

## Rule of Law Background to Democracy

by Winston P Nagan

In the historical record of managing human groups, there are several contested models. There is “rule by the one”, the monarch, or the “rule by the few”, the oligarchs, “or the rule that empowers all citizens to participate in the decisions that affect the community”. It is the Greeks that gave an emphasis to the notion of popular participation of citizens in the process of decision making by, for and about them. It should be remembered however, that even this original form of democracy was flawed. Women had no effective participatory rights and since the economy was significantly dependent upon slaves to maintain the economic space for democratic practice, the slaves too did not participate. In short, even in its origins the democratic ideal was mainly aspirational rather than a statement of political fact. Still, there is a great deal that permitted this aspirational idea to endure although as a political force it had to contend with other powerful forces skeptical of the principle of democracy. One important aspect to the expansion of the rights of the citizen was the idea that rights could only be secured regardless of the forms of governance if they were co defied and accessible to the population at large. In short, the citizens’ rights and duties could be secured by the myth of the rule of law against democratic or oligarchic or monarchic abuse.

The earliest effort to join law with empowerment took place during the 1700’s BC the Emperor Hammurabi proposed a set of rules called the Code of Hammurabi. This code set out the rights and duties of the people that lived in the Hammurabi’s empire. Since these rights were co defied as law, they secured the legal rights of the subjects of the empire. This of course is not democracy but when the rights and duties of the citizens are secured it enlarges the space for individuals to make decisions about their interests.

During the early period of Roman law, there were constant conflicts between the lower class Plebeians and the Upper Class Patricians. One of the great sources of conflict was the fact that the average Pleb had no idea what his legal rights and duties were. This made them subject to exploitation and abuse. Pleb agitation resulted in the codification of the famous law of the XII Tables. This was the first essential codification of law in the western European tradition. This was not a major democratic advance but it enabled people to make decisions about their own affairs that could be secured by the codified newly crafted XII Tables.

As Roman law evolved, the idea of developing the rules governing all aspects of society lead to the creation of scholarly forms of codification in the form of the writings of distinguished jurists and their application by neutral judges. Even though these juristic writings were not officially characterized by the Law of the emperor, even the emperor was often bound to respect them. This made the jurists suspect and over time several of them were murdered because they generated subversive ideas that restrained the abusive authority.

The emperor Justinian determined that all the great corpus of the law should be codified which the jurists did. The compilation came in four books. One the {The Institutes} --- This was a

student's textbook, The {Kodaks} and the {Novellae} the new laws. This initiative made the rules of law accessible to all citizens and again, regardless of the imperfections of the political system, the codification of the law provided political space to the subject under the law.

These works inspired by Justinian later became the foundations of the emergence of enlightenment and University based education in Europe. This resulted in immense scholarly energy directed at systemizing the law in the books. However, the written law also became a source for protecting individual rights. These scholarly works formed the basis of one of the most revolutionary developments in expanding the democratic ideals in France. Napoleon directed that the law be reduced to codes and in codified form, the law would be accessible to all citizens. The Napoleonic codes gave significant inspiration to the individual citizen having a capacity to rely on the written law to protect them from governmental abuse. The codes still endure today.

In England, another revolt inspired by the nobleman required King John to subscribe to a document referred to as the Great Charter, The Magna Carta. Essentially, the Magna Carta blocked the King from exploiting the rights of the nobleman. The Magna Carta soon extended to all English men. It established the great principle that even the great monarchists are bound by the law. These limits inspired parliamentary processes and the gradual secretion of democratic values and parliamentary institutions. It should not be thought that the struggle between law and monarchy was simple. Monarchs resisted the idea of being subject to law and in England, a revolution resulted in the removal of the monarchs head.

The great revolution in the United States against the English monarch was reinforced by the idea that the American Revolution was a democratic revolution. In this revolution the congress was elected and so was the President. However, women were not fully enfranchised and slaves were completely left out of the notion of the body politic. Notwithstanding oligarchic tendencies survived and they presented a challenge to democracy when the south of the United States decided to withdraw. Abraham Lincoln understood the challenge that this posed to the survival of democracy and in his Gettysburg Address he pointed out that the civil war has been fought so that government could of the people, for the people, by the people and will not perish from the Earth.

The First World War was a war fought by monarchs and oligarchs and ruling classes, this was a war in which technology out struck the military brain. Eventually the US came into the war on the side of the Allies who were much more democratic than the oligarchic Germans. Wilson, the American president, had a big picture that could emerge as a consequence of the war. His vision was World Peace and the Universalization of Democracy by the principle of self-determination. Unfortunately, the league could not live up to their promise as dictatorships began to flourish. Soon, all were engulfed in the Second World War. However, Wilsonian idealism was not dead. It reemerged in the form of the Atlantic Charter and the four freedoms upon which the UN Charter is based. These freedoms were freedom of speech and expression {democracy}, the freedom of consciousness and belief {more democracy, freedom from want {economic democracy} and freedom from fear [the freedom from war]. During the post-World

War period, the world community emerged their global constitutional system based on the UN Charter and a global Bill of Rights based on the Universal Declaration of Human rights and several important covenants that specify the fundamental rights of the individual in the world community.

Essentially, the Human rights dimension of the development of these rights was largely inspired by the human empowerment and self-determination. In short, it was fundamentally inspired by the idea of democracy secured by the rule of law. This does not mean that it would be an instant global transformation from monarchy or oligarchy to democracy. This is a matter that is still greatly contended. For example, one of the fundamentals of the law was the Stalinist controlled USSR. The USSR, although it used the rhetoric of self-determination, it was essentially a stalinistic autocracy and its influence spread as a contending ideology to the ideologies of social democratic liberalism. This is meant that we went through a global constitutional crisis called the Cold War with a threat of nuclear conflict and today even in the post-communist world, there is a strong residue emerging from Mr. Putin projecting an authoritarian dispensation as a Bull Walk against democracy. The fight for democracy continues. Apart from the political polarity generated by the Cold War, the UN charter which was the successor to the League of Nations, inherited the democratic principle in the form of the right to self-determination. This principle of self-determination generated by the league was also an instrument that challenged alien rule via colonialism or imperialism. The principle of self-determination and its democratic implications are spelled out in detail in the Declaration on Principles of International Law concerning friendly relations and cooperation amongst states in accordance with the charter of the United Nations. (1970) The depreciation of democratic values is further indicated in the Declaration when it states “subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle as well as a denial of fundamental human rights.”

The International Bill of Rights provides a documentary foundation for the human rights to democracy. In particular, Articles 18 through 21 highlight the most important foundations of democratic values. To this we should add, Article 6 of the Universal Declaration of Human Rights which stipulates “everyone has the right to recognition everywhere as a person before the law.” The Universal Declaration is complemented by two of the vitally important instruments of the International Constitutional System. These are the International Covenant on Civil and Political Rights (1966) and The International Covenant on Economic and Sociocultural rights (1966). These instruments are further supplemented by volumes of International and Regional instruments affirming the centrality of the human rights to democracy. These documents in effect represent the rule of Law foundations of the human right to democracy as a global alternative.

In the current picture of world politics, democracy flourishes but it is not unchallenged. Recent revelations concerning the electronic interference with elections held in the European Union and the United States can potentially be very destabilizing. These interventions represent an effort to undermine the confidence in the integrity of political participation in elections. Even without foreign interference, there are still significant efforts in the United States. For example,

voters suppression and the manipulation of voting districts to dilute the value of political participation. In addition, in states where there are restraints on financial campaigning, the consequences often arise in Plutocratic influence.

This is the summary of the fundamental values incorporated in the democratic ethos  
“Everyone has the right to take part in the government of his country, directly or through freely chosen representatives, everyone has the right to equal access to public service in his country, the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures”

Source: <http://www.youthforhumanrights.org/what-are-human-rights/videos/right-to-democracy.html>