

# **THE BELL CONFERENCE: SECURITY CHALLENGES OF WESTERN CIVILIZATION**

## **Pressures Upon the World of Democracy & Revival of Western Civilization**

### **Legal Protections of Democratic Life: The Transparent Electoral Process**

By Benjamin E. Griffith\*  
&  
Sona N. Pancholy\*\*

**Stone Bell House, Old Town Square, Prague, Czech Republic  
11-12 May 2007**

*“[D]emocracy is the worst form of Government except all those other forms that have been tried from time to time.”*

Sir Winston Churchill<sup>1</sup>

#### Introduction: “NUTS!”

Post-modern pessimists tell us that democracy is on the decline. One can scan the horizon of modern Europe, a 25-nation European Union that has become the remarkable counterweight to the United States of America, and easily conclude that democracy is on the ropes. In the face of the fall of communism in 1989, Sir Ralf Dahrendorf, a sociologist and distinguished author of many books and essays on social democracy and political theory, opined that Central Europe’s reformation would be difficult. He predicted that “it will take six months to reform the political systems, six years to change the economic systems, and sixty years to effect a revolution in the peoples’ hearts and minds.”<sup>2</sup> Given the resurgence of democracy and economic progress in Central Europe, which was underscored by prompt action taken by governments to develop strong economic influence,<sup>3</sup> one may ask whether that prediction has stood the test of time.

The international community has begun to recognize the increasing threats to democracy, partially evidenced by the convening of this important Conference for the second year in a row. The call for action reached the United Nations when “[i]n June 2000, over 100 governments gathered at the first Community of Democracies meeting in Warsaw and pledged to form caucuses at international and regional institutions to support resolutions and other international activities aimed at the promotion of democratic

governance.”<sup>4</sup> The important role of legal protections to both strengthen democracies, and forestall its erosion was recognized in the United Nations General Assembly Resolution on Promoting and Consolidating Democracy (Res A/55/96).<sup>5</sup> The Resolution calls upon States to enact and implement specific measures to promote and consolidate democracy. The importance of public participation and oversight of government is central to the demands of this landmark resolution.<sup>6</sup> This paper raises possible ways in which the Rule of Law can enhance public participation, particularly through fair elections.<sup>7</sup>

One can probably agree that the correlation between democratic elections, the rule of law, good governance and economic development is undeniable; moreover, “if conducted in accordance with democratic standards and in a timely fashion, electoral events can foster stability by promoting the greater participation of the political, ethnic, linguistic and religious spectrum in a country.”<sup>8</sup> Periodic elections, along with “participatory governance, equality, individual rights to ensure pluralism, the existence of the rule of law, and due process,” are prime examples of the essential elements of democracy.<sup>9</sup>

But when challenged to find a single nation in the Western world where elections are free, fair, equal, universal, accountable, and transparent, however, one might search in vain. The pessimists solemnly invoke Spengler’s dim view of the future of Western Civilization. One response to such dire predictions is to crawl into an intellectual cave and surrender, or better than that, pour the kool-aid spiked with arsenic and get it over with Jim Jones-style. Another response can be found in the Belgian town of Bastogne. This charming jewel of a town hosts a “Nuts” Museum and a “Nuts” Café. It is hard to find a store in town that does not sell “Nuts” t-shirts or “Nuts” coffee mugs.

“Nuts” was the most famous four-letter word reply in World War II history. It was in the darkest hours of December 1944 when freedom and democracy seemed to hang precariously on the edge of oblivion. A single voice, in a single word, told us that all was not lost.

In sub-zero weather, on a bleak and desperate winter day, that voice belonged to Brigadier General Anthony McAuliffe. He had just received a German commander’s demand for the American forces to surrender. McAuliffe’s 101<sup>st</sup> Airborne Division held Bastogne, but was surrounded by the advancing German army during the Battle of the Bulge. When McAuliffe heard the surrender demand, he laughed and said “Us surrender? Aw, nuts!” When he realized that he had to make a formal response to the enemy’s leader, he immediately wrote the following dispatch:

“To the German Commander: NUTS!”<sup>10</sup>

As one medic put it, “We didn’t give a damn what the Germans wanted, so it was a great answer to a stupid question. And it’s a piece of history that won’t die.”<sup>11</sup> This typically American response expressed exactly how Americans felt about surrendering. It epitomized the best of humanity in defense of western civilization. This spontaneous remark served as a huge morale boost for the public back in the States when it heard

about a desperate situation of American forces being surrounded at Bastogne. In modern times it illustrates a classic rebuttal to the dim views of democracy expressed throughout the latter part of the 20<sup>th</sup> Century.

### Democracy on the Decline?

Complacency and arrogance may be hallmarks of a political party on the verge of losing power. To see the most recent example of such a power shift, we need go back no further than the November 2006 election in the United States of America. This election resulted in an upheaval in the United States Senate and House of Representatives, as the Republican majority in each chamber was reduced to a minority, and the Democratic Party took over the reins of power as the majority party. The people spoke. Their voice was heard through the ballot box.

In this same vein, is it not fair to conclude that complacency and arrogance are also characteristics of a secure democracy on the decline? And if this is true, what legal protections can be availed of to protect and preserve democratic life?

In order to begin to assess answers to these questions, we must first start with understanding the behaviors that we are seeking to forestall. Law is ultimately about changing social behavior. In a recent article, Arch Puddington of the Freedom House noted an emerging change in the ways in which democracy is being challenged:

First, the targets of the pushback are less likely to be political parties or labor unions—the primary targets in the past—than independent nongovernmental organizations, other civil society institutions, and the press. Second, regimes are generally less likely to employ the traditional techniques of extreme repression: military rule, mass arrests, assassinations, torture, and coups. Instead, governments often use legalistic tactics to put potential voices of opposition out of business. Critical media are silenced by regime-directed economic pressure (such as discouraging advertisers from doing business with independent newspaper and broadcast outlets), the denial of licenses to privately owned television stations, unabashed state takeovers, and criminal slander charges against reporters who criticize the leadership. Another increasingly common tactic is use of the tax police to investigate and reinvestigate NGOs that are critical of government policies. Moreover, a number of regimes have recently adopted policies that make it difficult or impossible for domestic NGOs to receive support from foreign sources. Such policies are a potent weapon, given the lack of local sources of financial support in impoverished countries.<sup>12</sup>

Ultimately all these behaviors seek to restrict public access to information and the power of the public to voice their opinion, oversight, and demands for accountability. There is hope in these new tactics; they require the compliance of law. If laws are drafted against

arbitrary decision-making, behaviors such as the above become more difficult to exercise from the public halls of government.

The premise of this presentation is that equal voting rights and the free exercise of the fundamental right to vote in a transparent electoral process by a nation's citizens provides the strongest protection for democracy and the democratic life.

### The Decline of the West

In the summer of 1918, Oswald Spengler published the first volume of Der Untergang des Abendlandes (The Decline of the West), in which he advanced the idea that Westerners were Faustian.<sup>13</sup> Described by some as a 20<sup>th</sup> Century Cassandra, Spengler saw this Faustian civilization as one in which the populace constantly strived for the unattainable. Spengler held the deterministic view that civilizations rise and fall according to a natural and inevitable cycle.

According to Spengler's theory, we are now living in the winter of this Faustian civilization. It is a civilization in which the Western Man is a proud but tragic figure, one who strives and creates, all the while with silent acquiescence in the gloomy truth that his actual goal will never be reached. Spengler's world view was nothing less than an attack on the idea of progress, a rejection of the Eurocentric view of the history of Western Civilization, a provocative pessimism that, in retrospect, appeared to be confirmed by the Great Depression, totalitarianism, genocide, the dawn of the nuclear age, and the emerging global environmental crisis.

Spengler's world view had serious implications for the future of Western Civilization. If he was correct, then the likelihood was that around the end of the 21<sup>st</sup> century, money and democracy would increasingly hollow out the traditional forms of society, until both collapsed in the face of mere power politics.

### A Grim World View

The world view created by Oswald Spengler was grim indeed. This was a world in which our Western civilization was in a protracted fall, more of a sunset than a precipitous, blinding flash. More of a whimper and sigh than a sudden, cataclysmic event. If the 19<sup>th</sup> century was the winter of the West, the 20<sup>th</sup> century would witness the beginning of the end of an era of individualism, humanitarianism, liberalism and democracy. The masses would then accept with resignation the victory of the *Caesars* and obey them.<sup>14</sup>

Spengler's central theme was that civilizations and culture are subject to the same cycle of growth and decay as humans. This pessimistic world view resonated with post-World War I German culture, and its influence went far beyond the national borders of Germany.<sup>15</sup> Democracy was the government of a declining civilization, driven by money, corrupt to its core, and doomed to fail. Acceptance of Spengler's dim view of democracy by many who struggled to survive under the Weimar democratic system was arguably

widespread enough to pave the way for a post-democracy type of government with a strong-willed leader.

Drawing upon Goethe and Nietzsche, Spengler gave us an outlook of world history that we can now accept as a model of Western civilization – or reject with a principled, firm and deliberate response of “NUTS!” As you might surmise, the latter response is recommended in this presentation.

### Rule of the Rich?

Democracy is not the rule of the rich, a plutocracy in which the power of the State is centralized in and wielded by an affluent social class. Nor does democracy tolerate a high degree of economic inequality, albeit pockets of such inequality do exist and are the constant moving targets of legislative measures, political rhetoric, and public debate. To those who see Western democracy as a plutocracy grounded on the unholy fusion of money and government, it is inconceivable that such a form of government could survive, much less thrive beyond the present generation.<sup>16</sup>

But Western democracy and democratic life are not so fragile, and legal protections exist to sustain them. The alternative is unthinkable. Democratic life can survive and thrive in the face of what its detractors would label a plutocratic disproportionality. Western democracy can and will endure despite charges that the rich are said to have more votes and more voting power than the poor and marginalized.

### Money and Politics

In Spengler’s analysis of democratic systems, he focused on the inordinate influence on public perception of political issues by the wealthy and those who owned and controlled mass media. Specifically, he argued that even the exercise of one’s constitutional rights requires money, and that “voting can only really work as designed in the absence of organized leadership working in the election process. As soon as the election process becomes organized by political leaders, to the extent that money allows, the vote ceases to be truly significant. It is no more than a recorded opinion of the masses on the organization of government over which they possess no positive influence whatsoever.”<sup>17</sup>

Spengler also asserted that democracy is simply “the political weapon of money, and the media is the means through which money operates a democratic political system. ... Through the media, money is turned into force – the more spent, the more intense its influence.”<sup>18</sup>

### A Reassessment of Spengler

Oswald Spengler was a visionary philosopher, but he was too pessimistic. In 1991, John Farrenkopf wrote Prophet of Decline, reassessing Spengler’s challenging ideas on democracy and offering a fresh perspective of the future of the United States.

According to Farrenkopf, the conventional picture of Spengler as a consistently antidemocratic thinker is simplistic and wrong. In the years before Germany's traumatic defeat in World War I, Spengler was a conservative advocate of the quasi-democratization of the Second Reich. Farrenkopf examined Spengler's relationship to German historicism, his place in the German traditions of cultural pessimism and Realpolitik, and stance toward Nazism. He traced Spengler's intellectual evolution through a chronological analysis of his private papers and other works, showing how he substantially revised his historical philosophy. The unending continuum of alternately rising and receding cultures Spengler outlined in The Decline of the West was transformed in his twilight years into an arresting vision of world history as a line of development that spirals upward, before culminating in a cataclysmic end to civilization.

In an era of globalization, global warming, global economies and changes that are at once hypercomplex and accelerating, Prophet of Decline provides an alternate viewpoint on the direction in which Western Civilization is heading.

### Threats to Protection: Complacency and Corruption

There are legal protections in place to sustain Western democracy and democratic life, but they can neither be taken for granted nor left unattended by a complacent citizenry. How do we protect against a complacent citizenry? Can the Rule of Law play a role in encouraging an active and watchful populace? We argue that in fact the legal systems in place provide powerful tools. Recent developments in international law provide us one example of how law has an impact in protecting democracies from complacency. In trying to assess what has been driving democratization in recent years and what holds some countries back from fully realizing this potential, Larry Diamond of the Hoover Institute addressed four factors, including “changing international norms and conventions.” Diamond states that,

“[a]t a minimum, this evolution has done two things. First, it has lowered the political threshold for intervention, not only for the multilateral actors but for states and NGOs as well. Second, it has emboldened domestic advocates of democracy and human rights. No factor has been more important in driving and sustaining the third wave of democratization than this cluster of international normative and legal trends.”<sup>19</sup>

So what are the types of things that international and national laws can provide for which will enhance protections of democracy? If democracy is government by the people then the voice of the people must be heard. There are many forums which ensure this occurs. Non-governmental organizations, grassroots mobilization, free and open media, conferences such as this one. But ultimately they all must lead to a way to change policy or hold governments accountable and that is where elections become critical cornerstones. One of the most significant of protections of democracy, and ways to empower the citizenry, is a transparent electoral process. That process is meaningless unless equal voting rights are conferred upon all citizens of voting age who are qualified

to vote. In this context, equal voting rights are based upon a broad, universal suffrage that forbids discrimination, denial of the right to vote or any other infringement of that right on the basis of race, religious, ethnicity, national origin, handicap, language minority status, or other suspect classifications.

Many other formidable threats to these legal protections exist, chief among which is corruption, which can take many forms and seep into the democratic process like a cancer. Thinly disguised bribery like that which is the subject of pending indictments in the ongoing scandal in Washington, D.C. can at times be indistinguishable from lobbying. Partisan political fundraising in its extreme forms, illegal donations to candidates, political parties and corporate shells, ineffective campaign finance reform efforts that exempt questionable financial loopholes as large as a sewer, and similar undue influences as subtle as they are distorted can subvert clean, fair and open elections and the way in which public officials are elected to office in such a way that the democratic governmental system is changed into a system predicated on class war.

A “culture of corruption” is often cited as one of the key reasons the voice of the people is either actively subverted, or passively not exercised. How can the legal system provide curbs against what many believe is just the usual course of business? In a seminal manual on legislative drafting, Professors Robert and Ann Seidman tell us that “[d]rafters concerned to defend against possibilities of corruption should consider as engraved in stone a second commandment: corruption stems not only from weak individuals, but also from weak institutions.”<sup>20</sup> Corruption may not be eliminated, but legal efforts to curb it, including election laws that cause government officials to be held accountable to their constituency, are critical in the effort to protect democracy.

### Democratic Elections: No One Size Fits All

Jeane Kirkpatrick, scholar and former U.S. ambassador to the United Nations, offers this definition of democratic elections: "Democratic elections are not merely symbolic....They are competitive, periodic, inclusive, definitive elections in which the chief decision-makers in a government are selected by citizens who enjoy broad freedom to criticize government, to publish their criticism and to present alternatives."<sup>21</sup>

Democratic government and elections that are fair and impartial are simply opposite sides of the same coin. American Humorist Will Rogers once said, “Elections are a good deal like marriages, there’s no accounting for anyone’s taste. Every time we see a bridegroom, we wonder why she ever picked him, and it’s the same with Public Officials.”

There is no single formula or unique pattern for democratic government, nor are all fair, impartial and transparent elections conducted in exactly the same way. Indeed, election procedures, election laws, and election principles differ from region to region and nation to nation. Democracy is not reserved to one nation, nor does any one nation have a monopoly on fair, impartial and transparent elections.<sup>22</sup>

## International Election Principles

Much ink and more blood have been spilled in defense of universal, equal voting rights and fair, impartial and transparent elections than any other subject aside from liberty and freedom. One of the fundamental characteristics of democracy is accountable governance, and its nexus with the electoral process is clear. Government that is of the people, by the people and for the people is one of the best bulwarks against despotism, tyranny and corruption.

Such a democratic government may take many forms throughout this complex world of ours. But such a government at its core promotes and protects fundamental human rights, and those human rights include the right to vote and the right to seek election to public office. As any nation moves toward and embraces a democratic political system, its citizens are accorded greater and greater measures of meaningful political access, participation and dialogue. With these come heavy, ongoing individual and collective responsibilities of the electorate to remain vigilant, proactive and informed.

Numerous international and regional agreements and standards provide guidance for developing legal schemes that can be employed by nations to create democratic electoral processes. These include United Nations Development Programme publications such as *The Electoral Systems Practice Note*; Article 25 of the International Covenant on Civil and Political Rights; Human Rights Committee General Comment No. 25 on abusive interference with voter registration; Inter-Parliamentary Union declaration and advisory standards; The Protocol to the European Convention on Human Rights and Fundamental Freedoms on free elections; case law from the European court of Human Rights; and Inter-American Commission non-binding comments on Guatemala report.<sup>23</sup>

The United Nations General Assembly, in its Resolution on Promoting and Consolidating Democracy (Res A/55/96) called upon states to enact specific measures, which provide a useful guide for the purpose of our discussion:

(d) Developing, nurturing and maintaining an electoral system that provides for the free and fair expression of the people's will through genuine and periodic elections, in particular by:

- (i) Guaranteeing that everyone can exercise his or her right to take part in the government of his or her country, directly or through freely chosen representatives;
- (ii) Guaranteeing the right to vote freely and to be elected in a free and fair process at regular intervals, by universal and equal suffrage, conducted by secret ballot and with full respect for the right to freedom of association;
- (iii) Taking measures, as appropriate, to address the representation of underrepresented segments of society;
- (iv) Ensuring, through legislation, institutions and mechanisms, the freedom to form democratic political parties that can participate in elections, as well as the transparency and fairness of the electoral process, including through

- appropriate access under the law to funds and free, independent and pluralistic media;
- (e) Creating and improving the legal framework and necessary mechanisms for enabling the wide participation of all members of civil society in the promotion and consolidation of democracy, by:
- (i) Respecting the diversity of society by promoting associations, dialogue structures, mass media and their interaction as a means of strengthening and developing democracy;
  - (ii) Fostering, through education and other means, awareness and respect for democratic values;
  - (iii) Respecting the right to freedom of peaceful assembly and the exercise of the right freely to form, join and participate in non-governmental organizations or associations, including trade unions;
  - (iv) Guaranteeing mechanisms for consultations with and the contribution of civil society in processes of governance and encouraging cooperation between local authorities and non-governmental organizations;
  - (v) Providing or improving the legal and administrative framework for nongovernmental, community-based and other civil society organizations;
  - (vi) Promoting civic education and education on human rights, inter alia, in cooperation with organizations of civil society<sup>24</sup>

### The Rule of Law

In addition to these characteristics of democracy and a democratic government, respect for the rule of law is paramount. In this context, it is important to know the difference between the rule *of* law and rule *by* law, just as it is important to have in place a government of laws and not of men. Rule of law is precisely that. Rule by law is a cynical mirage behind which despots continue to rule with an iron fist. Moreover, the rule of law is not a mantra that can be mouthed and brought into existence without effort. Respect for the rule of law requires constant vigilance, and in the context of a transparent electoral process, it requires an informed electorate, constant observation and accountability. A truly transparent electoral process must also bear the hallmarks of freedom from media intimidation and freedom from opposition intimidation.

It is through regularly held democratic elections that citizens can exercise influence over governmental policy decisions that have an impact on their daily lives. The chief agents for bringing together and giving voice to the interests and concerns of citizens are political parties, and it is political parties that serve as the principal mechanisms used by political candidates, incumbent or challenger, to achieve their stated electoral and policy goals. Where strong opposing political parties are not available, the role of NGOs, advocacy groups, and international watchdogs becomes more critical.

Respect for human rights, fundamental freedoms, gender equality, and fundamental social and associational rights are the hallmarks of strong democratic government. Support for the rule of law, accountable governance coupled with the ever-improving capacity for good governance, and participatory political dialogue are the fuel

for democracy. Nobody ever said democracy was a cake walk. You work to maintain it, or you lose it, slowly but surely, like sand seeping through an hourglass.

### Alexis de Tocqueville's View of Unlimited Democracy

No discussion of the future of democracy would be complete without paying homage to Alexis de Tocqueville. When this 26-year old Parisian traveled across America in 1831, he said 'The whole country is nothing but one vast forest, in the middle of which they have made clearings.' He suspected that the people occupying this strange, blank, silent, untouched continent held the future in their grasp. As he remarked to a friend, 'We are traveling towards unlimited democracy. I don't say this is a good thing. What I see in this country convinces me, on the contrary, that it won't suit France; but we are being driven by an irresistible force. No effort made to stop this movement will do more than bring about brief halts.' A great grandson of Malesherbes, Louis XVI's defence counsel, guillotined along with almost his entire family, and nephew of Chateaubriand, Tocqueville belonged to a family intimately acquainted with the grief and horror of the revolution.

It was the level tone of his writing and his absolute lack of partisanship that disconcerted and disarmed readers then as now. Democracy made him an instant celebrity in Paris!

### The Right to Vote in 1805 and 2007

It took phenomenal nerve for this young Frenchman to advocate democracy at a time when the net result of more than 40 years of convulsive upheaval in France - revolution and counter-revolution, slaughter, mayhem, riot, imperialist war and national defeat - was that just over 2 per cent of Frenchmen had the right to vote. In England, even after the Reform Bill of 1832, it was 10 per cent. All adult white males in the US could do so.<sup>25</sup> The dramatic comparison of then and now needs no further elaboration. Democracy, albeit in different forms with different characteristics tailored to the needs, history and traditions of each nation, has grown, not declined. It still needs to be nurtured, just as a fire needs to be tended, lest its flame die down and we are left with smoldering embers.

### America, the Rough and Tumble

Alexis de Tocqueville was a sophisticated, inquisitive, patronizing Parisian so unprepared to find even a semblance of polite society in New York that he had to write home at once for silk stockings, cravats and 24 pairs of kid gloves. The United States overturned all his preconceptions. 'Everyone shakes hands,' he reported with incredulity. The Protestant religion shocked him deeply, and so did the self-respect of servants who felt they had a perfect right to chat to their employers, and waiters who sat down at table with their customers. In Washington he and his traveling companion were astounded by the simplicity of the presidential palace, where Andrew Jackson poured their drinks himself with no sign of attendant guards or courtiers.

It was all a long way from the Tuileries. Tocqueville understood by this time that the men who shaped and ran America had more to teach than learn from visiting Frenchmen: 'It is no longer a question of obtaining from them suggestions about topics we are ignorant of but of re-examining in conversation with them almost everything we already know.'

The sensation made him sick and giddy. Tocqueville had felt like this 10 years before, as a schoolboy in his father's library, when he lost his religious faith in a spasm of doubt so fierce that the ceiling, walls and floor seemed to heave and judder. 'I remember that moment with horror,' he wrote home from the US. In retrospect he saw his whole life as a series of shocks that shattered his philosophical and political underpinning with terrifying violence: 'Once more my intellectual world totters and I am again lost and desperate in a powerful tide which shakes or inverts every truth on which I have based my beliefs and conduct.'

### Middle Classes Governance of the State

Tocqueville always described his imaginative shifts of vision in terms of storm, flood, earthquake, tempests of anxiety and dread. He suffered all his life from stress, dyspepsia, stomach problems, allergies and the agonies of stage fright. We see through the eyes of civilized Frenchmen like Tocqueville so that his prejudices - or rather his refusal to give way to them - make his achievement all the more impressive. 'One thing is incontrovertibly demonstrated by America which I doubted until now: it is that the middle classes can govern a state,' wrote the aristocrat whose iconoclastic intellect didn't stop him being noble to his fingertips. Despite petty passions, incomplete education and vulgarity, 'they can demonstrably supply practical intelligence, and that is enough'.

The views he expressed at this time were unheard of, if not inconceivable, at the time in France. Tocqueville had crossed the Atlantic confidently expecting to find a primitive backwoods people struggling to operate a crude and essentially unworkable system of government. Unlike his English contemporaries, he found nothing of the sort. His book Democracy in America describes a competent, orderly, stable republic based, in sharp contrast to every other existing state, on liberty and equality. He contemplated calmly the crazy idea that all other nations - including 'even the great powers of Europe' - would one day follow the US example.

'In America a free society has created free political institutions,' he jotted down in one of the notebooks that formed the basis of his book. 'In France free political institutions will have to create a free society.' It would be another hundred years and more before the French finally adopted a form of government resembling a Tocquevillean republic in the late 20th century.<sup>26</sup>

Tocqueville enlarged our sense of human possibility and of the meaning of human lives in everything he wrote. He was one of the sharpest and most sympathetic writers of all time. The question is whether in our time his observations about Democracy in America hold continued validity. Indeed they do.

### Charter of Paris for a New Europe: Whither The Euphoria of 1990?

1990 witnessed the convening of leading democracies and their optimistic leaders in the City of Lights, culminating in the Charter of Paris for a New Europe.<sup>27</sup> With its opening line, the Charter cut a bold stroke for electoral accountability, underscoring the need for free, open and transparent elections:

Democratic government is based on the will of the people, expressed regularly through free and fair elections. Democracy has as its foundation respect for the human person and the rule of law. Democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person.

Democracy, with its representative and pluralist character, entails accountability to the electorate, the obligation of public authorities to comply with the law and justice administered impartially. No one will be above the law.<sup>28</sup>

Signatories to the Charter of Paris solemnly affirmed that “everyone also has the right ... to participate in free and fair elections.”

Unless the Charter of Paris is to be shelved as just another empty platitude relegated to the dustbin of international failures, it should be upheld, promoted, discussed, and extended. As one of the most significant frameworks for democratic elections and one of the most visible moving forces for the constant improvement of the administrative and legislative structure for democratic elections, the promise of “democracy, peace and unity” that was made in Paris in 1990 cannot be allowed to flounder. The promise cannot be allowed to crash on the shoals of tainted elections. The promise cannot be allowed to be diluted by problematic elections that are propped up on a foundation weakened by a general erosion of human rights. The promise cannot be allowed to be honored in form but breached in substance through intolerance for or curtailing of the freedoms of speech, association or assembly. The promise cannot be allowed to be thwarted by harassment or illegal interference undertaken on the part of national, regional or local executive authorities in the electoral process in order to benefit those in power.

The alternative is an unthinkable descent into anarchy, absolutism and loss of fundamental freedoms that are the hallmarks of democracy worldwide.

### Political Domination & Manipulation: Wolf in Democratic Sheep’s Clothing?

Now let us take a look at what is happening to the concept of “democracy” and the day-in-day-out practice of fundamental democratic principles such as the transparency and accountability of the electoral process. Are there today forces of state-directed political domination using the same or similar methodology prevalent in the days before the “fall of Communism” to manipulate public life? Do we have in our midst the agents of deception, subversion, discreditation, infiltration of NGO’s, universities, and other

institutions, and deceitful creation of democratic-looking institutions, all fulfilling the formal requirements for democracy but in fact subverting truly democratic institutions by incitement of chaos, perhaps occasional murders when nothing else works? When the president of a sovereign nation addresses an assembled security conference of foreign and defense ministers and says that the West must back off pushing his nation to be more democratic and more respectful of human rights<sup>29</sup>, these are not empty challenges. These are descriptions of the wolf at the door, the wolf wearing democratic sheep's clothing. Our task is only partially complete when we identify the wolf.<sup>30</sup>

### Conclusion

We look back over two centuries to the incredibly optimistic writings of Alexis de Tocqueville and see that he was indeed one of the sharpest and most sympathetic writers of all time. In mid-2007, can we still recognize this same enlarged sense of human possibility and find an expanded meaning of human lives that don't just survive, but thrive, in Western democracy? The answer is a resounding "Yes!"

Turning to the United States of America and giving an objective assessment of the nature of democracy in this nation born in the fire of revolution over 230 years ago, one must concede that American history is replete with contradictions such as slavery, racial apartheid, and the vestiges of official discrimination in a country founded on the lofty ideals of freedom and human equality. Yes, our democratic experiment has had its problems and failings. But the democracy upon which the government, people and institutions of this relatively young country was based continues to work to overcome and move beyond these painfully shortcomings. It tries to make it better. The founding president and chief executive of the Jamestown Project, Stephanie Robinson, echoed this belief recently when she made some poignant observations on the 400<sup>th</sup> anniversary of the Jamestown Colony. She noted that in this fledging colony in what would later become the Commonwealth of Virginia, "the promise of our founding ideals lived alongside slavery and racial domination."<sup>31</sup> But she concluded on a guardedly optimistic note:

Democratic life is an ongoing project, an unfinished masterpiece. Democracy is a process whereby citizens try to make it better. It can work if we recognize our failings and do the hard work of remedying them.<sup>32</sup>

The benefits of a democratic government and the future of Western democracy hinge on respect for the rule of law, good governance, protection of human rights, democratic institutions, and fair, impartial and transparent elections. Such elections in which citizens freely exercise equal voting rights can and do lead to healthy political discourse, freedom of expression by candidates and about candidates, a range of candidates running for public office, the presence of opposition political parties, meaningful election monitoring and observation without barriers, unimpeded voting and an independent media free to report on all aspects of campaigns, from the conduct of voting to the tabulation of the results.

In our country where Congress recently reauthorized and extended vital protections of the right to vote for minorities under the Voting Rights Act Reauthorization Amendment of 2006<sup>33</sup>, the legal protections of democratic life are an ongoing process and will never be self-executing. Their efficacy requires hard work, constant vigilance, an informed electorate, and meaningful implementation of fundamental election principles that have achieved international recognition. This is no “pie in the sky” optimism. It is a political reality that prods some national leaders to resort to recrimination, Cold War rhetoric and audacity disguised as righteous indignation when they are confronted with the need to “be more democratic.” It is a political reality that cannot thrive in the presence of complacency, arrogance, and corruption. It is political reality forged in the fire of liberty and sharpened with the grindstone of freedom.

---

\*USA National President for World Jurist Association; President-Elect of American Bar Association Section of State & Local Government Law; International Municipal Lawyers Association State Chair, International Committee member, and Local Government Fellow; International Barristers Society; American Bar Association International Law Section, Europe Committee; Past-President of National Association of County Civil Attorneys; Juris Doctor, 1975, University of Mississippi Law Center; B.A. (English and German), 1973, University of Mississippi. Private practice as partner in Griffith & Griffith, Cleveland, Mississippi, focusing on election law, voting rights, environmental law and civil rights defense of state and local governments. Best Lawyers in America, Municipal Law (2007). Board Certified in Civil Trial Advocacy by National Board of Trial Advocacy.

\*\* International consultant currently serving as the Development Director for the World Jurist Association; Chair, Indus Women Leaders’ 2006 Summit; Co-Chair, National South Asian Bar Association 2005 Conference; Past-Secretary, South Asian Bar Association DC Chapter. Memberships: Women’s Foreign Policy Group, American Bar Association, Women’s Bar Association. Specialization in local government law, legislative drafting/strengthening, business development and client relationship management. Masters in Law (International Legal Studies), 1998, Washington College of Law; Juris Doctor, 1995, Boston University School of Law; B.A. (Psychology), 1995, Boston University. Licensed to practice in Massachusetts and District of Columbia.

## ENDNOTES

---

<sup>1</sup><http://www.enterstageright.com/archive/articles/0105/0105churchilldem.htm>

<sup>2</sup> Christopher S. Crago, *Rebuilding the Foundations of Iraq: Comparisons to the Revival of Democracy in Central Europe*, 18 Regent U. L. Rev. 157,158 (2005).

<sup>3</sup> *Id.* at 176.

<sup>4</sup> Campaign for a UN Democracy Caucus, available at: <http://www.democracycaucus.net/html/about.html> (last visited May 4, 2007).

<sup>5</sup> [http://www.democracycaucus.net/pdf/55unga\\_prom\\_democracy.pdf](http://www.democracycaucus.net/pdf/55unga_prom_democracy.pdf)

<sup>6</sup> 1. Calls upon States to promote and consolidate democracy, inter alia, by: (a) Promoting pluralism, the protection of all human rights and fundamental freedoms, maximizing the participation of individuals in decision-making and the development of effective public institutions, including an independent judiciary, accountable legislature and public service and an electoral system that ensures periodic, free and fair elections; *Id.*

<sup>7</sup> Participants are already aware that protecting democracy necessarily requires more than just the paper that laws are written upon. International cooperation, media, intelligence gathering, etc. are all vital. However the focus of the current discussion is to determine what tools the Rule of Law might offer. It assumes that one of the most significant ways in which democracy within the halls of government is protected is be

---

empowering the citizenry and fostering their active oversight and participation. Here the power of well drafted laws and ability of the people to exercise their voice in the decision making process is critical.

<sup>8</sup> Hrair Balian, *Ten years of international election assistance and observation*, at 8, accessible at [http://www.osce.org/documents/odihr/soo1/12/1670\\_en.html](http://www.osce.org/documents/odihr/soo1/12/1670_en.html).

<sup>9</sup> Justice Tassaduq Hussain Jilani, *Democracy and Islam: An Odyssey in Braving the Twenty-First Century*, 2006 B.Y.U.L. Rev. 727, 728 (2006) (“[W]hile the Muslim political world has deteriorated in its acceptance of democratic ideals, that has little to do with religious dogma. In fact, nations with strong Islamic belief systems have a bright potential to reemerge as deeply democratic societies.” Id. at 750.)

<sup>10</sup> <http://www.army.mil/soldiers/dec2000/features/bulge1.html>

<sup>11</sup> Id.

<sup>12</sup> Arch Puddington, *The Pushback Against Democracy*, THE 2006 FREEDOM HOUSE SURVEY, available at: [http://www.freedomhouse.org/uploads/press\\_release/puddington\\_JOD\\_16apr07.pdf](http://www.freedomhouse.org/uploads/press_release/puddington_JOD_16apr07.pdf).

<sup>13</sup> Spengler’s book was actually conceived before the outbreak of World War I and looked beyond Germany’s fate to address the fate of the West as a whole.

[http://en.wikipedia.org/wiki/Decline\\_of\\_the\\_West](http://en.wikipedia.org/wiki/Decline_of_the_West)

<sup>14</sup> <http://www.fordham.edu/halsall/mod/spengler-decline.html>

<sup>15</sup> For example, Henry Kissinger, National Security Advisor and Secretary of State to the late Presidents Richard M. Nixon and Gerald R. Ford, has stated that he was influenced by Spengler and urged Nixon to read *Decline of the West*. [http://www.reference.com/browse/wike/The\\_Decline\\_of\\_the\\_West](http://www.reference.com/browse/wike/The_Decline_of_the_West).

<sup>16</sup> In the eighteenth century, Alexander Tyler, an English professor, described the inherent flaw of democracies in the context of the fall of the Athenian Republic: "A democracy cannot exist as a permanent form of government. It can only exist until the voters discover they can vote themselves, at will, money from the public treasury. From that moment on, the majority votes for candidates promising the most benefits from the public treasury, with the result that a democracy always collapses over loose fiscal policy, usually followed by a dictatorship. The average age of the world's greatest civilizations has been 200 years. These nations have progressed through certain definite sequences. From courage by revolution to liberty, from liberty to abundance, from abundance to complacency, from complacency to apathy, and back to dependency."

<sup>17</sup> [http://en.wikipedia.org/wiki/Decline\\_of\\_the\\_West#Democracy.2C\\_media.2C\\_and\\_money](http://en.wikipedia.org/wiki/Decline_of_the_West#Democracy.2C_media.2C_and_money)

<sup>18</sup> Id., *Democracy, Media and Money*.

<sup>19</sup> Larry Diamond, *Universal Democracy?* POLICY REVIEW, NO. 119 (JUNE & JULY 2003), available at: <http://www.hoover.org/publications/policyreview/3448571.html> (last visited May 5, 2007).

<sup>20</sup> Ann Seidman, Robert Seidman, Nalin Abeysekere, *LEGISLATIVE DRAFTING FOR DEMOCRATIC SOCIAL CHANGE*, at 348 (Kluwer Law International, 2001). Note: The professors define “institutions” as “repetitive patterns of social behavior.” *See id.* at 11, box 1.5.

<sup>21</sup> *What is Democracy*, available at: <http://usinfo.state.gov/products/pubs/whatsdem/whatdm5.htm>.

<sup>22</sup> Can the democratic electoral process lead to negative consequences? While beyond the scope of this presentation, when we focus on transparent elections as a cornerstone of democratization, potential limiting principles have been advanced by scholars such as Fareed Zakaria, opining that elections may have negative consequences resulting in “illiberal democracies,” (*see generally*, *THE FUTURE OF FREEDOM: ILLIBERAL DEMOCRACY AT HOME AND ABROAD* (Norton, 2003)) and that affirmative steps must be taken to protect against such consequences. In this connection, certain hallmark measures (i.e., respect for the rule of law, transparency, participatory governance, impartiality, and fairness) must be present to ensure that elections are not used solely to facilitate authoritarian rules or otherwise create an artificial aura of legitimacy for their power. For a reaction to the questions and cautions raised by scholars such as Zakaria, *see* Diamond, *Universal Democracy?*, available at:

<http://www.hoover.org/publications/policyreview/3448571.html>.

<sup>23</sup> *International Election Principles*, Ch. 1 (draft manuscript, ABA Section of Administrative Law and Regulatory Practice, April 2007)

<sup>24</sup> U.N. General Assembly Resolution on Promoting and Consolidating Democracy A/55/96, available at: [http://www.democracycaucus.net/pdf/55unga\\_prom\\_democracy.pdf](http://www.democracycaucus.net/pdf/55unga_prom_democracy.pdf).

<sup>25</sup> Hugh Brogan, *Alexis de Tocqueville: Prophet of Democracy in the Age of Revolution*

---

<sup>26</sup> Id.

<sup>27</sup> <http://www.hri.org/docs/Paris90.html>. The Charter of Paris for a New Europe was adopted by a summit meeting of most European governments in addition to those of Canada, the United States and the Asian countries of the former Soviet Union, in Paris on 21 November 1990. The charter was established on the foundation of the Helsinki Accords, and was further amended in the 1999 Charter for European Security. Together, these documents form the agreed basis for the Organization for Security and Co-operation in Europe.

The Charter was one of many attempts to seize the opportunity of the fall of Communism by actively inviting the former Eastern bloc-countries into the ideological framework of the free world. It has been compared to the Conference of Versailles of 1919 or the Congress of Vienna of 1815 in its grandiose ambition to reshape Europe. In effect, the Paris Summit was the peace conference of the Cold War: Perestroika had ultimately put an end to the ideological and political division of the Iron Curtain. Pluralist democracy and market economy were together with international law and multilateralism seen as the victors, and as the common values and principles of national and international conduct that now ruled from Vancouver to Vladivostok.

The Charter established an Office for Democratic Institutions and Human Rights in Warsaw, a Conflict Prevention Centre in Vienna, and a secretariat. Later, in 1992, also a Secretary General was appointed. It was agreed that the Foreign Ministers are to convene regularly for political consultations.

<sup>28</sup> <http://www.hri.org/docs/Paris90.html>

<sup>29</sup> Thomas E. Ricks, Washington Post Service, *Putin accuses U.S. of unilateral actions*, reprinted in The Miami Herald, Feb. 11, 2007, p. 22A. (As the Russian President put it, “Russia is constantly being taught democracy, and the people who try to teach it don’t want to learn it themselves.”)

<sup>30</sup> Padma Desai, *Putin and Progress*, Wall Street Journal, p. A14, Feb. 2, 2007 (Mr. Desai, author of *Conversations on Russia: Reform from Yeltsin to Putin*, addressed the issue of whether Russia is “regressing irretrievably into authoritarianism, or is she likely to embrace Western democratic norms despite the zigzags” and concluded, “Russian industry and energy sectors will increasingly adopt market-economy rules and practices as they learn to interact and integrate with Western business. ... ‘There is a definite consensus among Russian society and the elite that Russia needs a market economy. ... By contrast, our struggle to form a robust, functioning democracy has not brought decisive results. ... I do not think that the educated, urban populations in large countries such as Russia can put up with undemocratic regimes for long.’ ” (quoting Mr. Yeltsin’s prime minister, Yegor Gaidar, in an October 2004 interview)).

<sup>31</sup> Stephanie Robinson and Cornel West, *400 years after Jamestown*, The Miami Herald, p. 5L, Feb. 11, 2007. See generally [www.jamesproject.org](http://www.jamesproject.org).

<sup>32</sup> Id.

<sup>33</sup> See generally Benjamin E. Griffith & Jocelyn M. Benson, *What Local Government Counsel Needs to Know about the 2006 Amendments to the Voting Rights Act, H.R. 9: Bilingual Interpreters, Foreign Language Ballots & Strengthened Preclearance Requirements*, International Municipal Lawyers Association’s 71<sup>st</sup> Annual Conference, Portland, Oregon, Work Session III: Emerging Trends – Tracking the Hot Button Issues, Sept. 18, 2006, accessible at [http://www.griffithlaw.net/research.database/uploads/1159201057\\_file\\_scan0269\\_000.pdf](http://www.griffithlaw.net/research.database/uploads/1159201057_file_scan0269_000.pdf)