

Reflections on the Systemic Efficiency of Contemporary Democracy

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Abstract

This research article analyzes the complexity of democracy in the current context and the challenges it faces in maintaining its effectiveness and fundamental principles. Although democracy is seen as an effective system that protects human rights and promotes equality, it does not always guarantee these results. Democracy should be evaluated not only by the conduct of elections but also by its ability to respect and guarantee human rights and real equality, taking into account the variety of cultural, political, and economic influences. Additionally, it is necessary to have transitional justice mechanisms in place in contexts where democracy must address and repair human rights violations to ensure true social renewal.

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1. Introduction

The development of democratic societies has varied considerably throughout history. While it is true that democracy does not necessarily guarantee a fairer or more equitable society, it has proven to be an effective defense mechanism against systems that are considered undemocratic. Even so, it cannot be said that democracy is the antidote that provides a perfect solution to all its problems because, as was the case in classical Greece, democracy could degenerate into totalitarianism, authoritarianism, or even oligarchy, and could be corrupted from within.

A study of contemporary constitutionalism shows that democracy is widely conceived as an essential structure of political and social organization, which not only facilitates governance through public participation, but also promotes equality and protects human rights, among other aspects. In this sense, an effective democracy

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must go beyond the simple holding of periodic elections, the separation of powers, and the guarantee of fundamental freedoms. Understanding the foundations that should measure democracy forces us to highlight the implementation of the necessary tools that guarantee it, avoiding its restriction to a conservative vision that is normally associated with electoral democracy. Likewise, it should be noted that trying to find a univocal and universal concept of the term democracy makes us realize that there is no single axiom that is universally accepted, since there is a certain elasticity in how it is interpreted and in its implications.

The advancement of democracy can be seen both as a governmental objective and as a social commitment. The most palpable evidence of this claim is manifested in the different indicators used by international institutions and Non-Governmental Organizations, which measure the essential aspects and principles that make up the core of democracy and facilitate a clear understanding of its evolution and adherence to democratic ideals.

Thus, it cannot be understood that a democratic system is only defined by the mere convening of elections. A rigorous analysis of the democratization process should not only focus on formal electoral democracy, but also on its effectiveness. Therefore, what will be defended throughout this article is that democracy should not be understood solely and exclusively as a periodic voting process, but as a system that ensures the effective participation and representation of the citizenry in political decision-making. Hence, the study of democracy should not be dichotomous, but multifaceted, thus recognizing the complexity and multiple aspects that, in some way, contribute to its development and sustainability.

2. Problems and challenges faced by contemporary democracies

Democratization is the process through which a state moves towards a democratic system. This process has several clearly differentiated phases. The first phase involves holding democratic elections that allow the population to participate in public affairs through suffrage. Subsequently, the second phase involves bolstering the elements and principles that make up the democratic system, i.e., efficient democracy. Finally, the third phase ensures the consolidation of a flexible democratic system with adequate mechanisms to face the different economic, social, political and even environmental challenges that arise. On many occasions, democratization processes present obstacles that come from both internal and external factors, including pressures that can shape the evolution of a democratic system².

In the conceptualization of democratization processes, human rights are configured as a sort of creed in contemporary society. In order for a state to have a certain degree of success in the global democratization scenario, it must have systems that safeguard the protection and ensure respect for human rights. Without entering into the debate on whether this phase of recognition may be utopian or not, it can be

² This was the case with the democratization process in Hong Kong, which was hampered by the concerns of the Chinese government and the region's business elite. Ortmann, Stephan. "The umbrella movement and Hong Kong's protracted democratization process", *Asian Affairs*, v. 46, n. 1, 2015, p. 32.

said that what is really being sought is precisely to maintain the effectiveness of democracy.

Ferrajoli's work³ is a faithful reflection of the spirit of the rule of law, emphasizing the need to establish guarantees that act as real restrictions on state power. In this case, the Italian jurist defends the need to develop a theory with its declared objective being the foundation of the rule of law, encompassing not only the Theory of Law but also Political Philosophy. Likewise, it should be noted that democratization processes are not static, but on the contrary, they can progress, stop or even regress in different periods; for this reason, the stability and permanence of democracies rely on their strength and effectiveness.

The global debate on the precise conceptualization of democracy, as well as the elements that constitute it, arises as a response to the transition from an electoral democracy to a democracy that is effective, efficient, and systemic. This form of democracy not only emphasizes citizen participation but also institutional excellence and the protection of human rights. It is essential to mention that some authoritarian leaders have come to power through elections; however, they have limited basic freedoms and oppressed society to achieve this. Therefore, the idea that democracy is limited solely to holding periodic elections could cause confusion. A democracy reliant solely on voting lacks substance. Furthermore, elections in environments with significant social disparities lead to weak democracies. Thus, democracy consists of various factors, and suffrage is simply one aspect of it.

Democracies are facing significant challenges, especially due to the change in the perception and conceptualization of democracy itself. It can be observed that government and media intervention in public affairs is playing a decisive role in democratic evolution. This new way of understanding representative democracies is making citizen participation through their representatives possible.

These challenges, according to Elisabete Santos and Renata Álvarez Rossi⁴, include reflecting on the complex relationship between public administration and democracy, especially in view of the rise of political forces on the extreme right, and also on the extreme left, that use democratic rules against liberal democracy. On this issue and addressing the concept of justice and the consideration of the State as the main actor in ensuring a minimum degree of social justice when market mechanisms are insufficient, Amartya Sen, inspired by the doctrines of John Rawls, defends the relevance of using reason in the study on justice or injustice⁵.

Democracy, considered the ideal form of government, is criticized for failing to live up to its promises. It is sometimes reproached for its inability to eliminate the elites in power, who often perpetuate their interests to the detriment of true self-government. It is not always possible to reconcile formal equality with substantive

³ Ferrajoli, Luigi. *Derechos y garantías*, Trotta, Madrid, 7ª ed., 2010.

⁴ Santos, Elisabete & Álvarez Rossi, Renata. "Crise Democrática no Século XXI e desafios da Pesquisa em Administração Pública", *Revista Organizações & Sociedade*, v. 30, n. 104, 2023, pp. 01-16. DOI 10.1590/1984-92302023v30n0000PT.

⁵ Migliore, Joaquín. "Amartya Sen: La idea de la justicia", *Cultura económica*, v. 29, n. 81-82, 2011, p. 13 and following.

equality. However, much democracy promotes ideals of equity and citizen participation, in practice, democratic systems can remain susceptible to the influence – sometimes disproportionate – of the established powers, without succeeding in eradicating invisible power. These weaknesses highlight the need to renew and strengthen democratic mechanisms to ensure that the promise of self-government and equality are not merely nominal but are actually a reality in the daily lives of all citizens.

In a society based on democracy, it is essential that people be able to enjoy the rights and freedoms to which they are entitled. Failure to respect the laws that protect these rights creates a false sense of democracy that actually supports authoritarian rule. The ideal of democracy must guarantee people the ability to safeguard their rights in the face of tyranny, and modern democracies certainly promote ethics and values such as honesty, fairness, transparency, and moral responsibility.

3. Democratization and the liberal state

Any democratization process, whether political or social, must pursue the explicit objective of establishing a democratic order in a state. So far, we have argued that citizen participation, equal rights and freedom in collective decision-making are the foundations of democracy. In turn, all these principles underpin a system that guarantees equal opportunities and respect for human rights. To achieve this, any authoritarian power structure must be eliminated, establishing a system in which power is exercised by the people through free and fair elections⁶.

The liberal State as a political system is based on the guarantee of individual freedoms and the limitation of the power of the State. Norberto Bobbio makes this clear when he recognizes that the liberal State and the democratic State are interdependent; that is, certain freedoms are necessary for the proper exercise of democratic power and, in turn, democratic power is indispensable to guarantee fundamental freedoms. Effective democratization can only be achieved if fundamental principles such as citizen participation, the rule of law, transparency and accountability, political pluralism and respect for human rights are followed. This is the only way to achieve fairer, more equitable and participatory societies. These rights are essential for the proper functioning of a democratic regime and are necessary to guarantee, as David Beetham points out, the quality and integrity of the democratic process⁷.

A state cannot be fully democratic without being liberal, and it is unlikely that a non-democratic state can guarantee essential freedoms. Therefore, democratization as a process implies not only the establishment of a democratic system, but also the guarantee of individual freedoms. This is what Norberto Bobbio argues when he recognizes that the liberal state and the democratic state are interdependent. On the one hand, certain freedoms are necessary for the proper exercise of democratic power,

⁶ Bobbio, Norberto. *El futuro de la democracia*, Fondo de Cultura Económica, México, 1986, p. 53.

⁷ Beetham, David. "The Quality of Democracy: Freedom as the Foundation", *Journal of Democracy*, v. 15, n. 4, 2004, p. 62.

and, on the other hand, democratic power is indispensable to guarantee fundamental freedoms, otherwise the liberal State and the democratic State tend to collapse together when they are weakened⁸.

Democratization, understood as a process, presents multiple challenges. However, its objective is essential for the free and full development of the personality as a guarantee of the value of dignity, “un valor y principio fundamental del Estado democrático y de derecho”, an indispensable condition for the empowerment of the individual as a subject entitled to his inherent rights. In the words of Norberto Bobbio, the great challenge of democracy and the rule of law does not lie solely in philosophical questions or moral, but in the development of society.

Democracy is configured as a set of rules that determine who holds the power to make collective decisions and how these decisions are to be made⁹. Consequently, the democratic system will ensure that the power vested in a significant number of individuals within a group is strengthened when a majority decision is considered valid; even more so when that decision is taken by unanimity which, in that case, acquires greater validity. Thus, unanimity not only reflects total agreement within the group, but also strengthens the legitimacy and social acceptance of that decision that has been adopted. However, we cannot deny that reaching unanimity is not easy and can result in stagnation in decision making, which is why the majority rule is chosen as the most viable and effective method that ensures both participation and representation in collective decision making within the democratic system¹⁰.

For Instance, if we go back to the 1970s, we can see that most governments did not follow this democratic ideal and, for the most part, operated under authoritarian regimes, especially in Latin America, where the governmental systems of the time had a strong military inclination and, in particular, had a remarkable economic growth¹¹. This contrast highlights the importance and, at the same time, the fragility of democratic principles in times and regions where totally authoritarian power structures prevailed, with very few exceptions. In Asia, for example, there are countries that, under authoritarian governments, stood out for their remarkable economic growth¹² and, likewise, in Africa¹³, in less than twenty years, most African countries gained their independence, only three of which were democratic states. With

⁸ Bobbio, Norberto. *El futuro de la democracia*, Fondo de Cultura Económica, México, 1986, pp. 15 and 16.

⁹ *Ibidem*, p. 136. Bobbio states that “democracy is the government of laws par excellence”.

¹⁰ Bobbio, Norberto. “La regola della maggioranza: limiti e aporie”, en Norberto Bobbio, Claus Offe, Siro Lombardini (coords.), *Democrazia, maggioranza e minoranze*, Il Mulino, Bolonia, 1981, pp. 33-72.

¹¹ Victoriano Serrano, Felipe. “Estado, golpes de Estado y militarización en América Latina: una reflexión histórico política”, *Argumentos*, v. 23, n. 64, 2010, p. 187.

¹² Sen, Amartya. “El valor universal de la democracia”, *Themis revista de derecho*, n. 47, 2003, p. 279. Sen states that “some disciplinary states (such as South Korea, Singapore and post-reform China) have higher economic growth rates than many less authoritarian countries (including India, Jamaica and Costa Rica)”, p. 279.

¹³ South Africa's Constitution was designed precisely to be transformative and to drive post-colonial social, political and economic change. Rapatsa, Mashele “South Africa's transformative Constitution: from civil and political rights doctrines to socio-economic rights promises”, *Juridical Tribune*, v. 5, n. 2, 2015, p. 209.

this in mind, it can be affirmed, as Dankwart Rustow points out, that the emergence of democracy is not necessarily linked to economic transformations, but rather to political and social tensions. For this process to take place, the actors must have a significant degree of representation and power in the different social and political strata¹⁴. In contrast to this perspective, it is noted that political mobilization no longer plays a central role in the democratization process, but is seen as a structural condition.

In any case, we will not deny that it is absolutely necessary to distinguish the supposed analogy between economic development and democratic policies, since we must be clear that this cannot lead us to think that there is necessarily a direct causal relationship between the two. In other words, there is no linear and functionalist (unidirectional and direct) relationship that stipulates that economic development always leads to democratic policies or vice versa¹⁵. In fact, there are States whose economies are prosperous and yet are not democratic at all, as they do not comply with the ideals and principles of a democracy. This can be due to a lack of transparency in their electoral system, government censorship of the media, or repeated violations of human rights and civil liberties. These characteristics are more typical of an authoritarian State.

4. Theories of democratization towards the establishment of a liberal democratic state

In recent times, democratization processes have attracted special interest, especially when democratization in Eastern Europe germinated with the fall of the Berlin Wall. This phenomenon can be observed initially, for example, with Spain, Portugal or Greece, and subsequently in countries such as Hungary, the Czech Republic, Poland or Slovakia, which undoubtedly have their own particularities in their transition process in comparison with other states of the former socialist bloc¹⁶. These structuralist theories face numerous criticisms, because democracy is considered to be a direct consequence of growth and previous social and economic changes¹⁷.

Under the rubric of structuralist theory, authoritarian regimes that, disguised as modernization policies, present themselves as democratic, could even be legitimized, albeit inadvertently. Some authors warn about the confusion between the causes and consequences of democracy, since aspects such as education, development or the promotion of an ethical culture are necessary for any democracy. If we concentrate only on economic conditions, we can omit the importance of other

¹⁴ Dankwart Rustow, Alexander. "Transiciones a la democracia: hacia un modelo dinámico", *Transiciones a la democracia*, Prensa de la Universidad de Columbia, 1999, p. 27.

¹⁵ Heo, Uk y Tan, Alexander C. "Democracy and Economic Growth: A Causal Analysis", *Comparative Politics*, v. 33, n. 4, 2001, pp. 464 and following.

¹⁶ Kateva, Teodora. "Reflexiones sobre la transición a la democracia en el este de Europa y el caso de la República de Bulgaria", *Recerca: revista de pensament i anàlisi*, n. 5, 2005, p. 180.

¹⁷ Morán Calvo Sotelo, María Luz. "La Cultura Política Y La Interpretación De La Transición A La Democracia. (Notas Sobre El Caso español)", *Política y Sociedad*, n. 20, 1995, p. 99.

essential elements such as organizational capacity, ideology, and the ability to organize¹⁸ or, as we have already advocated on occasion, “effective, accountable and inclusive institutions that guarantee respect for human rights, the rule of law, participatory democracy, transparency, accountability, conflict prevention and resolution, and international cooperation”¹⁹, among others.

There is no doubt that the different theories that can be generated on democratization share a common approach that minimizes structural factors, opting for the will of political actors. Of course, this is a partisan approach, because those who think this way forget the realities of those states where there has been a commendable effort towards democratization²⁰. Transition, in the ideal notion that democracy represents, is conceived differently depending on the perspective from which it is observed. This is very important, because most of the time, European citizens, when evaluating democracies in other regions or countries of the world, tend to apply criteria that are only based on the fundamentals of the European Union, without considering local cultures or all the specific challenges faced by these countries²¹.

At this point, it is more than pertinent to ask what happens when democracy, in today's regimes, is reduced to the possibility of being electors and eligible to vote in elections. In fact, there are still states which, by holding elections, try to disguise a democracy which, in reality, is not a democracy. Mere adherence to democratic procedures is not an automatic guarantee of the rights promised by a democracy, especially when corruption is deeply rooted in the institutions themselves. This is also the understanding of Professor Nuria Belloso, who recognizes that there is a real problem in Latin America that not only affects the economic factor, but also extends to other equally convulsive complexities such as those resulting from guerrillas and drug traffickers, among others, and which give rise to political confrontations that have weakened populist or revolutionary political currents. In parallel, technocratic, business, and military elites, who are far removed from political structures, have gained prominence by promoting the idea that their interests are aligned with national interests, leading to a clear lack of credibility on the part of the civilian population regarding political representation and suffrage²².

It is also important to highlight the role played by the geographical factor in democratization. The Iberian Peninsula, for example, justifies well this interaction between geographical proximity and similarities in democratic transitions, as it has very similar cultural particularities and socioeconomic development²³. However,

¹⁸ Colomer Calsina, Josep M. “Teorías de la Transición”, *Revista de Estudios Políticos* (Nueva Época), n. 86, 1994, p. 246.

¹⁹ Miranda Gonçalves, Rubén. “Perspectivas filosóficas en la búsqueda de la paz, la justicia y las instituciones sólidas en la Agenda 2030”, *Novos Estudos Jurídicos*, v. 28, n. 2, 2023, p. 363.

²⁰ Felipe Mansilla, Hugo Celso. “Las insuficiencias de la democracia contemporánea. Una crítica de las teorías de la transición”, *Política y Sociedad*, n. 34, 2000, p. 178.

²¹ Belloso Martín, Nuria. “Los dilemas de la democracia en América Latina”, *Anales de la Cátedra Francisco Suárez*, v. 33, 1999, p. 36.

²² *Ibidem*, p. 47.

²³ Tusell Gómez, Javier. *La dictadura de Franco*, Alianza Editorial, Madrid, 1988, p. 270.

democratization in Spain and Portugal was quite different; while Spain opted for reformist democratization through dialogue, Portugal undertook a more revolutionary change. After the death of General Franco, Spain undertook a reform process championed by the government and the elites, where a transition based on dialogue and consensus among the different political actors, including the Franco regime and the opposition, was intended, which meant a peaceful transition of democratization through legislative reforms and democratic elections. In contrast, Portugal opted for a revolutionary transition approach where, after almost five decades of dictatorial regime, it was overthrown by the Armed Forces movement.

The period of democratization after the death of the man who led Spain for more than 30 years did not happen automatically, but developed according to the political forces that were present at the time. In fact, it became evident that the opposition fought for an amnesty for the recognition of political and trade union rights. One of the keys to the democratization process in Spain was characterized by the desire to emulate Europe in relation to the implementation of rights and freedoms, guaranteeing peace, stability, and economic growth.

A detailed study carried out by Javier Tusell on what democratization meant in Spain regarding Huntington's proposed ideas on “democratizing waves” revealed the challenges and incongruities that took place in this particular historical scenario. In relation to other countries, Spain achieved a positive balance; such as, Latin American countries maintained and in some cases still maintain authoritarian regimes²⁴. In this sense, many authors have defended the democratization process in Spain, highlighting the young reformists and liberals as decisive actors who maintained a Europeanist approach, arguing that Spanish society required a renewed political system similar to Western democracies, promoting change from within rather than promoting a revolution from without.²⁵

5. Political transition as a path to peace and real democracy

The ideal notion on which peace and justice rest in the transition stages is conceived in a global manner. It is a matter of finding a basis of justification on which the social fabric can develop its participation in all those areas that, in some way, have an impact on its full development, that is, in social, political, or economic aspects. The foundation of justice must be considered when it comes from the rational subject and in a position of freedom and equality, as Rawls defends it. This is the only way to understand the universality of justice over utilitarianism. This approach in Rawls' thought is not exempt from controversy, since on the basis of maximizing the good, personal sacrifice could be imposed for the sake of optimizing the general welfare. In fact, under this same approach, unjust regimes could be justified by alluding to the benefit of a favorable overall balance, which would raise many ethical dilemmas

²⁴ Tusell Gómez, Javier. *Dictadura franquista y democracia, 1939-2004*, Crítica, Barcelona, 2005, p. 331.

²⁵ Carr, Raymond, Fusi Aizpurua, Juan Pablo. *España, de la Dictadura a la Democracia*, Planeta, Barcelona, 1979, pp. 48-49.

about the fairness and morality of such actions.

In the case at hand, transitional justice forces us to look back with the aim of promoting peaceful coexistence in society. In terms of objectives, transitional justice could be viewed from two clearly differentiated categories. The first would have to do with the structural objective, focusing on the stabilization and reorganization of the state, implementing legislation that would guarantee peace, democracy, and the rule of law. The second would focus on the reparation of damage²⁶, in particular the transgressions suffered during the period of transition to the human rights of the civilian population. In short, it is a matter of guaranteeing, with a view to the future, the non-violation of human rights, resolving social conflicts in a peaceful manner and, under no circumstances, resorting to the use of force.

From our point of view, democratization is closely linked to the maintenance of peace and security provided by institutions based on an equitable and stable political system. This being so, it can be asserted that the maintenance of peace²⁷ is linked to the rule of law and, therefore, it is necessary to reform or abolish the institutions associated with the previous repressive regime in order to prevent the recurrence of abuses, thus basing the legitimacy of the state on popular sovereignty and the democratic principle. In this sense, it is also impossible to guarantee that the decisions taken by a majority are equally fair, since under the umbrella of the majority the rights of minorities can also be restricted.

In democratization processes, two formulas for transition must be recognized. The first would be identified by the negotiation of the actors in power, which is recognized as the pact of elites, and the second by the result of popular mobilization. Political transition through elite pacts is usually a process of democratization engineered by the political and economic elites of the state and is intended to maintain the ostentation of power and privileges, while also addressing a series of social demands that, to a certain extent, avoid violent mobilizations and ensure political and economic stability. An example could be the democratization in Spain after the death of General Franco, where the political and economic elites agreed on the need to implement democracy and whose result was embodied in the Spanish Constitution of 1978.

Transparent and fair elections are essential to ensure the sustainability of a transition to democracy, even if the results do not accurately reflect our political preferences. Regardless of the wills that give rise to an agreed democratization, the authoritarian regime has no desire to give up power and control. During negotiations it is essential not to forget that those who have or have had power are willing to promise

²⁶ This reparation, as stated by Antonio Sorela, does not have to be solely and exclusively a financial reparation, and can be made “in different ways (...) including public apologies, publicity of the sentence (...)”, although the most common is the payment of financial compensation. Sorela Castillo, Antonio. “La reparación integral del daño en el sistema jurídico mexicano”, *Perspectiva multidisciplinar de los Derechos Humanos en el contexto social del siglo XXI* (Antonio Sorela Castillo and Laura Miraut Martín editores), Academia Líder en Formación Avanzada, México, 2023, p. 13.

²⁷ Así lo hemos defendido anteriormente, pues “la paz se entiende como una condición necesaria para el ejercicio de la justicia” Miranda Gonçalves, Rubén. “Perspectivas filosóficas en la búsqueda de la paz, la justicia y las instituciones sólidas en la Agenda 2030”, cit., p. 356.

everything to minimize the democratic opposition forces, without prejudice to violating the agreement. Rarely does the interruption of resistance lead to a decrease in repression, and dictators can exercise oppression and violence even more cruelly. The decline in popular resistance often eliminates the countervailing force that had limited the control and brutality of the dictatorial regime.

Unlike democratization through elite pacts, the role of social movements and civil society is the response offered by democratization from below, which has its genesis at the base of society. In this sense, social movements and protests play a cardinal role in the demand for transformation in the social and political sphere, challenging the structures of power. At the same time, it is noteworthy how a military regime can be extended to the processes of transition and democratization, as they have significant similarities.

The change from a military regime to a democratic one does not always take place through a conflict that implies a military defeat, but rather through a decision by the armed forces to cede power, either within the deadlines that they themselves establish or through negotiations. This implies that the end of the military regime and the revolutionary moment do not always coincide, and it is likely that the latter will not materialize. Should this happen, the process of social democratization, as distinct from transitional political democratization, becomes a challenge to be resolved within the democratic regime and is abandoned as a condition for its stability.

Political transitions, whatever they may be, have implicit advantages and disadvantages. On the one hand, a negotiated political transition relies on the permanence of institutional structures that, in principle, respond to agreements with the civilian population. Even so, it cannot be ignored that this entails a certain margin of risk, especially when there are hidden political interests that may weaken the principle of justice. On the other hand, the political transition that has its foundation in popular movements is supposed to involve a high level of participation in order to overthrow the institution. However, the exercise of violence may be conditioned by external agents. In both cases, the need to establish guarantees of inclusion and promotion of human rights is defended, since this is the only way to achieve real and effective democratization.

In the political and constitutional debate, democracy, as a form of government, is considered one of the most rights-guaranteeing systems. However, it also faces challenges and gaps in ensuring real equality, especially when the elites remain in power. In this regard, Norberto Bobbio's dissertation is interesting when he argues that democratic states are identifiable for two reasons: firstly, because of the presence of non-democratic states in the international system, where secrecy becomes the norm rather than the exception; and secondly, because the international system as a whole is practically devoid of democracy, or at least only in theory and not in practice, according to the United Nations Charter. This is because, ultimately, the international order is still based on the traditional system of balance of power, which prevents true democratic practice at the global level²⁸.

²⁸ Bobbio, Norberto. *Democracia y secreto*, Fondo de Cultura Económica, México, 2013. Translation by Ariella Aureli and José Florencio Fernández Santillán.

As long as a democratic state exists in a community where the majority are autocratic states with full rights, and as long as the international system remains undemocratic, the regime of democratic states will be imperfect. An international society with a tendency towards anarchy presupposes the internal despotism of its members or at least hinders their democratization. The only way to combat the invisible power is with another invisible power that is equal and opposite, i.e., by using our own spies to counter foreign spies and our own secret services to counter those of other states²⁹.

For all these reasons, it is understood that secret services in the democratic system will only be viable when they seek to safeguard a constitutional interest without harming other interests that are equally susceptible to protection. In the end, it is a matter of guaranteeing freedom and the free development of individuals without interference by institutional power³⁰.

6. Transitional justice as a guarantee of reparation of damages

Democratization and transitional justice are two sides of the same coin. Transitional justice has undergone a significant evolution in response to the social and temporal contexts of each region. The immediate response offered by transitional justice is precisely because the history and convulsive scenarios faced by some countries in their struggle for democratization obliges them to look at dictatorial governments that, ignoring the assumptions advocated by the ideology of human rights, implement restrictions on judicial decision-making and civil society. The violence that these dictatorial regimes employ, especially through torture or forced disappearances, is some of the manifestations suffered by those who support the right to freedom and free development of personality, leaving a desolate panorama and a much more vulnerable society.

Transitional justice, as we have come to recognize it, has its genesis in the intention to compensate for the damage caused by flagrant violations of human rights in the democratization processes that have taken place, with the aim of creating a transitional line in the future democratization process that respects the value of human dignity. The declared objective of transitional justice responds to the massive violations against the civilian population that took place in many countries, for example in Latin America or Eastern Europe, among others. In the specific case of Latin America, as Omar Guillermo Encarnación states, transitional justice revealed the brutality of political life and, at the same time, the dramatic progress made in promoting a culture of human rights³¹.

This evolution has not remained static over time, which implies a non-sequential treatment of it. The beginnings of modern transitional justice can be traced back to World War I; however, its recognition as an extraordinary phenomenon of

²⁹ *Ibidem*, p. 43.

³⁰ *Ibidem*, p. 37.

³¹ Encarnación, Omar Guillermo. "Transitional Justice: Comparative and Historical Perspectives from Latin America", *Latin American Research Review*, v. 57, n. 1, 2022, p. 190.

international scope emerged in the post-war period after 1945. The Cold War marked the end of the international focus of this initial stage and, subsequently, the second phase was comprised of the post-war period, where a wave of democratization became visible beginning in 1989. The third phase, or steady state of transitional justice, is related to the current conditions of persistent conflict, which normalizes the presence of violence³².

After the Second World War, the victim became the compass of protection policies, an approach that also focused on the universal perspective derived from the ideology of human rights. In the 1990s, it was oriented towards democratization processes, which gave rise to a new objective where truth commissions and international tribunals were configured as instruments of justice for the numerous victims who suffered the massacres of authoritarian rulers, recognizing the experiences of the victims and establishing an official record of the violations³³.

Transitional justice, therefore, is recognized as a process of seeking justice in a framework of political transition, especially in those countries where democratization has left a trace of crimes against humanity that were committed by previous repressive regimes. On this issue, the contribution made by the Mexican jurist Carlos Santiago Nino in his analysis of the transition processes in Southern Europe (Spain, Portugal and Greece), Eastern Europe after its passage through communism, as well as the crimes that took place in Asia, as occurred in Vietnam, Cambodia and the Philippines, is relevant³⁴, is relevant. The notion of transitional justice is characterized by the implementation of legal norms and principles within the framework of international law that have as their declared objective the pursuit of justice. Unquestionably, it has its genesis after the Second World War with the Nuremberg and Tokyo trials³⁵.

The United Nations proclaims that transitional justice should have a two-way approach that encompasses both legal and practical aspects, i.e., from the initiation of trials to the subsequent reparation of victims. As part of the United Nations system, OHCHR plays a fundamental role in supporting affected States, providing instruments that promote the rule of law and establish effective transitional justice processes³⁶. Precisely, the United Nations has been reinforcing the importance of providing victims with effective and equitable access to justice³⁷, which also includes that victims receive compassionate and respectful treatment and have access to justice

³² Teitel, Ruti G. "Transitional Justice Genealogy", *Harvard Human Rights Journal*, v. 16, 2003, p. 70.

³³ Hayner, Priscila. *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, Routledge, New York, 2010, p. 20.

³⁴ Nino, Carlos Santiago. "El Castigo como Respuesta a las Violaciones a los Derechos Humanos. Una Perspectiva Global", *Radical Evil on Trial*, Yale University Press, 1996, p. 14 and following.

³⁵ *Ibidem*, p. 25.

³⁶ Estado de derecho, Justicia de transición. Available in: <https://www.ohchr.org/es/transitional-justice>

³⁷ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>

mechanisms to repair the damage as quickly as possible³⁸, respecting their privacy and security.

The objective of transitional justice can be approached from two perspectives. On the one hand, it is centered on the conceptualization and the ambiguity that derives from it. In this way, it is possible that it can be interpreted according to the interests of the agents involved, which leads us to think that the interpretation will depend on who holds power. On the other hand, one could pay attention to the approach it offers in terms of the guarantee of peace and the justice that derives from it, as well as the nomothetic models, i.e., norms or laws that guide the political processes and the peace negotiations.

In the context of processes of change from a dictatorial regime to a democratic one, or from a democratic regime to an authoritarian model, this is the scenario where difficulties and tensions are most visible. In general, the outgoing regime in the negotiation, depending on the level of power it still has, tries to shield itself and, consequently, is granted amnesties, as in the case of Spain³⁹, Argentina, Chile or the attempts of impunity in Peru⁴⁰. Each transition process unfolds in a framework with different identity characteristics. What does coincide is that any process must be linked in some way with the obligations imposed on States and international conventions that guarantee the value of human rights as universal principles in judicial and political processes. All of this involves a process of awareness-raising in which lessons must be learned from the experiences of others. Not only in terms of economic development, but also in the way in which the Constitution must be guaranteed as a response to the rule of law, integrating international norms into the national legal system⁴¹.

7. Conclusion

As we have argued, the current institutional model of democracy faces important challenges. While it is true that it is still idealized as a system that, in a certain way, promotes equality and equity, historical reality shows that democracy has not always ensured fair results. Thus, some regimes that present themselves as democratic often conceal authoritarian structures.

It has been demonstrated that the mere holding of elections in which the people exercise their sovereignty does not necessarily guarantee real democratic practices either. It is enough to recall various authoritarian leaders who came to power precisely after holding elections. For a democracy to be truly effective, not only must

³⁸ “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power”: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>.

³⁹ Gil Gil, Alicia. *La justicia de transición en España. De la amnistía a la memoria histórica*, Ediciones Atelier, Barcelona, 2008, p. 22.

⁴⁰ Report of the Ombudsman's Office of Peru n. 57, *Amnistía vs. Derechos humanos. Buscando justicia*, Lima, 2001.

⁴¹ Pezzano, Luciano. “Las obligaciones de los estados en el sistema universal de protección de los derechos humanos”, *Anuario Español de Derecho Internacional*, v. 30, p. 309.

the public participation of its citizens be guaranteed through electoral processes, but human rights, equality, and justice, among others, must also be guaranteed and respected.

Beyond trying to make democracy visible from a classical point of view, what must be considered is that to be present in a democratic State, it is necessary to evaluate its strengths and effectiveness in the recognition of the rights that correspond to all human beings by their own natural biological condition and how they are embodied and guaranteed in the Magna Carta. In the current debate, the processes of democratization have generated great interest, especially in the different theories that attempt to describe it, although what we must bear in mind is that its success will depend, in any case, on the political and social forces or elites and their genuine commitment to a transition towards a real democracy.

Democratization processes are not automatic; they vary, influenced by different factors, whether legal, geographical, economic, or even socio-political, unique or particular to each region. In some cases, these particularities can lead to the violation of civil rights, especially when power elites perceive that their privileges are at risk and threatened.

Democratization and transitional justice must go hand in hand to redress the harm caused to victims in contexts where human rights have been severely violated by authoritarian regimes. Both models must move forward together to guarantee true social and political transformation. This is the only way to ensure that democratic transitions replace one regime with another and promote true social renewal and guarantee the dignity of the human person.

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