self-organized association to realize this aim. Additionally, acting in hierarchical structures does not create mutuality and equality of participation and so weakens reciprocal exchange and the possibilities of developing trust relations. It is assumed that relationships within vertical networks of hierarchy and dependence are not able to create experiences of reciprocity and trust to the same extent as relationships in horizontal networks which bring together agents of equivalent status and power (cf. Putnam 2000, Offe/Fuchs 2001). Last but not least the production of public goods is not the aim of firms and companies. This means that commitment to common aims is primarily restricted to the “club” goods of the firm. The virtue to contribute to a genuine public good and the even more demanding virtue to contribute voluntarily and out of altruistic concern for the individual goods for others who are in need – the virtue of “solidarity” – plays no significant role in this context.

So what seems to be true in regard to these arguments is that the democratic process can indeed gain considerably if social capital is developed (also) in the context of a civil society where self-governance and self-organization is independent of commercial motives and where people are sometimes ready to provide voluntarily individual or public goods for others and where they create reciprocity and trust in egalitarian relationships. It is plausible that these qualities cannot so easily be produced in the marketplace and in commercial business. As bird-watchers we do not realize our aims in competition with others and are not dependent on the good will of an authority. By watching birds with others we do as we like and do not perform tasks which are defined by someone else.

But it is no less important that civil society be embedded in a flourishing market economy. Universalism is learned, valued and enforced by the expansion of economic exchanges. Only if civil society is embedded in markets can it be prevented from collapsing into particularism and isolationism. Bowling without booming may lead to bombing.

A market economy creates a unique environment for the associational groups of civil society. In a society with a vibrant market economy people are not restricted to stable, strictly limited communities and to relationships based on personal ties. Social groups are flexible and “osmotic”, their membership fluctuates, the boundaries and composition of groups are constantly shifting. Instead of continuity and stagnation, there is private, social, political, economic and geographic mobility. A modern market society engenders non-local, supra-regional cooperative

interests. With the expansion of market relations and a well-developed division of labour, group confines become permeable. Social groups and communities are no longer isolated from their environment, their members are not bound to each other by unbreakable ties. The lack of static social ties leads to a relatively frequent change of partners in cooperative ventures. In such an “unbound” society, one cannot rely on temporarily existing barriers and boundaries.

Often, market-societies with a great number of members, with prosaic and impersonal relations between people, with frequent fluctuation between social groups and communities, are seen as destructive powers undermining and dissolving once intact communities and personal relationships. But societies of this sort also give rise to the phenomenon that people who at first have little in common can come into contact and establish relations. They encourage cooperation and association regardless of racial, national, social or cultural differences. Only when this is the case, will people who adopt social norms of unlimited, universal scope become valuable for their fellow-men. The anonymity, dynamism and mobility of an open market-society mean that the reasons which speak in favour of enacting universalistic norms acquire maximal importance. The destruction of traditional structures and relationships in modern market societies is therefore highly congenial to the establishment of the kind of interests and virtues that are necessary for making democracy work.

When searching for a suitable partner for a cooperative enterprise in such an anonymous, mobile, changing society one will not look for persons who are moral and trustworthy only in relation with their particular circle of people, but for persons who in general have a moral attitude: persons, that is, who take a moral point of view, in the sense of being impersonal and impartial towards the interests of others. Thus, the kind of associational life characteristic of mobile and dynamic societies also produces a demand for a special kind of people as suitable partners. The required qualification is no longer unconditional loyalty to a certain class of people, but a general adherence to the norms of reciprocity and trust.

Therefore the development of a market-society contributes to a universalistic orientation and thereby to a kind of social capital which is beneficial to society as a whole and especially the democratic process. In the first place, as it develops an open society with inclusive cooperative structures, transcending natural and artificial borders and demarcations of all kinds, it enhances the chances of “bridging” social capital

that promotes and enforces norms of reciprocity and trust beyond the confines of some well-defined groups, and shapes interests in favour of a universalistic democratic order. Second, commercial enterprises in a market society themselves create a kind of social capital which is an important source of open networks and universalistic norms of generalized reciprocity and general trust. In this way the market-embeddedness of the civil society is an important foundation for the development of “civic” social capital which overcomes the dangers of particularism and group-selfishness. On the other hand, without the genuine “civil” social capital, created mainly outside the market-place, the important resources of solidarity, altruistic engagement and autonomy by self-government and self-organization would dry up.

The overall result is: we need social capital to shape the kind of political interests and to produce the kind of civic virtues which together make democracy work. But to enhance the chances to get the right form of social capital, civil society should be embedded in a well established market-economy. There is not only one direction of influence here. What is needed is a virtuous equilibrium between markets, politics and civil society.

## **II. Making Democracy Tame: Constitutional Rights and Rule of Law**

### *2.0 Introduction*

The freedom to choose between options and to decide according to our own preferences is judged to be a highly valuable good. Normally we would like to have more of this kind of freedom than less. Any restriction on our domain of choices comes as a potential threat to our interests and its acceptance requires special justification – as for example in the case of a mutually advantageous limitation of liberties, the dangers of temptation or prohibitive decision costs. But beside these and some other exceptions most people would prefer their freedom to be extensive and comprehensive to the maximum.

In this sense a predominant interest in maximizing freedom of choice is seemingly a fundamental characteristic of *individual* choice. Does this also hold true for *collective* choice? Does the *prima facie* preference for an unrestricted domain of choice also apply to the decisions we have to make as a *group*? At first sight much speaks in favour of a positive answer. Why should we have any interest in restricting the pos-

sibilities and options we have as a collective if we do not wish for this as individuals? Moreover, there seem to be even stronger reasons for an unrestricted domain of choice in the collective than in the individual case. Problems like shortsightedness or high decision costs seem to be more easily tractable if we face decisions collectively rather than individually. Particularly the problem of possible mutually advantageous limitations of liberties vanishes if there is only one actor around – the collective – who decides on matters relevant to the group as such with no danger of externalities for other actors.

Of course, in the case of collective choice we are confronted with a new sort of problem. A collective decision is a decision which we ascribe to a collective actor. However, a collective actor is not a “natural” entity – like an individual – but is an artificial construct, composed of a set of individual persons. The same holds true for the decisions a collective actor makes. They are not the result of a “natural” decision process as in the case of individual decisions but of a process which is based on a bundle of contingent rules. These rules determine what kind of outcome counts as a valid “decision” of the collective actor. Therefore, whatever the rules are that define “the choices” of a collective actor, the collective outcomes which are the result of the application of these rules can never be simply *identical* with the individual choices of the members of the collective. There is, maybe, only one exception in which we can say that there is no difference between the individual choices of the members of a collective and the collective decision: i.e. if all members of a group spontaneously arrive at the same decision in regard to a certain option which the group has to decide. Note that the case of an explicit *unanimity rule*, there is no guarantee that a collective choice is exactly the choice each individual would have taken without such a rule.

So the core problem with collective choice is that the individual members of a collective must take the possibility into account that the result of a collective decision process will not be in accordance with their personal preferences: that decisions on collective matters will be taken which deviate from the decisions the members of the group would have taken individually. The magnitude of the possible gap between individual and collective decisions depends on the nature of the collective decision rules: the danger that collective decisions will not be in accordance with my personal preferences is obviously bigger when I live as a repressed subject under a despotic regime than as a free citizen under the rule of unanimity.

Seen from this perspective, *democracy* is an institutional device to mitigate the problematic relation between individual and collective decisions. Many proponents of democracy praise the rules of democratic decision-making for efficiently bridging the gap between individuals and collectives. If we were able to “make democracy work”, then we would also accomplish the task to create an institution of collective choice in which the difference between collective and individual decisions is minimized – and that means that the individuals must no longer be afraid of being coerced by collective choices which do not represent their individual preferences.

The crucial question is: does democracy in fact represent a variant of collective decision rules which efficiently *close* the gap between collective and individual decisions? Or does democracy represent rules of collective choice which *narrow* this gap *better* than any other known rules? In the first case we can hope to realize an ideal form of democracy in which the “individual will” is truly encapsulated in the “general will” and the individual can testify convincingly that the collective decisions are “his” or “her” decisions and that they reveal his or her preferences as well as individual decisions would do. In the second case we can only hope to optimize democratic institutions in a way that the *chances* of an individual in a democracy to find his or her preferences accounted for in collective decisions are *better* than in other institutions of collective choice.

Whether we believe in the first or the second possibility leads to seriously different consequences in regard to the design of the political and judicial institutions in a democracy. If we believe in an “ideal” democracy able to eradicate the difference between individual and collective choice we have no reason to restrict the domain of collective choice. On the contrary, in this case we would have good reasons to advocate even more than in the individual case a maximum of freedom of choice. There would be nothing we as individuals would have to fear from our “own” decisions if made as a collective.

If instead we believe in the necessary “imperfection” of democracy in bridging individual and collective choices, our view would change considerably. In this case we would have to painstakingly weigh up the possible risks of collective choices against their possible advantages. From this perspective the question whether and how far we should restrict the domain of collective choice is at the top of the agenda of democratic institution building. In this view it is not enough to “make democracy work”. The next question must be “how to make a working democracy *tame*”.



In the following we firstly discuss (2.1) the difference between these two views of democratic “perfection” with regard to *epistemic* and *procedural* conceptions of democracy. Subsequently (2.2) we argue that a view of democracy as a principally imperfect institution must accept a substantial trade-off between the efficiency of collective choice and its necessary limitations. In the next section (2.3) the thesis is put forward that in an imperfect democracy it is the best option for everyone in the long run to restrict the domain of collective choice by means of constitutional principles and the rule of law, even if this has the consequence that sometimes optimal decisions – according to utilitarian or ethical criteria – are not possible (2.4). We close with some reflections on the seemingly inevitable erosion in “maturing” democracies of constitutional restrictions on collective decision-making (2.5).

### *2.1 Two Versions of Democracy: Truth and Aggregation*

In regard to the relation between democracy on the one hand and constitutional rights and the rule of law on the other hand, two principal views seem to be taken: one view sees the role of constitutional rights and the rule of law as constitutive for establishing a democracy and its institutional framework. In this view, civil rights and the “Rechtsstaat” are necessary elements of every democratic system. Without their embeddedness in constitutionally guaranteed rights, in a separation of powers and in an independent judicial system, institutions of collective decision-making could not be *called* democratic at all.

The other view does not simply regard constitutional rights and the rule of law as tools to facilitate and institutionalize democratic procedures and processes. Quite the reverse, from this perspective, civil rights or the competences of an independent jurisdiction are seen primarily as limitations to democratic decisions and as constraints on the power of the electorate. In this context citizens’ rights appear as “trumps” (Dworkin 1977) in the hands of individuals against the dangers of a “tyranny of the majority” and not as instruments which should enable people to participate successfully in collective decisions. In this view constitutional rights and the rule of law are not primarily constitutive elements of democracy but represent normatively indispensable amendments to every democratic system. Without their embeddedness in constitutionally guaranteed rights, in the separation of powers and in an independent judicial system, democratic institutions could not be *justified*.

If the second view is correct, it would follow that the constitutional order of legitimate democracies includes two kinds of elements which conflict with one another. To differentiate between them is not always an easy task because they sometimes look similar and sometimes are even identical but, nonetheless, are supposed to have different impacts depending on the situation and the context. Firstly, there are elements which are indeed seen as constitutive for the institutionalization of democracy. They define, for example, the authority to legislate, the procedure for voting, and political rights such as the right of association or free speech. These elements are accepted as being essential to democracy and it is believed that they could not be eliminated without eliminating democracy itself. Secondly, it is assumed that there are constitutional principles and institutions which are not preconditions of democracy as such but – as already mentioned – represent elements which have the function to restrict the possibilities and options for democratic decisions. These are principles like private property rights which exclude certain domains from democratic decisions by securing private disposition over goods and services. Also institutions such as the separation of powers and especially an independent judicial system are seen more as being devices to hinder the realization of the “democratic will” than to promote it.

To discuss the relation between constitutional rights, the rule of law and democracy more thoroughly, it is useful to differentiate between *epistemic* and *procedural* justifications of democracy (the following summary is based on List/Goodin 2000). The epistemic concept of democracy goes back to Rousseau’s conviction that democracy can track the truths about the “general will” and the “common good” or to Mill’s hope that by democracy we can identify “the greatest good for the greatest number”. To epistemic democrats, the aim of democracy is to disclose the truth. To them, democratic decision-making is more desirable than other forms of collective choice because, and insofar as, it is an instrument of insight and discovery. That which is to be found exists independently of the process through which it comes into cognition. Political decision should be understood as a search for the “good” and the “true” for the community (cf. Estlund 1998; Barry 1964; Coleman, J.L. 1989; Miller 1992; Cohen 1986).

The procedural concept of democracy on the other hand as it goes back, for example, to Schumpeter (1950) and Dahl (1979), sees the justification of democracy as lying in certain procedural features. In this view, in collective decisions there is no “independent truth of the matter” which can be revealed by the right decision. The procedure itself serves as the

criterion for truth and the goodness or rightness of an outcome is wholly constituted by the fact of its having emerged in the procedurally correct manner (cf. Coleman, J. L./Ferejohn 1986). There is no consensus between the proceduralists as to which rules are to be recommended for democratic decisions and which are the relevant criteria for the quality of those rules. The merits of alternate ways of aggregating people's votes into an overall social decision are controversial. But it is not misleading to summarize the object of the procedural democrats as being to ensure that the preferences of all voters be considered in the voting process with equal weight. Democratic decisions ought to be systematically responsive to the preferences of all the people.

For both views of democracy, it is crucial whether democratic decision-making is judged as having the capacity to be a "perfect" institution which nearly always produces the optimal result or whether it is judged as a fundamentally imperfect institution which, for some reason or other, can never get near to this ideal. A "perfect" epistemic democracy would be an institution which guarantees the revelation of truth in each and every of its decisions and will always be superior to individual deliberation and insight. A "perfect" procedural democracy would be an institution which, in each and every of its decisions, guarantees an aggregation of votes in which the preferences of all voters are included and equally considered. In the epistemic as well as in the procedural case, the vision of a perfect democracy is intrinsically connected with the benchmark of reaching consensus and unanimity: if truth is found by democratic decisions, consensus becomes obtainable as the result of rational insight; if all individual preferences are aggregated by democratic decisions, unanimity becomes obtainable as a result of accepting the outcome as a genuine collective preference.

If such "perfectionist" versions of democracy would indeed be feasible, we would be justified in stating that democracy, in fact, realizes the ideal of "self-government" of the people. The electorate could then be seen as a truly collective actor to whom one could justly ascribe genuine collective insights and preferences – and this not only from an external point of view because of the empowering rules for collective decision-making, but also from an internal point of view of every participant in the voting process (cf. for the difference between an "internal" and an "external" point of view: Hart 1994). In a perfect democracy every individual participant could feel himself as the "author" of the collective decision and could personally identify with the outcome. As a voter, I would be able to see a democratic decision as a decision "we" made associated with a "we-belief" or "we-intention" (cf. Tuomela/Miller 1988).

The establishment of a perfect democracy would require constitutional principles and legal rules only as devices for implementing the optimal framework for a collective search for truth or an all-encompassing aggregation of preferences, and to provide the institutional mechanisms to realize democratic decisions as effectively as possible. Striving for perfection would not call for instruments to restrict the possible outcomes of democratic decisions. Any constitutional principles which embody *ex ante* limitations of future collective choices would not only be superfluous in a perfect democracy, but would do harm. In a perfect epistemic democracy such principles are not necessary, because if for some reason or another it were not right to intrude in certain domains or to choose certain options, this truth would *ex post* also be acknowledged. Moreover, any constitutional restriction on future possibilities would be a disadvantage, as we could hardly be certain *ex ante* that some class of decisions will always be wrong *ex post*. The same holds true in regard to a perfect proceduralist democracy: if there is no other criterion for goodness or rightness than the factual decision which is the outcome of a perfect decision rule we should and could not worry about the possibility of wrong choices in the present or the future. In this case even more than in the epistemic case, we cannot know *ex ante* what the aggregate result of future preferences will be. So it holds for both versions of democracy: if people find or define the truth by their collective decisions, there can, by definition, be nothing wrong with the outcomes of these decisions and if there is a constitutional principle which would hinder them from realizing their decisions, it must be the principle which leads to the wrong result.

It seems obvious that, in existing democracies, essential elements of the constitutional order are not only nuts and bolts to implement perfect democratic decision rules and to guarantee the effective realization of their outcomes. Above all, the constitutional specification of property rights demarcates an area which is principally excluded from collective choice – at least in a core zone of these rights. The function of these rights cannot be reduced to promote the collective search for truth or to optimize the preference-responsiveness of the democratic voting process. On the contrary, property rights exclude certain classes of collective decisions even when, in the concrete case, it is acknowledged that these decisions are based on true convictions or promote common interests. Therefore, constitutional rights and the rule of law are not expressions of our hope for a perfect world but expressions of our sceptical realism that imperfection is a fundamental living condition of human beings – in democracies and elsewhere.

## 2.2 *Nobody is Perfect: Opinion and Domination*

If we cannot escape to utopia but inevitably have to live in a world of imperfect democracies, our prospects and options change considerably. In an epistemically imperfect democracy we have to reckon with the fact that collective decisions will not always recognize the truth, but will sometimes be faulty. In an imperfect procedural democratic system we must expect that decisions will be made by which the preferences of some people are completely excluded. In both cases the members of a democratic society have to face the risks which are linked to the probably “wrong” decisions, especially in regard to the damage they have to expect if they belong to the part of society that has to suffer from “wrong” decisions.

It is indeed highly unlikely that we can realize in practice the ideal form of democratic self-government. Of course, we formally constitute a collective actor, which means that constitutional and legal rules of empowerment define under what conditions we ascribe a decision to the electorate as a whole. The rules of decisions in democracies can include “free and fair” voting, voting rights for all citizens, the freedom of speech and association, public debate, deliberation and bargaining. An epistemically perfect decision rule would *always* track the truth without error. A procedurally perfect decision rule would *always* include all individual preferences in the collective aggregate. Democratic procedures will almost certainly never realize these ideals. At best, they can be judged as epistemically or procedurally “optimal” given the constraints imposed by the real world. The outcomes of such imperfect decision rules will then often be right and good, without always being right and good (cf. List/Goodin 2000).

In real democracies, under the constraints of limited time and large numbers, we could not do without decisions by majority rule, and hence the imposition of collective decisions on dissenting minorities. In the case of a majority decision, a member of the minority can only speak in the formal sense of “we” as the collective actor and of “our” in regard to the decision of the majority – not in respect to the material result. In the concrete case, from the point of view of the minority, the decision of the majority stands for government by majority and not for self-government – minorities are ruled by others and not by themselves (cf. Baumann 2003).

From an external point of view it may still be justified to speak of a form of democratic self-government even in the case of majority voting.

The outcomes of a majoritarian democracy may – if Condorcet is right – have a high probability of truth or may incorporate the vast majority of the interests and preferences of the voters. This does not mean that truth is found or justice done from the internal point of view of a member of the minority as well. In a general sense a minority may agree that democracy is a kind of self-government of the people, because everybody’s voice is heard and everybody’s vote is counted. The members of a minority may even consent that majority rule is quite a good truth-tracker. This general judgement does not change the fact that, in the concrete dissenting case, the collective decision does not express the beliefs or the preferences of the members of the minority but the beliefs and the preferences of the members of the majority.

Under the premises of an epistemic justification of democracy, it follows that for the members of a minority the majority decision does not reveal the truth but represents only the “opinion” of the majority. Under the premises of a procedural concept, it follows that for the members of a minority the majority decision does not represent an aggregation including the preferences of the minority but documents a “domination” of the preferences of the minority by the preferences of the majority.

	Procedural Democracy	Epistemic Democracy
Perfect	Aggregation	Truth
Imperfect	Domination	Opinion

So whatever the final judgement may be: to achieve an adequate understanding of constitutional rights and the rule of law in their relation to democratic decision-making, it is crucial whether we look at democracy as an institution capable of perfect self-government or as an imperfect institution of notoriously fallible majority-rule. If democracy were an institution of perfect self-government, there would be no justification whatsoever for constitutional limitations on the scope and domain of collective decisions: if the outcomes were always true or always represented

a genuine collective preference, there would be no need for any *ex ante* restrictions on those outcomes. On the contrary, we might, for no good reason at all, prevent decisions which serve the truth or the common interest. If we look at democracy as an incurably imperfect institution, constitutional limitations on democratic government acquire quite a different appeal. If real democracies do not represent an ideal solution to the problem of collective decision-making but only the second-best, and we therefore have to reckon with wrong and biased outcomes, then to exclude some options from the domain of democratic decisions could be the right constitutional choice. It then becomes a matter of *trade-off* and no longer a question of principle (there is a general underestimation of the necessity of trade-offs in the design of constitutions and institutions, cf. Baurmann/Brennan 2006).

The fact that all modern democracies actually impose more or less far-reaching constitutional restrictions on the power of the democratic legislator makes clear that, as a result of a collective learning process, we know that democracy is indeed not an institution of perfect self-government. The analysis of the conditions which would be necessary to realize an ideal democracy provides good theoretical reasons why this experience is not accidental.

### *2.3 Domesticating the Democratic Leviathan: Constitution and Rule of Law*

According to Hans Kelsen (1945; Baurmann 2000a; b) the state consists of a hierarchically ordered system of rules which determines the way in which the state organs are empowered to use coercion. Seen from this perspective, democracy as an institution of collective decision-making on the state level is nothing harmless or innocent from the start. It deals principally with decisions about the use of power and force. We therefore have to differentiate between democratic decisions regarding, for example, the running of a workmen's club or governing the common fishing ground from those about ruling the state. In the context of the state, political decisions always include the possibility that those who do not feel committed to a decision – generally or in the concrete case – are forced by coercion to abide by it. As Max Weber said (1958): in principle political decisions deal with ethically problematical options because they always have to do with the use of power.

A second characteristic of political decisions on the state level is the fact that these decisions know no "natural" borders but are, in principle,

universal in their domain. The instruments of coercion the state has at its disposal are almost universally employable. Due to the factual monopoly of power, they can with irresistible force overcome practically every counterpower. So there is no social arena or realm of interaction which is per se protected against the invasion of the state and vital interests of all members of a society are potentially endangered by political decisions.

A third feature of collective choices which includes the use of state power is closely connected to the first two, namely the fact that these choices can have irreversible consequences: life and health of individuals can be damaged, property and assets destroyed or redistributed, social groups and social relations undermined, institutions eroded, the natural environment devastated, and last but not least peace can be ended and war begun. In all these cases political decisions can very likely change the world in a way which cannot be turned back to the previous state of affairs (this fact is overlooked by Habermas 1996).

Due to this unlimited scope of state power and its huge potential to produce harm and damage to individual and collective interests one has to reckon with an important asymmetry in the use of this power – as James Buchanan and Roger Congleton (1998) have argued convincingly. This asymmetry has to do with the fact that there is no prestabilized balance between the gains and losses different groups encounter as a consequence of political decisions. In many cases a group can profit tremendously even if another group must only burden minor sacrifices: so the life of many poor people can be saved if the rich only give away a small proportion of their income. But in many cases there is the possibility that even moderate gains for one group of people can only be achieved at excessive costs to another group. For example, cases in which a redistribution in favour of already privileged persons deprives other persons of essential resources.

If political decisions were determined by the opportunistic behaviour of the ruling majority, this kind of asymmetric consequence would be a regular outcome of these decisions. The reason is that such a one-sided distribution of gains and losses would be endogenously produced by the majoritarian choice process itself. As Buchanan and Congleton emphasize, majoritarian politics, if unconstrained by constitutional or moral principles, would, in itself, create alternatives for political choice and actions that necessarily include distributional and exploitative elements, quite apart from the possible existence or non-existence of collective alternatives that are positive sum in some aggregative sense.



Political decision-making along this line of logic would have the consequence that even if there were regular rotation in the “winners” and “losers” coalition, *everybody* would be damaged in the long run: the gains for the members of a winning coalition through redistribution and exploitation of the losers could no longer compensate for the losses which they themselves would have to suffer as members of a suppressed minority. Under such conditions, a democratic institution of collective choice would lead to a dilemma: by choosing the option which is most in their interest every time, the participants would bring about a situation in which everyone is worse off than in the status quo (Buchanan/Congleton 1998).

In a perfect democracy, cycles of this kind would not happen. A perfect epistemic decision rule would guarantee that all decisions would be in correspondence with ethical principles which prohibit excessive burdens on minorities and secure justice for all members of a society. A perfect procedural democracy would guarantee that all the preferences of all the people are taken into account and nobody is ignored in the aggregate. However, as we have to reckon with imperfect versions of democracy we have to reckon with majority decisions that are not based on ethical deliberation or an impartial consideration of all preferences but instead on the subjective opinions and particular interests of the ruling majority. Under these conditions the participants must be aware of the possibility of democratic decisions which deviate from the optimal line and which threaten a cycle of mutual exploitation which finally damages the interests of all.

So if we must accept that real democracies are imperfect institutions which cannot, at least sometimes, prevent collective decisions from being made by majorities with the aim to maximize the payoffs to their own members, then we will have an incentive to restrict the domain of collective decisions and eliminate at least some of those options which would have especially negative effects for the minority if chosen in an arbitrary way. If democracy can at least partially develop into the rule of opportunistic majorities and if the use of state power can have drastic consequences which cannot be equalized or reversed in another election, it is the best choice for all in the long run to restrict the competences of the democratic electorate by constitutional principles and the rule of law. They can be interpreted as attempts to bar political options by which certain individuals or groups would be greatly disadvantaged for the possibly only minor benefit of other individuals or groups (Baurmann 2003).

This shows again that constitutional constraints and the rule of law as devices to tame and domesticate the democratic Leviathan are not instru-

ments to realize a democratic utopia. A perfect democracy whether in the epistemic or in the proceduralistic view could and should do without those constraints and rules. Constitutional rights and the rule of law do not belong to the world of ideals and perfection but rather to the real world of weakness and imperfection. They are instruments for dealing with the shortcomings of institutions, intellectual weaknesses and moral vices of human beings and are not meant to give people the freedom to practise their most acclaimed virtues.

#### *2.4 The Impossibility of a Democratic Liberal: the Right or the Rights*

If it is true that constitutional rights and the rule of law are not generally constitutive parts of democracy but instruments of constraint and restriction then there must inevitably be tension between them and the principles of democracy. Conflicting cases in which a “perfect” democratic decision is prevented by the existence of undeniable rights do not come as a “paradox” or surprise but of necessity: because rights are not instruments to create an ideal, perfect democracy but to prevent negative outcomes of real, imperfect democracies. Rights and democracy are not meant to be compatible under ideal circumstances. To prevent any “tyranny of the majority”, therefore, involves significant trade-offs. Constitutional precautions may also exclude decisions which would be the result of the “wisdom of majority”.

The kind of trade-off between constitutive and restrictive elements in a constitutional order depends on the concept of democracy. The trade-off for an epistemic concept of democracy would be the fact that by restricting the domain of choices by a schematic device like civil rights sometimes a status quo would be preserved which it would have been better to change according to exogenous normative standards. Take the example of the abortion law in Germany: after intensive deliberation and public debate and probably on the basis of well founded ethical convictions a large majority tried to liberalize the legal possibilities for abortion. But their attempt to legalize abortion in the first three months after conception failed because the supreme court declared its incompatibility with the universal right to life.

The trade-off for a proceduralist concept of democracy may be a considerable utility-loss in individual cases. The firm protection of civil rights can have the consequence that in some situations certain utility-maximizing or Pareto-improving choices cannot be made: this

is Sen's example where the prude and the lascivious could not jointly better their situation according to their preferences without violating individual rights (cf. Sen 1970). This does not mean at all that there is an alarming incompatibility between the fundamental principles of liberal or democratic societies. In a perfect democracy no individual rights would prevent the participants from making Pareto-improving choices. Rights are designed for imperfect democracies as *ex ante* barriers against certain decisions that are seen as exceptionally dangerous: for example, decisions by the majority of prudes who would determine for the minority of lascivious people which books they should read. As rights cut off a whole domain of possible options, it can well be that *ex post* some of these options would indeed be desirable under epistemic as well as under procedural criteria: as is the case when prudes and the lascivious unexpectedly develop some peculiar preferences.

Constitutional rights and other principles of the rule of law are not natural elements of democracy but rather prevent democracy in certain areas. They do so to prevent bad outcomes of imperfect democracies – and by this they may sometimes also prevent good outcomes of imperfect democracies. Seen from this angle, the “paradox of liberalism” is nothing worrying but almost a trivial consequence of the tension between an ideal but dangerous freedom and real but costly restrictions. In this sense rights and “the right” do not operate on the same conceptual level. Rights prevent certain types of decisions irrespective whether they are right or wrong in regard to other criteria.

Paretianism is only one possible position that might conflict with constitutional rights. Utilitarians, contractarians or even Kantians will have similar experiences if they apply their ethical standards directly to post-constitutional choices. The unalterable reason for this possible contradiction is the fact that the constitutional choice in favour of rights and other general principles must be based on an empirical calculation of average chances and risks of political decisions, an outline and evaluation of worst-case-scenarios as well as general assumptions about the probable domain of individual beliefs and preferences and their distribution among the citizens. It is therefore clear from the outset that the aim cannot be to find a constitutional framework which for each and every problem will guarantee the optimal solution, but to find a “constitutional heuristic” which, as a second-best solution, facilitates good outcomes in most cases and prevents worst outcomes in all cases. So a general limitation of the possibilities of collective decisions is like a heuristic in individual decision-making: it serves well for the majority of cases

but there are always some situation in which following the heuristic will not give rise to the optimal choice.

For this reason we must accept the general impossibility of a democratic liberal: at least a “fundamentalist” democrat who believes in perfect democracy could not be a liberal who argues for constitutional restrictions, individual rights and the rule of law (therefore it does not come as a surprise that Habermas presents only a quite weak justification for these institutions in his “Discourse Theory of Law” 1996; cf. for a thorough criticism of Habermas’s theory: Engländer 2002). Collective decisions in perfect democracies analytically could not be wrong and are an expression of true self-government. And if it is a genuine “we” who decides than there is no need to protect the individual “me” from this collective actor.

If a principal tension exists between constitutional limitations and democratic freedom it is not self-evident how far those limitations should go and where a desirable equilibrium will be located. But, as already stated, this question is a matter of trade-offs, and not a question of principle. To measure the relevant trade-offs two dimensions seem to be relevant. Firstly, one has to estimate the respective values of gains and losses. That means one has to compare the potential damage that can arise from “imperfect” choices of the electorate, in the worst case by a “tyranny of the majority”, with the potential gains one could achieve by “perfect” choices in the domain that would be restricted by rights or other constitutional constraints.

Secondly, one has to estimate the respective probabilities for the different outcomes. This means the probability on the one hand that a stupid or vicious majority will choose wrong or evil options and, on the other hand, that a wise or virtuous majority will choose right or good options in the relevant domains.

Most existing constitutions of democratic states seem to represent a kind of minimax-strategy in regard to these problems. Above all, by granting individual rights several worst-case scenarios seem to be avoidable. Even when probabilities are actually slight that a democratic state would intrude into these delicate areas, it may appear as rational to prevent any such danger.

The estimation of probabilities becomes more relevant in areas in which not so much is at stake. This concerns, for example, the separation of power between nation and state legislators or the competences of supreme courts. The probabilities here have to do with the degree of “perfection” of the democratic system. If there is a long-standing stable

democracy with a highly deliberative, vibrant and critical public based on well developed social capital and a high civic engagement of its citizens, then the risks of “democratization” may appear slighter than in a young and unstable democracy with intimidation and corruption, patronage and clientelism and a citizenship which is only interested in its private affairs.

So what we would have to expect theoretically is a mixture of a hard-core of civil rights which will be more or less identical in all developed democracies and a sphere of “soft” constraints and restrictions which will vary considerably between different democracies. That is just what we actually find in existing democracies.

### *2.5 Sclerosis and Erosion: Aches and Pains of Old Democracies*

To prevent the “tyranny of the majority” – be it tyranny by stupidity or vice – involves significant trade-offs: it can also mean that decisions of a wise and virtuous majority are prevented in the process. That makes a democratic system which is embedded in constitutional constraints and a rule of law an intrinsically fragile institution, because it must be consciously accepted by the citizens as a second-best solution which comes with certain costs and disadvantages. These costs are often felt most painfully in situations of emergency when there is a real or imaginary need for extraordinary political measures, which are not always compatible with civil rights or other legal principles of the rule of law. In situations like these, democracy is not seldom endangered by the call for a benevolent dictator who would overcome the tiresome obstacles of constitutional traps and could freely and efficiently decide on the best solution to the pressing problems. In situations like these, the usual calculations of the trade-offs between the risks of unconstrained collective decisions and the costs of constitutional limitations for many citizens may no longer be convincing. And, of course, it was always a popular instrument of anti-democratic demagogues to exaggerate the costs of constitutionally and legally correct procedures and by this try to manipulate the public opinion to agree to anti-constitutional politics.

We will discuss another problem here which also seems to be connected with the fact that constitutional rights and the rule of law always come at a cost, and which is especially relevant for well established, “mature” democracies.

If the main line of the above considerations is convincing then we should always embed democratic choice in a limiting constitutional

framework. We have to accept the disadvantages of these constraints in face of the risks of an unconstrained collective choice process. Our speculation is that the general insight into the necessity to accept these costs and disadvantages of constitutional constraints on democratic choice *ceteris paribus* may be larger in young than in mature democracies. To put it in a nutshell: we will probably find more rule of law in young democracies and more options for collective choices in old democracies. This developmental path seems to be driven by dynamics which have to do with the process Mancur Olson (1982) identifies as one of the reason for the sclerosis of "old" economies.

Olson assumes that the increasing shift from economic activities on the market to political activities with the aim to influence the distributional decisions of the government is one of the main reasons for this sclerosis. That this process could develop at all in this direction, another development is a necessary precondition: namely a continuous erosion and weakening of the impact of constitutional devices which should principally restrict the domain of political decisions. Behind the ever-increasing investment in rent-seeking and political redistribution lies the loosening grip of liberal rights and the constitutional limitations of governmental power.

This process of an incessant erosion of liberal constitutional institutions in maturing democracies seems to be part of a larger societal development, and one that is not merely a matter of the malicend influence of opportunistic actors, reckless pressure groups and power-hungry politicians. In fact, in a slightly perverse way it has to do with the evolving of *trust* in a society, especially trust in democracy.

During the process of maturing, a well-ordered democratic system normally will accumulate trust among its citizens. This trust will tend to develop from trust in the democratic rules and institutions to trust in the process and the outcomes of democratic decision-making itself. In mature and well-working democracies the citizens generally will not be particularly anxious that politicians might blatantly misuse their power or that majorities might completely neglect the interests of minorities. The need to establish and maintain high-quality guarantees against wrong or vicious majority choice will therefore not be felt as urgently as before. The insight into the functions and necessities of constitutional safeguards will become weaker and weaker: trust in the system and in the political actors will substitute the demand for constitutional and legal precautions.

The other side of this coin is an increasing public pressure for the "right" political decisions which are not hindered by idiosyncratic scruples in

regard to the constitutional order. The demand for efficient government and efficient political decisions will also increase in the process of democratic ageing. The reason is partly homemade and a result of a vicious circle: as more economic and social problems become subject of political choice, the more politics and the quality of political decisions become important. Today in many countries we additionally face the quite paradoxical situation that governmental activity and efficiency are especially needed to cut back the effects of ever increasing politicization. Both tendencies will converge in a growing claim for “good” and far reaching political decisions *and* an increasing readiness to accept collective decisions which transgress constitutional borders and intrude in formerly protected areas of civil rights. This process does not come as a revolution, but as an evolution: it does not destroy rights, but erodes them. Paradigmatically we can see this process in Germany in regard to the judicial interpretation of constitutional rights which are less and less seen as negative rights of defence against collective demands but as positive rights which represent claims to political action. Instead of being interpreted as insurmountable barriers to political decisions in the name of the common weal, they are now only seen as one element in an overall process of weighing up between individual and collective interests (cf. one for all: Brugger/Anderheiden/Kirste 2002).

So we are coming nearer and nearer to a “perfect” democracy – at least in the attitude people develop in regard to democratic choice. The idea of “in principle” constraints and restrictions to the range of politics is increasingly being lost. Political efficiency and the enlargement of political power is nowadays much more popular than political restraint. Legitimacy is more ascribed in regard to outcomes than to principles and processes. Philosophical concepts of deliberative democracy, which put the criterion of consensus in the foreground, support this development in harmony with “modern” public law jurisprudence.

The question remains open whether we should interpret this development as a plausible consequence of the constantly increasing quality of democracy or as a development by which a permanently “imperfect” democracy gathers more and more arbitrary power. Are we becoming more and more successful at replacing constitutional limitations and the rule of law by virtues and morality or are we getting more and more careless in regard to the inevitable risks of every institution of collective choice?

### III. The Power Structure of a Society

#### 3.1 *The Dispersion of Power in a Society as a Precondition of Democracy*

Two distinct but related phenomena are relevant here which are usually referred to as the *dispersion of power resources* and the existence of a strong *civil society*, respectively.

The concept of dispersion or concentration of power resources refers to the way in which the control over assets like wealth and the means of production and the access to higher education is distributed over a society. The concept of strength or weakness of civil society refers to the way in which social relationships are configured in a society. A strong and vital civil society exists wherever we find a variety of well organised groups<sup>2</sup> which are not politically controlled; in a weak civil society social relations are atomised and no associations exist except perhaps those that are organised and controlled by the government itself.

A wide dispersion of power resources as well as the existence of a strong civil society are commonly considered to be at the very least necessary conditions of democracy<sup>3</sup>. The central point of the dispersion argument is that political power will always be in the hands of those who control the vital resources of a society; therefore, if this control is in the hands of a subgroup of a society, this group will not

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2 Sometimes – for instance in a line of thinking preferred by Habermas (1992, 399 ff.) – a distinction is made between organised groups as belonging either to the “Economy” or to “Civil Society”, where the former groups are seen as articulating the income interests of their members and the latter groups are seen as articulating a conception of the “public interest” (as defined by their members). I will not use this distinction between the Economy and Civil Society – first, all of the interests articulated in both cases are particular interests insofar as they are the interests of group members only, without any more general mandate; second, the distinction between economic and other interests is in itself not too useful: Does a teachers’ union which argues for better schools and also for better endowed schools belong to “Civil Society” or is it part of the “Economy”?

3 Sometimes stronger claims are made; cf. in particular Vanhanen’s (1997) idea that the dispersion of power is not only a necessary but also the only sufficient condition of democracy.



share political power with the rest of society; only if the control over vital assets is dispersed, will the political power also be distributed in a democratic way. The civil society argument, on the other hand, is about the ways in which *voice* (in the sense of Hirschman (1970) can be organised in a polity: If a well articulated political power structure faces nothing but an amorphous mass of isolated individuals, democracy will not last, whatever the formal political institutions may be (cf. only Gellner 1994).

The dispersion argument and the civil society argument are perfectly compatible with each other. The common point is that political power has to be embedded in and counterbalanced by other kinds of power to make democracy possible or stable. To a degree, the two arguments are about the two sides of one and the same coin – the first argument is more explicit about resources than about action, the second argument is more explicit about action than about resources. Both arguments certainly are not intended to deny the importance of the part of the story which is not explicitly mentioned.

The ideas of power dispersion and the control of power by power are widely accepted, with good reason. However, the social power which restrains political power is certainly not harmless. Power balance and power dispersion are not simply a matter of equally autonomous individuals but of cooperation among individuals which is impregnated by (non-political) power relationships among the citizens themselves.

Two groups of problems can be identified:

### *3.2 The First Problem: Social Inequality and Political Equality*

The dispersion and balance of power which has to be considered as a condition of democracy is a by-product of societal heterogeneity. The owners of specific resources care and sometimes fight for their specific interests; organised groups crystallise around the particular interests of people (most prominently around income interests).

This heterogeneity does not come without a heavy dose of inequality: Some interests are more readily organized than others; and among those which are organised, bargaining power is not equally distributed (cf. only Olson 1965). In some societies not just diversity but social inequality itself is the whole point of group formation (think of the caste system in India). Moreover, the organised groups which are strong enough to counterbalance the power of government may be internally egalitarian and democratic – or may not. Only in exceptional cases will

the countervailing social power which embeds and keeps stable the political power configuration be shared equally by all citizens<sup>4</sup>.

Social diversity or heterogeneity as such is certainly not a problem for democracy. But the inequality which comes with it or which lies behind it may well be a problem for a constitution which is founded on the idea of political equality.

Pertinent questions are: What types of social inequality are not compatible with political equality? What degree of inequality is dangerous for political equality? Are only groups which rest on voluntary contract really compatible with democracy? Do we need a democratization of the whole society (“Demokratisierung aller Lebensbereiche”) to make democracy complete and safe, or might this democratization lead to the destruction of structures which could tame Leviathan? Should traditional forms of social organisation like tribal or parochial groupings be seen as an acceptable variety of the functionally necessary politics-restraining power? Or should they rather be seen as remaining pockets of former autocratic or feudal institutions which have to be broken up to make a society ready and safe for democracy? Is a caste system compatible with democracy? How should the “warlords” in Afghanistan be judged?

### *3.3 The Second Problem: Veto Power and Governability*

Since the different organised groups and the owners of specific types of assets have their own particular interests, they will use the game of politics to further these interests. Their contribution to the stability of democracy on the other hand, which may well be seen by them as their common constitutional interest, is a public good which they do not directly seek. Their politics-restraining power in general, and in particular their veto power, is to them not primarily a means to tame Leviathan, but rather a means to get income.

Seen against this background, decision by consent as the default type of democratic public choice has two faces: The first, and beautiful, face of consent as a requirement makes sure that politics is not exploitative – here the consensus threshold protects rights or legitimate claims against

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4 The institutional “separation of powers” has been historically directly connected to a balance among societal groups. That this link has been severed formally in the modern state’s constitutional system of checks and balances does not mean that societal power configurations have become irrelevant for the containment of political power.

tyranny. The other, and less beautiful, face of consent is its capacity to block desirable change (cf. only Olson 1982). As long as we have in mind a situation where incomes are generated by voluntary cooperation among autonomous subjects, our problem with political power is plausibly the threat of political encroachment on society. Here consent (maybe bought by adequate side payments) is the right procedural idea. If, however, our focus is on incomes which are generated by political means in the first place, then what is at stake is not “property” (in the sense of a right, a legitimate entitlement), but rather “interest” (in the sense of a claim), and sometimes an interest which we might reasonably call an interest in privileges.

In the first constellation, where “property” is at stake, we would probably argue in favour of strong defenses against politics, whereas in the second constellation, where “interest” only is at stake, we would probably argue in favour of a political capability to override vetoes – as long as this happens not just by interest again, but by interest *and* principle (cf. Buchanan/Congleton 1998). One can easily imagine societal constellations where the thresholds against democratic political action are too high as well as constellations where they are too low.

Since what is “property” and what is “interest” is not simply given, a working democracy needs social norms which operationalise the distinction and which help the citizens in forming their judgment on the matter. A political culture where “the state” is generally seen as above society and interest groups are condemned is certainly not democratic; but a political culture where interest groups (presently: in particular Public Interest Groups) can claim to be endowed with a higher legitimacy than elected representatives is not democratic either.

### *3.4 The Third Problem: How to Go From Here to There?*

The picture of the desired state of things is probably not contested: In the ideal situation, democratic institutions are embedded in a society

- where individual autonomy is respected,
- where power-generating assets are not concentrated in the hands of minorities,
- where associations can be formed freely,
- where the internal structure of associations is democratic or at least democracy-compatible (by inalienable rights to exit), and finally,
- where the conflict among groups is embedded in a consensus of the groups (on their common interest and on the rules of the game) and a

consensus of society on the role of groups (describing the criteria of legitimate use and limits of group power).

Democratic institutions can be exported and imported more easily than these surrounding arrangements of societal power and also than the requisite social norms. What can be done, what should be done? By whom?

As far as power-related assets are concerned, the answer is clear, in principle – dispersion should be promoted by political means. This is comparatively easy to accomplish in matters like education, where no direct and visible redistribution is needed. Where land or physical capital are concerned, things are more complicated, since the owners of these assets have the means and the will to defend their positions. A political power strong enough to redistribute land or wealth at will is in itself a problem. By what political means can processes of gradual and evolutionary change be supported? What are the effects of more equal access to education combined with a still persisting concentration of other assets? May we expect a society to develop along an evolutionary path to more equality also in these respects, or have we to expect a society tormented by disappointed expectations and growing conflicts?

As far as the development of civil society is concerned, the problems are similar: Even if we have an idea of how different kinds of social ties should be judged in principle with respect to democracy, it is by no means clear what the role of politics could be in the process of transformation: Is it a political responsibility or duty to support the formation of certain groups and to suppress the formation of other groups? Should politics be empowered to regulate the way in which groups may behave towards each other and in the political game? What is the threshold where this society-forming role of politics does not any more support the necessary decentralisation of power in a society but instead begins to destroy it?

## **IV. Demos: The Political Nation**

### *4.1 The Role of the Political Nation in a Democracy*

The concepts of identity and identification on the one hand – much vaguer than the concepts of power resources and power relationships – and the problems of drawing boundaries between members and non-members on the other hand are the salient topics here.

The cultural foundation of identification and distinction may be ethnicity, history, culture, religion (as part of the cultural heritage, among

other types of heritage), even contract. Thus, identification may have more or less particularistic and parochial roots. Some of these roots we will probably consider as ethically less acceptable than others; also, not all of them are favourable to the possibility and stability of democracy. That some of the roots of identification may be ethically dubious, functionally obsolete or outright dysfunctional does not imply, however, that identification itself is dubious or obsolete. The opposite is true: Democracy needs identification and the distinction between members and non-members more than any other political system.

The reason for this is simple: Politics, even if seen as a contract, implies some measure of compulsion – the citizens' political opinions and interests differ and have to be transformed into public choices where some of the subjects come out as winners and some as losers. This is the case in democracies as well as in any other political system. What is specific to democracy is the fact that the winners and losers of decisions are considered as equals, as governing themselves. Everyone has to face the possibility of losing in any specific decision – but everyone must have the disposition to see it as losing to those who belong to “Us”, and not to some kind of foreign power, “Them”.

This is possible if there is common ground and a common knowledge of this common ground. Therefore, the members of the polity need to have a shared idea of what they owe each other and, vice versa, of what burdens they may justly put on other people. The distinction between members and non-members obviously does not imply that non-members can have no rights or that members have no responsibilities towards them. It only means that members have specific duties towards each other and therefore additional rights regarding each other.

That is the meaning of Demos – it is not necessarily a bond of fate, but definitely a bond of solidarity and not only reciprocity: Some members of the community may not ever be able to pay back, and nevertheless it is considered a duty of all to take responsibility for their fate – simply because they are members.

#### *4.2 First Problem: Undersupply of Identity*

In a democratic society people are autonomous in the formation and definition of their personal and political interests and opinions. Their identification with the body politic will be only a part of their bundle of identifications and in most cases only a minor part. How do we describe the minimum which is necessary?

The list of what reasonably might be considered as necessary or at least helpful includes the following features of a culture:

- first, a widespread acceptance of and maybe also some pride in the central political institutions;
- second, shared basic – non-political – cultural traits like a common language or at least a shared *lingua franca* and fundamental habits in dealing with other people (otherwise society in general is not sufficiently homogeneous; cf. Buchanan 1999);
- third, the absence of religious, ethnic, regional and class cleavages or at least a cross cutting of such cleavages (otherwise there is a danger of born majorities and minorities and the *political* society is too divided).

The first condition is considered necessary by nearly everyone writing on the subject. Sometimes it is argued that “constitutional patriotism” is the only salient condition and that all the rest may safely be as heterogeneous as the circumstances make it<sup>5</sup>. Other writers on the subject do not deny that it is vital that the institutions are widely accepted, but argue that this feature is causally dependent on either or both of the latter traits.

In established and well working democracies all these conditions are fulfilled to a substantial degree. Some of these democracies, where substantial immigration exists, experience cultural changes which are often considered as threatening a status quo which has been taken for granted. In contrast to these newly established or just emerging polities like the European Community, many postcolonial polities in the Third World or some of the transforming post-communist societies have not yet reached a status where the notion of *demos* can be readily applied.

#### 4.3 *Second Problem: Too much Demand for Identity*

The notion of an undersupply of identity and identification might suggest the idea that there is such a thing as an adequate supply, defined by some objective standard. This is not quite true. We also have to look at the other side: What is the demand for identity and what

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5 In the German discussion on „Verfassungspatriotismus“ we find two quite different lines of thinking – Dolf Sternberger sees it as a combination of universalist values and the identification with a specific history of institutions; Habermas seems to stress only the first part – which implies a kind of cosmopolitan patriotism.

determines that demand? And in particular: Can there be too much demand for identity?

The demand can be something implicit, given by the feelings and opinions of a people; demand is explicit if it becomes a political issue, a matter of political programmes. In democracies at least, there is always an incentive for populist politicians to invest in identity politics – to declare diversity as being a danger, to force assimilation, to suppress or to expel those who do not conform. This temptation may be the stronger, the smaller the reach of sovereign self-governance of a polity is: One may be helplessly exposed to the economic forces of globalization, to military imperialism or whatever, but identity politics is a field where something can be done at home and without external interference.

This is the area where the distinction between liberal and illiberal democracy (Zakaria 2003) may make sense: Liberal democracy would be the type of democracy with only a limited demand for identity. It is a type of polity where the identification with the central political institutions and the adequate process is common across different social groups and strong enough to embed diversity, to tame majorities and to make minorities patient. Illiberal democracy would be a democracy with a high demand for identity: The majority aims at defining the way of life for all (“Leitkultur”).

If strong harmony is the ideal, democracy is as much at risk as in a situation where people have no common ground whatsoever. In the latter case the polity is obviously in permanent danger of falling apart; but the same is true in the former case: Since, given the ideal of complete harmony and homogeneity, difference and dissent is always seen as a symptom of failed integration, the polity will be in a permanent state of perceived crisis as long as there remains any bit of individual autonomy.

#### *4.4 Third Problem: The Path to Democracy and the Stabilization of Democracy*

A stable democracy presumably is a democracy where the demand for identity is not too high and where the supply is roughly adequate to the demand (this means that *some*, not a *specific*, equilibrium of demand and supply is a necessary condition of stability).

Here too (similar to what we saw in the case of the power structure of a society) the formal institutions of democracy are more easily created than their social and cultural infrastructure. Again it is the political process itself by which to some extent this social and cultural infrastructure

is created, transformed, or destroyed. Some of this creation and transformation happens by political design, some of it is an unintended and possibly uncontrollable result of political action.

We may discern two different ways to deal with the problem of identity formation politically. The first and more active or constructivist way consists in trying to provide an adequate supply, the second and more modest and evolutionist way consists in dealing wisely with the limits given by the circumstances.

The active provision of an adequate identity supply can be described this way:

*Nation Building* is the central concept here in the cases of newly created democracies, especially those which bear the burden of a colonial history. But to some degree “nation” building is intended also in the case of newly created transnational democracies, like the European community.

*Integration* is the central concept where immigration changes the situation in established democracies. With respect to integration the central problem is to find a balance between too much and not enough integration – the debates centering around the concept of *multiculturalism* are pertinent here.

The less demanding way – adapting to an inadequate identity supply – has the following traits:

Ideas of this kind center on ways to reduce the demands which are made on the people, basically by putting some distance between the people and the political decision-making process. These ideas come in different forms: In connection with the prospects of the EU we find the idea of replacing *input* measures of democratic performance (actual participation and involvement) by *output* measures – the rationality, efficiency, equity, and therefore, hopefully, the public acceptability of the policies enacted (Scharpf 1998). Ideas of this kind are contested – they are more acceptable to the adherents of a *liberal* view on democracy than to adherents of a *republican* view on democracy; pertinent to the issue is also the discussion on democratic *elitism* and on *delegative* democracy (O’Donnell 1994).

The two ways to approach the problem are not necessarily mutually exclusive, since one can at the same time try to build or support a Civic Culture and – meanwhile – try to demand not too much of the people. Nevertheless, it might well be the case that there is a trade-off between the two approaches. Whether this is so depends on what we think about social learning processes. If one believes that political orientations are



mainly the result of political action, then one would have to argue in favour of a fostering of participation, supported by active nation building. If one believes that political learning is a function of the general – economic and social – conditions of life, then one will aim at transforming these circumstances first.

## V. Religion

### *5.1 Faith, Fallibility, Freedom, and Political Power*

Whether and to what degree religion – for instance in the form of civil religion – might be a *prerequisite* for a stable political community, is highly contested. It is much easier to tell what the conditions are under which religious convictions are *compatible* with democracy. This will be discussed now.

In the preceding section religion was already a theme – as one cultural phenomenon among other cultural phenomena, and mainly with respect to identity or cleavage. What was left out of the picture was the fact that religions – at least the three monotheistic religions, Islam, Judaism, Christianity – are a very special part of a society's culture. Their distinguishing trait is their claim to truth, exogenous to societal or political processes, a single truth, not made but revealed. A faith of this kind is considered as infallible by its believers, it cannot be refuted by whatever kind of mundane evidence; it cannot be submitted to voting or bargaining; no compromise is possible. Certainly all religions know doubt – but doubt is to be dealt with by rules internal to the particular creed; no external judge is accepted.

In some sense religions of this kind cannot coexist as equals – the idea of different and coexisting truths is mistaken in itself; and as soon as someone is convinced of knowing the truth, everyone who does not accept this truth can only be wrong in his eyes.

The implications for an acceptable relationship between faith and political power in democracies are obvious:

In democracies – and in any polity where individual freedom is protected – faith and political power are necessarily disconnected. In short, insofar as infallibility is claimed, no coercive power can be held; insofar as coercive power is held, infallibility cannot be claimed.

If the two spheres are not separated, individual freedom and therefore democracy is impossible. Where government claims infallibility (and authority in religious matters) no room for political dissent in general

and for the interplay of government and opposition in particular remains. Where, on the other hand, religion claims governmental authority, religion becomes government – and obviously not a democratic government. In fact, state authority in religious matters is the same thing as religious authority in political matters.

### *5.3 The Political Consequences of Religious Convictions*

The idea of revealed truth can have very different consequences. Put as simply as possible, we may discern a consequence which could be called *fundamentalistic fanaticism* and a consequence which might be called *respect for diversity*. The difference between them does not lie in the seriousness of belief, but rather in the specific form the belief takes and in the respective positions concerning the moral autonomy of the individual:

Fundamentalistic fanaticism aims at political power for two reasons: First, fanatics do not think that people have a right to their own way to God including their own mistakes. Fanaticism rests on the idea that people should be saved with or without their own contribution and consent. This is the logic of the inquisition: to save someone's soul it might be inevitable to burn him. Where fanatics have access to political power, they will feel not only the opportunity, but also a duty to use this power in the right way. Second, fundamentalists read the respective holy book literally, as explicit law and not only as a set of basic principles. Since God has given the law, there is not much room for human legislature as a creative process. Together these traits imply that fundamentalistic fanatics have no use for democracy and also no use for restricted government. In the framework of an existing democracy they will expect the politicians to behave in the right way, and they will elect those who promise to so behave. They will find it difficult to accept a government as legitimate which acts in a different way, even if a majority supports this government.

The opposite position, respect for diversity, is not religious pluralism (which would collide with the idea of revealed truth<sup>6</sup>). Rather it is founded on the idea of individual autonomy which includes the right to be wrong.

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6 Hinduism for instance might be – in contrast to Judaism, Christianity and Islam – a genuinely pluralistic religion.

Respect for autonomy may have its foundation in the idea of faithful people's respect for faith as such (Cardinal Ratzinger: "a multicultural society cannot exist without respect for what is [seen as] sacred. This implies respect for what is sacred to other people."); it may also have genuine theological reasons, namely the idea that redemption is possible only if people find their own way to God (Qur'an, 2, 256: "There is no compulsion in religion"). Also, diversity respecting religiosity goes typically hand in hand with a propensity to read the respective holy book more flexibly than fundamentalists do – to be taken as a limited set of basic moral principles, not as a compendium of concrete legal rules for each and every circumstance of life. This leaves room for creativity and compromise in making concrete law. Together these traits imply that people of this kind have no serious difficulties accepting restricted government and democracy; they even may actively support this type of constitution.

Islam, Christianity and Judaism all contain both polar positions and everything in between as possibilities. None of these religions is either a fundamentalist-fanatic or a diversity-respecting creed. Individual persons have a choice as to how to interpret their faith, and, as we see everywhere, they choose in different ways. What happens politically then depends entirely on the collective configuration of these choices and its path, be it globally, regionally or locally.

A necessary condition of democracy is that fundamentalists do not dominate in a polity, which means that there is an intra-religiously strong or dominant conviction (which is shared inter-religiously wherever different religions coexist in a polity) that truth – however intensely believed – should not or cannot be forced on other people<sup>7</sup>.

What are the circumstances under which we can expect this condition to be fulfilled, what is the role of politics in this field?

#### *5.4 The Role of the Democratic State in Religious Matters*

We witness a return of religion into politics in various places, most notably in the Islamic world, but also in the United States. Some of the roots of this development lie in external circumstances – in the Islamic

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7 It is not a sufficient condition. If religion becomes an issue of identity politics, its adherents may behave aggressively towards other people even if their creed does not include the idea of only one true belief. Political Hinduism is probably such a case.

world the situation in Palestine and the ubiquity of corrupt secular elites play an obvious role. But our problem here is not primarily *why* religion returns into politics, but rather *what kind* of religious orientation it is: Is the dominance or at least dominant visibility of the aggressive forms of religion which we experience inevitable or not?

At first cut this is a question of the internal arrangements of creeds, mainly a question of the strength and ideological orientation of their internal hierarchies. The fact that Catholicism nowadays is less prone or vulnerable to fundamentalism than Islam or Protestantism, is – to a substantial degree at least – a consequence of institutional arrangements which give clear standards of distinction between center and fringe and where there is no competitive pressure on leaders and would-be leaders to take a radical position.

Now this is something which has to be taken more or less as given for politics. The option to take political control of the internal arrangements of religious groups is sharply limited for obvious reasons – the general legal order can be enforced by the state and has to be enforced, but not much more is admissible.

What then could be done politically to make democracy faith-proof? Is it wise to insulate politics from religion? Or is it wise to respect, support and encourage politically the diversity-respecting factions of the various religious groups? If we take the former as the more promising path, then strict laicism is the recipe to make democracy safe (faith then must be kept private); if the latter is seen as more promising, then the state should be neutral among different religious groupings but not neutral with respect to the possible factions and also not indifferent in matters of religion in general<sup>8</sup>: Insofar as religious convictions are important for people, it might be considered as a duty of the democratic state to protect the practice of religion; and it might be considered as legitimate if the state supports the development of a culture of mutual respect and discourages the development of a culture of fanaticism.

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8 A striking illustration of the alternative is one of the public reactions to the inauguration speech of the new German Bundespräsident, Horst Köhler: His concluding sentence “God bless this country” was judged by the grand old lady of German liberalism, Hildegard Hamm-Brücher, as “embarrassing”.

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