

# **Democracy, Freedom of Expression, and Freedom of Association**

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## **Democracy as a project**

Since the end of the cold war and the fall of the Berlin wall, more and more countries have become nominally democratic. Constitutional democracy seems to have become "the only game in town," at least in Europe. However, we should not become complacent and assume that countries that are democratic by name are also actually democratic. Indeed, I will go so far as to claim that we have no fully democratic countries in the world – and that we never will have any.

Democracy is a very demanding ideal that cannot be achieved overnight and perhaps can never be fully realized. A country does not become democratic merely by having a democratic constitution and holding elections. Democracy depends also on a democratic political culture, free rigorous public debate, and a vibrant civil society. The latter are necessary for keeping political leaders accountable, to avoid corruption and undue concentration of power in the hands of a small elite, and to democratize society itself. Insofar as power concentration in the hands of the few and abuse of power is a tendency to which every society is prone, the struggle for democratization is a never-ending project. Thus, democracy is something we never simply have but, rather, something we always must strive to perfect.

Democracy means that the people rule themselves; that those who are subject to the laws are also the authors of the laws. But can we truly say that the population as a whole is those who give the laws in any really existing democracy? Is it not rather the case that the laws are given by a small elite that compete for the people's vote? Aren't the majority of people in contemporary democracies spectators to politics rather than participants in politics?

So-called realists think these facts mean that we must redefine democracy in less ambitious terms. They think that we must understand democracy not as rule by the people but, rather, as rule by elites competing for the people's vote, as the Austrian economist Joseph Schumpeter put it. Another possibility is to see rule by the people as a goal for which we should strive. On this alternative view, democracy is not

something we have but is an unfinished project. The point is not that democracy as rule by the people is not something we have now and can realize in the future, but that democracy is something we can never fully achieve. Democracy is a continuous, never fully realized project.

In the Nordic countries, we like to pride ourselves of our democracies. We have very high voter turnout at elections. We have competition among a number of very different political parties. Money does not play a great role in politics. We have a free press and diverse media. We have freedom of expression and vigorous public debate. We have freedom of association and active NGOs and voluntary associations. We have a vibrant civil society. But also in the Nordic countries is democracy as rule by the whole people an ideal we can only strive for, not something we have achieved.

To put it differently, the transition to democracy is never fully achieved. None of us lives in fully democratic societies. At best, we live in societies that are democratizing – approaching the ideal; at worst, we live in societies that are de-democratizing – moving away from the ideal. As eminent sociologist and political scientist, Charles Tilly writes in his 2007 book *Democracy*: "Democratization is a dynamic process that always remains incomplete and perpetually runs the risk of reversal – of de-democratization."

Since we are in Denmark, let me mention that, 60 years before Tilly, the Danish theologian Hal Koch wrote the following in his book *What is Democracy?* (1945): "Democracy ... is not something in itself completed ... It is not a victory, which has been won, but a struggle that is still ongoing. It is not a once and for all achieved result, but a task that must continually be solved."

The most promising path for making democracy more than the elites' competition for the public vote lies in having an active and democratic civil society. The activities of NGOs are crucial for not only upholding democracy but for the continued democratization of our societies.

## **Democracy as a way of life**

Why do I stress that democracy is a project rather than an end-state? Why can't we say that democracy is something we have achieved, at least in the older and better-established democracies such as the Nordic countries? I say this because I want to stress that democracy is not merely a set of laws and formal institution, or a

constitution that sets out procedures for democratic decision-making, separates the three branches of government and protects individual rights. These formal institutions are crucial but they are not sufficient for realizing the democratic ideal. After the Second World War, we had in Denmark a discussion of the meaning and value of democracy. One prominent intellectual, the aforementioned Hal Koch, argued that democracy is not merely a set of institutions but a way of life. Democracy is something we must live.

This conference focuses on the role of NGOs, civil society organizations and voluntary associations in democracy. We shall discuss the role of NGOs in relationship to democracy, freedom of expression, and freedom of association. One might say that NGOs need freedom of association and freedom of expression to exist and thrive, which is true. But we should also look at the relationship from the other side. NGOs are the agents struggling for freedom of association and freedom of expression. But civil society organizations do not just fight with the state about the right to freedom of association and freedom of expression; they also give these rights life. NGOs are essential parts of the democratic way of life.

### **State and civil society**

Sometimes, we see the state as a threat to our freedoms. Civil society organizations see themselves as fighting against the state for the sake of freedom and democracy. However, the modern sovereign state and civil society emerged together, and there are good reasons to think that a free civil society depends on a strong state. Of course, it is a large question what we mean by a strong state and how strong the state should be.

What I mean is the following: A vibrant civil society depends on the existence and enforcement of civil rights, the enforcement of civil rights depends on a state with the capacity to secure the rule of law, to secure the rule of law a state must be well functioning and have powers of enforcement.

By a strong state, I mean a state with a well-functioning legal system, including well-functioning courts, means of enforcement, and a well-functioning bureaucracy. But I also mean a state with legitimacy, that is, a state that is acceptable to the citizens who are subject to its rules.

State and civil society need each other. The state needs civil society for generating legitimacy and support, as well as for sources of learning and inspiration. Civil

society needs a state to project civil rights, uphold order and security, distribute resources, etc.

### **A two-track model of democracy**

My lecture today depends on the view that democracy happens not only in one track but in two tracks, an idea I take from the German philosopher Jürgen Habermas. Thus, I want to speak of a two-track model of democracy.

Sometimes there is a tendency to understand democracy only in terms of election of representative and the authorization of political leaders to make political decision on our behalf or in our name. But this view of democracy gives little room to the democratic importance of the public sphere of civil society and the democratic activities of NGOs. And to understand the importance of freedom of expression and freedom of association for democracy, we cannot only look at elections; we must also look at the role of the public sphere of civil society and voluntary associations.

Thus, Habermas has suggested that one can understand democracy as happening in two tracks:

1. The formal track of elections of representatives, deliberations in parliaments, and implementation by the executive branch.
2. An informal track in which members of civil society seek to influence political leaders, parliamentarians, and executives through what Immanuel Kant called "the public use of reason".

It is important that we understand the difference between these two tracks of democratic politics, and that the two have different functions in terms of democratizing society. In other words, there are some things civil society organizations can do only by limiting themselves to the informal track. And there are things that must be done in the formal track to uphold democratic norms of, e.g., political equality. Democratization is not about collapsing the two tracks but requires that we keep them separate. If the two tracks are collapsed, we lose the distance that is necessary for the critical function of the public sphere of civil society.

## Two tracks of democratic politics

	Informal Track	Formal Track
<b>Core Rights</b>	Rights of Free Expression and Association	Right to vote
<b>Debate</b>	Debate to inform, raise awareness, find new arguments	Debate to make decisions
<b>Procedure</b>	Informal	Formal
<b>Time</b>	Unlimited	Limited
<b>Problems</b>	Detect problems	Solve problems
<b>Site</b>	Periphery	Center
<b>Agenda</b>	Unlimited	Limited
<b>Power</b>	Criticizes power abuse	Exercises power
<b>Norm</b>	Participation	Political equality

## Civil society

What is the role of NGOs or civil society organizations within this framework of a differentiation between state and civil society, formal and informal democratic politics? There are some dilemmas for NGOs and civil society organizations in their relations to the state. On the one hand, NGOs need the state to protect rights and sometimes for financial support and, on the other hand, they must stay independent of the state (remain *non*-governmental, voluntary, and civil). They seek to influence government and perhaps get a seat at the table, while not becoming government, that is without being coopted by the government and becoming part of the system.

One of the challenges for NGOs is on the one hand to become powerful enough to be able to influence government and on the other hand to maintain the independence necessary for checking power. When NGOs are successful, they get a seat at the table and are able to influence political leaders. This type of success, however, involves the danger of being coopted by government, which has an interest in blunting the critical edge of civil society actors. Moreover, the closer NGOs come to the center of power, the further they move from the problems of the periphery of society. Important questions, therefore, are: How can NGOs be politically powerful without becoming part of the system, whose power they should check. How can NGOs be at one and the same time sensitive to the perspectives and problems of ordinary citizens and influential in political society?

On the background of the two-track model of democracy and the challenge just mentioned, I want to distinguish to complementary roles for civil society

organizations. First, they must be offensive and direct their action toward the state. Second, they must be defensive, self-limiting, and direct their action inward.

*Offensive action directed toward state*

In their offensive mode, NGOs engage in what might be called a politics of influence and inclusion. This politics of influence and inclusion is directed at the state or government. The politics of influence concerns the aim of NGOs of getting new items on the political agenda or of advocating changes in existing policies. Historically, voluntary organizations have played an important role of detecting new problems in society and getting them on the political agenda. E.g. issues relating to the environment and the climate. The politics of inclusion concerns in particular the work done by NGOs of getting hitherto excluded or marginalized groups recognized by the state and included in the political process. From women to ethnic minorities to sexual minorities. This offensive role aims at the democratization of the state and government.

*Defensive and self-directed action*

In their defensive mode, the activities of NGOs are more directed toward civil society than the state. There are two aspects to this. First, civil society organizations must protect their own rights and activities. Of course, this self-protective mode is not entirely separate from but includes activities aiming at influencing the state. But the protection of its own rights lies also in the very activity of exercising of the rights. Rights that are not used are dead rights. Freedom of expression and freedom of association must be used to have meaning and value, and NGOs are central for this. Second, the activities of NGOs are not only aimed at influencing the government but also at influencing public opinion. This influence is directed, in a sense, at civil society itself. It includes activities that make the public aware of new problems and challenges, of producing and spreading information about these issues, of suggesting solutions to the problems or challenges, and of giving arguments for the importance of the problems and for why some solutions are better than others are. The defensive or self-directing role of NGOs aims at the democratization of civil society itself.

I mentioned that NGOs could be seen as in a dilemma in relation to state and government, which they depend on and from which they nevertheless should stay free. To steer free of this dilemma it is important that NGOs follow what I, following Jean Cohen and Andrew Arato, shall call a self-limiting strategy. A self-limiting strategy is a strategy that is characterized by an acknowledgment of the differentiation of state and civil society. NGOs should seek to influence government but should not become part of government. We should not be blind to the fact that

state and government might have an interest in incorporating NGOs into the state, because in this way they can control them. But in order for NGOs to keep their critical function, they must not become part of the system or the state.

There are no easy answers to exactly how an organization at one at the same time can maximize its influence and keep its independence from government. However, it is crucial that members of NGOs always keep in mind the danger of being coopted by the government that they seek to influence. Some of these dangers lie at a very practical and personal level. Leaders of successful NGOs become part of the elite and connected to political leaders. But when this happens, they might lose both their critical perspective on political power and their connection to the periphery of society whose problems they are supposed to bring to the political agenda.

## **Democracy and Civil Rights**

Let me turn to civil rights, with special attention to freedom of expression and freedom of association. I want in particular to say something about *the relationship* between democratic debate and decision-making on the one hand and civil rights on the other hand.

Sometimes, civil rights are seen as external constraints on democracy. That is, rights are regarded as setting limits to what democratic majorities can decide. In this view, democratic participation and civil rights express different or even opposing normative commitments. Democracy gives majorities license to decide whatever it likes, while civil rights protect citizens against certain types of decision by the majority.

While it is true that individual rights do protect citizens from certain decisions by democratic majorities, we should not see this as expressing an opposition between democracy and individual rights. For individual rights do not only limit democratic decision-making; they also enable it. We cannot imagine a democratic process in which citizens lack, for example, freedom of expression and freedom of association. Both the formal track of elections and the informal track of contestation depend on individual rights. Candidate selection, political party formation, and election campaigns are impossible without freedom of expression and freedom of association. The formation of civil society organizations depends on freedom of association, and because the activities of NGOs are mainly communicative, they depend on the right to express themselves freely.

Thus, civil rights are not only limits to democracy; they are also enabling democracy. This means that the struggle for civil rights is a struggle for deepening democracy. Some might say that if the majority decides to limit certain civil rights, then this is perfectly democratic. But this is a dangerous misunderstanding. If the majority decides to outlaw critical opposition groups or to censure critique of the government, this has made the country less democratic and not more democratic. How democratic a country is depends on not only who decides but also on what is decided. Not everything decided by a democratically elected government is democratic. Freely and fairly elected governments cannot protect themselves from criticisms based on the fact that they are democratically elected; they can and should be criticized for being undemocratic (and not only unjust) if they limit civil rights that are necessary for upholding a democratic process.

The argument that I have just given, however, does not mean that the meaning and application of civil rights can be taken as given. We have to note that civil rights such as freedom of religion, freedom of association, and freedom of expression are abstract principles. And abstract principles do not apply themselves. Thus, when civil society organizations criticize their government for violating civil rights, they at the same time enter a political debate about the meaning, limits, and proper applications of these rights. Questions about violations of civil rights are not above or outside politics; rather, they are an essential part of democratic debate and contestation.

So what is the role of NGOs and civil society in relation to civil rights? On the one hand, civil society organizations should fight for rights to freedom of expression and freedom of association. They should document, publicize, and protest infringements of civil rights. These are well-known activities of NGOs in the fight for the protection of civil rights.

On the other hand, civil society organizations should also recognize that they are part of what we might call a discursive struggle about what is the exact meaning of and limits to civil rights. We cannot just take the meaning of these rights as given and assume that the only struggle concerns whether or not civil rights are violated or not. Sometimes different groups in society will have different understandings of what a right means and implies. And in cases in which there are disagreement on the meaning and implications of civil rights, one must avoid the twin dangers of particularistic universalism and dogmatism.

Particularistic universalism is particularism presented as universalism. The danger of particularistic universalism lies in the failure of recognizing that one's own



interpretation of a right is not a universally acceptable one, but is a product of one's particular perspective. Dogmatism is to present one's own view as self-evidently true and beyond discussion. The danger of rights dogmatism lies in that it excludes discussion of the meanings of rights and delegitimizes or marginalizes those with a different interpretation of rights.

I mentioned earlier that civil society is important to (1) check abuses of power, (2) detect new problems and set new issues on the agenda, and (3) supply new arguments for different courses of action. Part of this struggle concerns also definitions of what constitutes abuses of power and what our rights mean. This struggle is not only one we have with the state but also with the public.

## **Conclusion**

I began this lecture by claiming that democracy is an unfinished project. This incompleteness of democracy is not just a contingent matter – that is, something that could be different; it is an integral part of democracy. There is something inherent in democracy that means that we can never fully realize it. Democratizing the state and civil society is not something that has a pre-given and clearly defined end-state. In the process of consolidating and deepening democracy, we keep redefining the goal; we keep redefining what core rights and democracy itself mean and imply. This process is not anti-democratic but part of what democracy is or should be.