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The Evolution of Democracy and Human Rights in Latin America: A Ten Year Perspective

by Sonia Picado

FOR YEARS, SCHOLARS HAVE ATTEMPTED TO provide a concrete definition of “democracy” and to establish its linkage to “human rights.” Both concepts have evolved alongside western culture. On the one hand, ancient Greeks developed democracy to be a system of government that would provide an effective, legitimate means of making decisions for the citizenry. On the other hand, human rights doctrine developed from Aristotle’s teachings on equity, the Stoic School explorations of equality, and the debates that arose about justice as a value. In contemporary times, democracy and human rights have merged in the movement for social justice. To understand the interplay between these two concepts in Latin America, it is useful to look at the endeavors of our regional governing bodies.

In the American continent, the Charter of the Organization of American States (OAS) and the American Declaration of the Rights and Duties of Man, proclaimed in Bogotá in 1948, eight months before the Universal Declaration on Human Rights, clearly stipulates a link between human rights and democracy. This interaction was strengthened in 1969 with the adoption of the American Convention on Human Rights, which consolidated the Inter-American Commission on Human Rights (Inter-American Commission or Commission) and created the Inter-American Court of Human Rights (Inter-American Court or Court). Within this framework of inter-American institutions, members of civil and political society have struggled to install and consolidate democracies that respect human rights.

This article will discuss this process over the last decade, emphasizing the democratic initiatives of the OAS and the work of the inter-American human rights institutions. The challenges and triumphs of these institutions during this period both demonstrate the interconnectedness of democracy and human rights and lend credence to the inter-American system as a legitimate approach to promote these cherished ideals.

HISTORICAL BACKGROUND

MANY KNOW ABOUT THE AUTHORITARIAN OPPRESSION that characterized the 1970s in Latin America. Fewer know about the important work of the Commission in denouncing the powerful military regimes for widespread human rights violations during this period. Pursuant to a broad interpretation of its mandate, the Commission developed country studies and admitted individual petitions to “serve as the basis for the preparation of Country Reports.” Special recognition in that period should be given to Argentina’s report on crimes committed by the military in 1973 and a similar report on Somoza’s regime in Nicaragua, published in 1978. Both reports were crucial in the movement to overthrow the dictatorial regimes in those countries and initiate democratic transitions.

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The Court was not actually installed until 1979, and most of its work in the early years was carried out by issuing advisory opinions on fundamental issues of democracy and human rights. The term “democracy” was clearly linked to civil liberties in *Advisory Opinion OC-8/87, Habeas Corpus in Emergency Situations*: “In a democratic society, the rights and freedoms inherent in the human person, the guarantees applicable to them and the rule of law form a triad. Each component thereof defines itself, complements and depends on the others for its meaning.” Throughout the 1980s, a decade of political opening in Latin America, the Court complemented the important work of the Commission by developing jurisprudence that helped articulate the responsibilities of states in assuring the rights of their citizenry.

Throughout that period, one of the most pressing issues was the impunity of government officials in cases of human rights abuses. The Court emphasized the importance of overcoming impunity in the *Velasquez Rodriguez* case, the first contentious case submitted to its jurisdiction in 1986. In that case, the Court set perhaps its most important precedent to date, holding the government of Honduras liable for the systematic policy of politically motivated arbitrary detention, torture, and forced disappearance of citizens.

Both the Commission and the Court were at the forefront of the battle to expose these crimes, hold governments accountable, and pressure them to reform state institutions in order to achieve greater respect for human rights. Although these crimes persist as part of a sad legacy in Latin America, the last decade has brought to light a myriad of other problems that impede the full consolidation of democracy and enjoyment of human rights. This paper will discuss these new challenges and explore how the inter-American system has worked to confront them.

THE DEMOCRATIC PROCESS AFTER 1990

AFTER THE FALL OF THE BERLIN WALL IN 1989, a systematic evolution of democracy took place around the world. At that time, the main challenge for Latin America was to complete its own democratic transition and begin to consolidate and strengthen its political infrastructure. Members of this movement for change often describe it in terms of integrating human rights norms into all aspects of governance. The OAS, as the regional governing body, has been a leader in articulating the terms of this process of integration.

SANTIAGO COMMITMENT AND RESOLUTION 1080

The General Assembly of the OAS has, on numerous occasions, demonstrated its support for the integration of human rights principles into the notion of democracy in the hemisphere. In 1990, the Declaration of Asunción stated that representative democracy is the political system that best protects the aspirations of the inter-American system. It also emphasized the need to respect human rights and to reduce social inequities within countries and among nations.

When the General Assembly met in 1991 in Santiago, Chile, it was the first time in the history of the continent that all Latin American countries, with the exception of Cuba, had democratically-elected

presidents. This fact created an optimistic atmosphere which led to the adoption of the Santiago Commitment, through which the democratic states of America declared “[t]heir inescapable commitment to the defense and promotion of representative democracy and human rights in the region, within the framework of the principles of self-determination and non-intervention.” The Santiago Commitment was implemented by OAS General Assembly Resolution 1080, which established procedures to respond collectively to any interruption to the constitutional order. Resolution 1080 gives the Secretary General of the OAS the power to convene the Permanent Council in order to examine and evaluate any constitutional breakdown, and if necessary, to convene an *ad hoc* session of the ministers of foreign affairs or an extraordinary session of the General Assembly to analyze the facts and intervene diplomatically where there has been an interruption in the “legitimate exercise of power by the democratic elected government of a member state.”

In September 1991, this procedure was applied in Haiti, where a military coup forced President Aristide out of power. The OAS responded immediately by sending a mission that included a number of ministers of foreign affairs. In spite of the quality of the mission, its members were prevented from entering Port au Prince by violent protesters. In the following days, another mission was established, head-

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INTER-AMERICAN DEMOCRATIC CHARTER

The terrorist attacks on September 11, 2001, changed the world: the image of innocent people being killed in such an act of cruelty and insanity shocked not only the United States, but all civilized nations around the globe.

An hour after the attack, the General Assembly of the OAS met in Lima, Peru, at the request of U.S. Secretary of State Colin Powell, and approved the Inter-American Democratic Charter (Democratic Charter) in an act of hemispheric solidarity.

The Democratic Charter is the newest and most comprehensive agreement to support democracy in the Americas. In Chapter II, “Democracy and Human Rights,” Article 7 states that “[d]emocracy is indispensable for the effective exercise of fundamental freedoms and human rights in their universality, indivisibility, and interdependence.” In Chapter III, “Democracy, Integral Development, and Combating Poverty,” Article 12 declares that “[p]overty, illiteracy, and a low level of human development are factors that adversely affect the consolidation of democracy”

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ed by Augusto Ramirez Ocampo, a distinguished Colombian, who worked for more than two years to restore the presidency. The length of time it took to reestablish the constitutional order notwithstanding, the OAS response in this case sent a positive message regarding the Santiago Commitment.

In 1992, President Fujimori dissolved the Peruvian Congress and usurped the power of the judiciary. The OAS reacted by sending Hector Gros Espiell, then Minister of Foreign Affairs of Uruguay, to negotiate a procedure to restore democracy. By holding elections for a new Constitution, Fujimori gained dubious legitimacy and managed to be reelected. The corruption of the Fujimori government, and particularly that of Security Chief Vladimir Montesinos, was disclosed by multiple video tapes that gave concrete evidence of bribes of state officials and other illegal practices. A popular uprising in the year 2000 forced Fujimori to flee to Japan, where he is seeking protection as a national, so as not to stand trial for multiple human rights violations. Throughout that process, the Special Envoy of the OAS, Eduardo Stein, played a significant role in restoring democracy.

In May 1993, President Serrano of Guatemala also tried to dissolve Congress and the Supreme Court, in the same way that Fujimori had done. However, a prompt reaction from the OAS and the international community forced the president to desist, resign, and flee to Panama.

In Chapter IV, “Strengthening and Preservation of Democratic Institutions,” Article 20 gives the Secretary General the faculty to request the immediate convocation of the permanent council to undertake collective actions “in the event of an unconstitutional alteration of the constitutional regime.” Though this clause, intended to reinforce the Santiago Commitment, has yet to be applied, there are currently situations of unrest which may compel the Secretary General to exercise this power.

At the time of this writing, President Aristide of Haiti has resigned, or was forced to resign as he recently alleged, and the United Nations Security Council has adopted a resolution to send a multilateral force to seek peace and reestablish democratic order in the country. A valid question is why the OAS did not take the lead in this situation by applying the Democratic Charter. Indeed, the breakdown of democracy in Haiti presented an ideal opportunity to raise the important question of what actions the OAS should take when a democratically elected president resigns or is forced to leave office.

The same question could be raised regarding the popular uprising that unseated President Sanchez de Lozada in Bolivia just a few months after he had been democratically elected. Even though the elected vice-president took his place, there is no question that there was an abrupt interruption of the democratic process. It is surprising, and somewhat

disappointing, that there was no reaction from the other countries in the hemisphere, either individually or through the OAS.

These setbacks show that, despite all the progress, international mechanisms and treaties to protect democracy leave much to be desired. In order to understand where these mechanisms fall short, it is important to explore the nature of the unrest they have proven unable to mitigate. Democracy implies governing for the people; but today's governments in Latin America have been unable to confront the most pressing problems affecting the majority of their citizens. Governments in Latin America marginalize significant sectors of society and promote bad social and economic policies. These are main factors contributing to the general disenchantment with democracy and the breakdowns in social order that have resulted. The inter-American human rights system has worked expressly to address these issues.

CHALLENGES TO DEMOCRACY AND THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

BOTH THE COMMISSION AND THE COURT have reinforced the importance of "preferred rights" over the last decade. The rights to life, liberty, equality before the law, freedom of religion, freedom of expression, freedom from arbitrary arrest, and due process of law are the traditional centerpieces of western democracies, and these concepts continue to be refined in inter-American jurisprudence. Over the past decade, the Commission and the Court have focused on promoting these fundamental rights among those groups that have traditionally suffered from systematic exclusion. In addition, the inter-American human rights bodies have increased their work in the area of economic, social, and cultural rights, which Latin American governments have largely ignored in the past. The goal has been to identify those issues that most contribute to social unrest and confront them in the context of contentious cases as a means to promote democracy.

The Commission has continued to hold extensive hearings on alleged human rights violations throughout the continent and perform numerous *in loco* visits. During these visits and hearings, respect for economic, social, and cultural rights has been scrutinized much more than in the past. The Commission has also appointed special rapporteurs for some of the most sensitive issues in the Americas, including indigenous and women's rights. Cases on these important issues are making their way up to the Court and a body of jurisprudence interpreting these rights is slowly developing.

ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

Latin American governments have failed to raise the standard of living and have ineffectively addressed economic, social and cultural rights. In general, Latin America, which has the worst income distribution in the world, has failed to inspire even moderate optimism for a more sound economic future, of the kind that should naturally result from democracy and a climate of participation by the population.

The Additional Protocol on Economic, Social and Cultural Rights (Protocol of San Salvador), adopted in 1988, did not enter into force until November 1999. Its contents imply an extension of the list of protected rights. Additionally, in 1993, the Managua Declaration pointed out the need to consolidate democracy by promoting the economic, social, and cultural development of all member states. The protection and promotion of these rights have become the main challenges for consolidating democracy on a continent that has been known for its lack of respect for social justice.

For many years, the Inter-American Commission has scrutinized state compliance with economic, social, and cultural rights, as evidenced by its country reports on El Salvador in 1978 and Haiti in 1979. Recently, however, the analysis has become more profound. In its country reports on Brazil in 1996, Mexico in 1998, and Colombia in 1999, the Commission analyzed the legal framework of each country as it pertained to economic and social rights and made specific recommendations. In the 1999 report on Colombia, for example, the Commission noted with concern "the deterioration . . . in the economic, social, and cultural rights of the population, and the persistence of inequality in the distribution of wealth." The same statement is true in most Latin American countries due to development policies that undermine the incumbent democracies.

The Court has recently taken up a number of social rights controversies. In its 2001 decision of the *Baena Ricardo* case regarding workers' freedom of association, the Court stated that "the American Convention is very clear in pointing out in Article 16, that the freedom of association 'shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.'" In its landmark 2003 decision of the *Cinco Pensionistas* case, the Court held that a pensioner had a property right entitlement to his or her pension. In so doing, the Court set an important precedent by protecting a social service from limitation or rescission unless it was contrary to public policy or a social interest.

Most recently, the Court published *Advisory Opinion OC-18/03, Legal Status and Rights of Undocumented Migrants*, where it takes up one of the most contentious issues of our times. The Court stated that a "state is bound by the *corpus juris* of the international protection of human rights, which protects every human person *erga omnes*, independently of its citizenship or migration statutes, or any other condition or circumstance The State cannot use the fact that it is not Party to a given human rights treaty to evade the obligation to respect the fundamental principle of equality and non-discrimination." These cutting edge developments show the genuine commitment within the inter-American system to develop a cogent approach to economic, social, and cultural rights defense.

OVERCOMING EXCLUSION

One of the primary impediments to the full consolidation of democracy in Latin America is the exclusion of broad sectors of society. Indigenous peoples and Afro-Latin Americans increasingly lack a sense of belonging, and women are faced with a negligible level of political representation. Such systematic exclusion clearly violates the principles of equality and non-discrimination articulated in the human rights instruments currently in force throughout the region.

Indigenous Rights

In its 1997-1998 Report to the Secretariat, the Inter-American Commission stated that "special attention was given to the rights of the Indigenous Population and Communities, following the process to approve the American Declaration of Indigenous Peoples."

As early as 1989, in its decision on reparations in *Aloeboetoe et al*, the Court demonstrated its sensitivity to cultural diversity in the Americas when it considered the Commission's argument that "it is necessary to take into account the family structure of the Maroons, of

which the Saramakas (the tribe to which the victims belonged) are a part. It is essentially a matriarchal structure, where polygamy is common." The Court used customary law as a basis for deciding the amount of reparations for actual damages to be received by the victims' successors. It also ordered Surinam, as an act of reparation, to reopen a school and to make a medical dispensary operational during that same year. This was a first important step in the recognition of social, economic, and cultural rights as justiciable.

In its 2001 decision in the *Awas Tingni* case, the Court unanimously "decide[d] that the State must adopt in its domestic law, pursuant to Article 2 of the American Convention on Human Rights, the legislative, administrative, and any other measures necessary to create an effective mechanism for the delimitation, demarcation, and titling of the property of indigenous communities, in accordance with their customary law, values, customs and mores." This was the Court's first articulation of the right of indigenous communities to their land, and it set up an extremely important precedent for human rights defenders throughout the Americas.

Also important with respect to the protection of indigenous communities was the Provisional Measures adopted by the Court in March 2003, in which it required Colombia to "adopt forthwith all necessary measures to protect the lives and safety of all the members of the communities composed of the Community Council of the Jiguamiandó and the families of the Curbaradó." With this important order, the Court expressed its belief that the protection of these traditionally discriminated groups' physical integrity must accompany the process to recognize their land and cultural rights.

Women's Rights

As a natural part of the commitment within the inter-American system to protect the rights of those groups that have been traditionally excluded, it has focused on the widespread problem of discrimination against women at all levels of society. Women constitute 50 percent of the population in the hemisphere and have little representation in the upper echelons of power. The controversial "quota" system has proven to be successful by significantly advancing parliamentary representation in Argentina, Mexico, and Costa Rica among other countries.

In 1995, the Inter-American Convention to Prevent, Sanction and Eradicate Violence against Women (Convención de Belém do Para) came into effect and currently exists as the preeminent articulation of women's rights in the Americas. The Convención de Belém do Para provides that the Inter-American Commission on Women, created in 1928, can now request advisory opinions from the Inter-American Court, thus giving women a better opportunity to claim their rights.

Though women continue to be excluded from the development process and remain the "poorest among the poor," the work of the Special Rapporteur on the Conditions of Women in the Americas and the work of women's NGOs, is creating growing awareness of the limitations that this situation imposes on the democratic process. Violence against women has also come into the open. New legislation is being promoted at the national level recognizing the home as the most dangerous place for women, and legitimizing interventions in the private sphere to confront this situation.

These key developments in the inter-American system are representative of a broader effort to identify impediments to democracy

and confront them with the continent's human rights machinery. The work of the Commission and the Court now touches on the full range of civil, political, economic, social, and cultural rights of a larger sector of Latin American society, a development that inspires confidence for the upcoming decade.

CONCLUSION

THE 1991 SANTIAGO COMMITMENT marked the most optimistic moment in Latin America's transition to democracy. It was the consequence of a constructive and positive attitude toward the system of protection of human rights and the consolidation of democratic governments in the region. Unquestionably, "fundamental freedoms" are at the heart of this process, but democracy will surely fail if it does not attend to questions of poverty and other issues related to the quality of life. Social, economic, and cultural rights, however, are still perceived as "second class" rights and most of the governments in the region do not have the political will to comply with them. These challenges are emblematic of the current flaws in Latin American democracy.

Consolidating democracy requires strong national institutions, and in this sense, Latin America has a long way to go. A large and often corrupt bureaucracy makes modernizing the state structures an almost insurmountable task. Interest groups resist much needed changes in the three branches of power, and the old vices of previous decades are still very much entrenched in the system. Transparency and a new culture of accountability are essential for strong and credible state institutions.

The Commission and the Court are increasingly seen as reliable alternatives for the pursuit of justice when national systems of justice prove ineffective. A process of reforming and strengthening of the inter-American system started in 1996 and concrete results were seen in the year 2000 at the General Assembly of the OAS in Windsor, Canada. Recent amendments to the statutes of the Commission and the Court will help the two organs cooperate more in the future. The Court has allowed victim-petitioners greater participation, which should result in more access to justice. As a result, the credibility of the inter-American system has increased over the last decade and the scope of its work has grown to encompass many delicate issues of human rights abuse that were previously ignored.

These advances, however, are not occurring on a large enough scale and the inter-American organs can only respond effectively to the challenges they face if they receive sufficient funding. The OAS continues to be crippled by budgetary restrictions which severely limit the extent to which it can practically pursue its mandate. More and more, the economic restrictions of the OAS are reflected in the human rights organs. The Commission and the Court need to work on a permanent basis so as to attend to the growing demands for their intervention. This necessarily means that both the commissioners and judges should receive sufficient pay to allow them to sit at the Commission and Court year-round and work exclusively in those functions. Such changes will facilitate an expansion of the inter-American system that will permit it to confront all of the human rights impediments to the full democratic evolution of the Latin American continent. *HRB*