

**Balancing Power in Democracy:
A Philosophical Analysis of Popular Sovereignty**

**By
Theophilus Chando**

**A thesis submitted in fulfillment of the requirement for the Degree of Doctor
of Philosophy in Philosophy at the University of Nairobi, May 2014**

Declaration

This thesis is my original work and has not been submitted for award of a degree in any University

Signed

Theophilus Chando

Reg. No. C. 80/80381/2010

Signed

Prof. J. Nyasani

Signed

Dr. F. E. A. Owakah

Dedication

This PhD thesis is dedicated to my father, Mr. Nelson A. O. Chando, my mother Mrs. Dorothy A. Chando, to my daughter Juliet Atieno Chando, and my son, Bill Onyango Chando, and to their step sister, Natasha Mwajuma Chando.

Acknowledgments

This thesis has taken me an enormous amount of effort and time to accomplish. But it has taken an equally enormous amount of support and assistance from several other people to be what it is now. Without this support and assistance, this work would not have seen the light of day. Space will not allow me to acknowledge every person who made significant contributions towards my goal of completing this work. The few I will mention are by no means more important than those I will mention. It is only that their names, constantly kept lingering in my memory at the time of writing this acknowledgement.

First, I would like, in a very special way, to thank His Lordship, Bishop Philip Anyolo, the Bishop of Homa Bay Diocese, together with the Catholic Scholarship Program for Africa, for the financial support which enabled me to undertake these studies. For years, the thought of studying for a PhD degree was only a dream, and at times it even took the shape of a wild dream in my mind. It is for the generosity of the Bishop and the magnanimity of the Scholarship that this thesis has seen the light of day.

Secondly, I wish to thank in a particular way, my supervisors, Professor Joseph M. Nyasani, and Dr. Francis E. A. Owakah, for their particular patience and the effort they made to ensure the completion of this thesis. It has not been an easy journey for the three of us, but the commitment and dedication to this course made it a success. May God grant you all that is best during your life time on earth.

I am equally thankful to the administration and staff of the University of Nairobi library; the administration and staff of the Consolata Institute of Philosophy library; and the administrations

and staff of Tangaza University College library for their assistance in locating the material necessary for my research whenever I needed it.

To all my colleagues in the academia, especially Dr. Oriare Nyarwath, for his constant encouragement during the trying and discouraging times of this work, Prof. Bob White, for availing to me all the original texts of Jürgen Habermas, and Patrick Ryan for his constant encouragement, and to all who constantly prodded me to persevere and accomplish this work, I say, thank you. This work is as much yours as it is mine.

I am grateful too, to my parents Mr. Nelson A. O. Chando, and Mrs. Dorothy A. Chando, whose faith in my ability to accomplish a PhD research became a source of great inspiration, and my cousin Beatrice Atieno Obute Omboga, for her moral support during this time. I would like to pay tribute to all my siblings, in a special way to my sister, Grace Adhiambo Chando, for her support. Thanks “Nya Baba” for your unwavering support.

In a particular way , I would like to recognize my “Friepass” brothers: Philip Odeka; Peter Osodo, Camlus Omogo, Erick Manga, Sylvester Ragalo, Rev. Fr. Patrick Odhiambo (Innocent), Stephen K’Adenyo, Samwel Omoro, , George Gitau (a.k.a Athungu), Nicholas Odhiambo Ochien’g, and Johnfisher Ondingo. Thanks, guys for the brotherly concern you demonstrated in supporting my cause.

Lastly, I thank, in a special way, all those who supported and encouraged me in one way or another, to complete this work. Special thanks go to all my former teachers who saw me through all the levels of academic training till now. Equally valuable in this regard are my teaching colleagues and to my past and present students at Tangaza University College, Consolata

Institute of Philosophy, and St. Joseph's Major Seminary of the Diocese of Meru. God's blessing to you all. I wish to single out two of my outstanding students, Mark Athony Agen'ga, and Horace Otieno Adipo, for their const support and encouragement in the entire period of doing this work. Thanks guys for the faith you have in me. May God bless you all.

Abstract

This thesis analyses the concept of popular sovereignty as a core principle of democracy. For centuries, democracy has been hailed as the best form of government on the assumption that since the society is structured by the people for the sake of the people's well-being, it is only reasonable that the people themselves be in charge of all the processes and activities which affect their lives. This thesis is a contribution to the larger democratic debate about power relations between citizens and their representatives in the light of modern day representative democratic politics. The ideal is that the people are sovereign in democracy, which is to say that the ultimate power rests with them. In practice, however, the people do not exercise real power over their affairs, as their representatives constantly usurp the power from them. This creates conflicts between the people and the representatives, causing a serious problem for the realization of the aims of democracy as a form of government. How to balance the extent to which citizens still remain in charge of their affairs, as they continue to entrust delegates with the execution of their decisions without risking the loss of their sovereignty, has been the main concern of this thesis.

In our opinion, the solution to the problem of the conflict between citizens and their representatives, for a more orderly and peaceful society, depends on how the concept of popular sovereignty is understood. In our attempt to gain an understanding of popular sovereignty, we have employed the phenomenological and critical methods, based on pure library research. We have found in the process, primarily, that popular sovereignty rests on some fundamental principles, and is actualized by deliberation, publicly conducted in an environment where members regard themselves as free and equal. What this means, ultimately, is that for popular sovereignty to be achieved, there must be genuine efforts to instill in the citizens the principles on which it depends, and to institutionalize deliberation as a core element in every collective decision making at all levels of the society. Equally, there is need to impart legal knowledge to citizens, adapted progressively according to the comprehension capacity of the learners, starting from elementary levels of learning, until university or other tertiary levels of learning.

Table of Contents

Declaration.....	i
Dedication.....	ii
Acknowledgements.....	iii
Abstract.....	vi
Chapter One	1
General Introduction	1
1.1. Background to the Study.....	1
1.2. Statement of the Problem.....	10
1.3. The Goal and Objectives of the Study.....	10
1.4. Justification and Significance of the Study.....	11
1.5. Scope and Limitation of the Study.....	11
1.6. Operational Definition of Terms.....	12
1.7. Literature Review.....	13
1.8. Theoretical Framework.....	27
1.9. Study hypotheses.....	30
1.10. Methodology.....	31
1.10.1. The Phenomenological Method.....	31
1.10.2. The Critical Method.....	33
1.10.3. Chapter Summary.....	33
Chapter Two	39
Popular Sovereignty: Its Key Principles and Implications for Popular Sovereignty	39
2.1. Introduction.....	39
2.2. Sovereignty.....	40
2.3. Popular Sovereignty.....	42
2.4. Principles of Popular Sovereignty.....	44
2.4.1. Residual Epistemic Capacity.....	44
2.4.2. Personal Autonomy.....	46
2.4.3. Communicative Disposition.....	49
2.4.4. Participation.....	51

2.5. Participation as a Deliberative Process	52
2.6. Deliberation and other forms of Discourse	54
2.7. Conclusion.....	58
Chapter Three	64
Individual Citizens and the Principles of Popular Sovereignty in Democracy	64
3.1. Introduction.....	64
3.2. Homogeneity of Citizens	64
3.3. Power	67
3.4. Individual Independence versus Social Integration	72
3.5. The Moral Norm of Honesty and the Communicative Disposition.....	75
3.6. Individual Intellectual Disposition.....	78
3.7. Individual Citizens and the Exercise of Sovereign Mandate	80
3.8. Conclusion.....	82
Chapter Four	86
The Concept of Political Representation	86
4.1. Introduction.....	86
4.2. Representation.....	86
4.3. Representation and the People’s Fallibility	90
4.4. Representation and the Usurpation of Sovereign Power	92
4.5. Sovereignty, Representation, and Popular Participation.....	96
4.6. Popular Sovereignty, Representation and the Notion of Rights	98
4.7. Conclusion.....	103
Chapter Five	108
Summary, Conclusions and Recommendations	108
5.1. Summary	108
5.2. Conclusions.....	111
5.3. Recommendations.....	119
Bibliography	123

CHAPTER I

GENERAL INTRODUCTION

1.1. Background to the Study

Humans, Aristotle remarks, are naturally political animals.¹ When political organizations began, however, is impossible to tell, for no records exist, or could have existed to indicate that.²

Documented history, however, shows that political communities have existed on earth for several millennia. China, Mesopotamia, Egypt, Greece, India, and the Amorites have been documented as some of the earliest political civilizations.³

In some of these ancient communities, for example, Greece and Mesopotamia, political organization was regarded as a divine ordinance, since it was seen as replicating the divine order.⁴ Humans were simply following a divinely predetermined path, in which the ruler of the human political realm was the counterpart of the leader of the divine realm. If the leader of the divine realm held absolute authority over its realm, the leader of the human realm had matching authority.⁵

With the invention of the city-state in Greece,⁶ though, the conception of the nature of political community changed from a religious one to a secular one. Politics was not seen as a divinely ordained activity, but as human contrivance meant to help in achieving communally desired ends. The Greeks, then, particularly Athenians, conceived of a political system where all citizens (with some qualification), would be ruling over themselves collectively, through making

decisions on collective affairs. This kind of rule in which everybody was a decision-maker was called by the Greeks, *democracy*. It is a system which earned an unprecedented praise for the Greeks, as a free people worth emulating.

As a form of governance, democracy has also become popular over time, and is today regarded as the best system for organizing human political communities. Since the fundamental principle of democracy is that citizens are their own rulers, admirers of democracy regard it as the best form of governance in which the interests of every individual will be taken care of.⁷ Critics of democracy, like Plato and Aristotle however, are skeptical of its ability to organize human communities in the best way.⁸ Plato (c.427BC-347BC), prefers a few well trained men, assisted by equally well trained “women”⁹, to take charge of the political community, while Aristotle (c.384BC-322BC), a mild critic of democracy, prefers men of moral excellence to take charge.¹⁰

After the attack on democracy by Plato and Aristotle, it lost vibrancy until the First Century B.C. when it re-emerges in the works of Cicero and Seneca.¹¹ With these two thinkers, the scope, nature and structure of citizenship broadened from the narrow Greek conception based on blood relation to a broad one, based on law and agreement, motivated by common needs. According to Cicero, the State is a property of the people. “... a commonwealth is the property of the people. But a people is not any collection of human beings brought together in any sort of way, but an assemblage of people in large numbers associated in an agreement with respect to justice and partnership for the common good.”¹² Notwithstanding this endorsement of the role of the people in the formation of the political community, Cicero still preferred the rule of the monarch to that of the people.¹³ The people can be unruly and perhaps, even become tyrannical and dangerous to

the existence of the State itself, as had happened in Athens.¹⁴ His theory was democratic, but he preferred an autocratic practice. A more democratic opinion is found in Seneca. Human beings, he argues, belong to two realms: the State, and the greater society. An obligation to serve the greater society, whether by holding political office or not, whether by getting physically active or by philosophical contemplation alone, falls upon every individual, regardless of his/her rank in the society.¹⁵

The concept of the commonwealth as made up by the people, introduced to the medieval ages by thinkers such as Cicero and Seneca, though, was more to the advantage of the king than, who became the titular representative of the people and the repository of the people's authority.¹⁶ The enlightenment idea of a powerful king was already latent in early medieval political thought. As G. H. Sabine and T. L. Thorson write,

The king ought to have no equal in his realm, because this would nullify the rule that an equal cannot have authority over his equals. Still, less ought he to have a superior or anyone more powerful than he, for he would then be below his own subjects, and it is impossible that inferiors should be equal to those who have greater powers. But the king himself ought not to be subject to any man, but he ought to be subject to God and law, since law makes the king. Therefore let the king render to the law what the law has rendered to the king, viz. dominion and power, for there is no king where will rules and not the law.¹⁷

In this conception, there is certainly no room for any democratic practice, for the king rules, it seems by some kind of divine right, since he is responsible only to God. Yet still, there is confusion as to the limits of the king's diadem since still, there is a feeling that the king has, or ought to be superior in (a part from God), law, court and "... the king's associates..."¹⁸ In general thought, it was held that God ordained two kinds of authority to exercise power: one held by the priests and the other by the secular rulers as ordained by the natural law, and no one individual could hold both the *sacerdotum* and the *imperium* at once.¹⁹

The general bent of the medieval political thought was that society is stratified into two: a higher, superior one, and a lower, inferior one. Each section had its naturally ordained realm; the superior's realm being that of providing the necessities of social tranquility, while the inferiors' realm is that of obedience and "lawful" submission to the superior. Again, here we find what looks like a regress to the pre-democratic Athenian conception of political organization. Democracy loses favour to hierarchical structures.

Towards the close of the medieval period, however, a shift in thinking in favour of a rather democratic dispensation occurs, as exemplified by Marsilio of Padua. In his writings, he subordinates the authority of the church to that of the State. Religion, in his opinion, is a social phenomenon which should operate under the principles set by the State. The Clergy, just like any other citizen, are under the temporal government.²⁰ His writings are symptomatic of democratic thinking:

‘the legislator, or first and proper efficient cause of law, is the people or whole body of citizens, or a prevailing part of it, commanding and deciding by its own choice or will in general assembly and in set terms that something among the civil acts of human beings be done or omitted, on pain of a penalty or temporal punishment.’²¹

For the first time, one sees an allusion to the theory of "Popular Sovereignty" in Marsilio of Padua's writings. The executive and juridical are to be set up by the people through election so that authority is exercised in accordance with the law as determined by the people.²² This, in a sense, implies some consultation and perhaps, even deliberation among citizens, even though at this time the idea is not yet clearly expressed.

After Marsilio, this democratic thinking slowly dies out for some time, and the next significant political theory which comes to the fore is the non-democratic theory of the Italian Renaissance political theorist, Niccolo Machiavelli (1469 – 1527), and the British empiricist, Thomas Hobbes (1588 – 1679). In Macchiavelli's thought, government ought to be of one man, responsible to no one, and on whom it depends entirely to determine the structure of the state, and to make all the decisions regarding the governance of the state. It is only in this way that we can ensure harmony, and dispel knavery and undesirable subterfuges and shenanigans, which are likely to be found in democratic governments. Democracy would only be possible where minimum civic virtue was still extant, but in a corrupt society, such as was Italy at the time of Machiavelli, it is only the rule of an absolute monarch which can check people's unbridled appetites, and produce a semblance of order. Democratic government would rest on the assumption that people always mean well, and can be trusted to make decisions which serve the common good, and this is exactly what Machiavelli contests.²³

Writing almost a century after Machiavelli, and at a time when his own country, England was reeling under the burden of vicious civil wars,²⁴ Hobbes too prefers that the affairs of a State be vested in the hands of one absolute ruler, a despot, in whom it is incumbent to decide the nature of the State,²⁵ and to determine what is good or bad for the citizens; for he bears their person. Perhaps the most important point in Hobbes' political theory is that human beings seem irredeemably captured by a burdensome infectious obsession with power:

So that in the first place, I put for a generall inclination of all mankind, a perpetuall and restlesse desire for power after power, that ceaseth onely in Death. And the cause of this, is not always that a man hopes for a more intensive delight, than he has already attained to; or that he cannot be content with a moderate power: but because he cannot assure the power and means to live well, which he hath present, without the acquisition of more. And from hence it is, that kings, whose power is greatest, turn their endeavours to the

assuring it at home by Lawes, or abroad by Wars: and when that is done, there succeedeth a new desire; in some, of Fame from new Conquest; in others, of ease and sensuall pleasure; in others of admiration, or being flattered for excellence in some art, or other ability of the mind.²⁶

This obsession is manifested in disparate ways, chief among which include the desire "... of Riches, of Knowledge, and of Honour."²⁷

Such a condition is obviously inimical to a democratic kind of governance. Democracy cannot work where every person fights for selfish advantage, and no means is prohibited in the pursuit for power and survival. A rule by the many is simply unthinkable under the circumstances where each is scheming a war against another. Such a situation is undesirable, and Hobbes recommends that some way of creating order be worked out. The best way would be that citizens give up their right to independent thought and individual governance in favour of one man or in favour of an assembly of men, who shall make all the decisions in the name of the citizens, and this man or assembly of men shall bear the person of all the citizens. By allowing that an assembly of men can take charge of the affairs of the State, some authors²⁸ have argued that democracy, at least in theory, is not all at odds with Hobbes' conception of good governance. The problem, however, is that as in the case of Machiavelli, democracy is impossible due to human beings' belligerent nature.

Machiavelli's and Hobbe's non-democratic recommendation introduces an aspect in political thought and practice which has been seriously contested. J. Locke, J. J. Rousseau and J. S. Mill have argued, and rightly so, against autocracy, equating it to a negation of human nature, which is that of freedom.

From the 17th Century, a radical shift of thought in favour of democracy occurs, beginning with John Locke (1632-1704) and the French philosopher, Jean Jacques Rousseau (1712-1778), and maintains currency till today. Government, Locke argues, must ultimately be in the hands of the entire body of citizens. The citizens may decide to entrust some representatives to act in their name, but the power to design the society and to make ultimate decisions is still vested with the people.

In the Lockean scheme, we see a theory of popular sovereignty, together with its deliberative corollary, gradually established. The citizens retain the power to change their government, or elements thereof, or those who are to take charge of the affairs of the State, either partially or entirely. It is upon the citizens to make the laws according to which they are to be governed, and whoever acts on behalf of the citizens has to abide by these laws. It is also incumbent on the citizens to change these laws as the circumstances may warrant. Whoever acts on behalf of the citizens makes a contract with the citizens, to act for the safety of the citizens, and remains fundamentally answerable to the citizens.²⁹

A similar, but more complex view is found in the Philosopher Jean Jacques Rousseau. He proposes a complex system which maintains individual freedom, but within strict checks and balances of the “general will”. A human being does not exist without the community (the General Will). It is the community which makes people, and so, the community is prior to, and for that reason, has absolute authority over the individual. It confers rights to the individual and the individual can only enjoy such rights, only as much as the society permits. The General Will conferring these rights, is “... absolute, sacred, and inviolable ...”³⁰ and no individual ruler can

contravene its dictates. In so far as the sovereign cannot overstep the bounds set by convention, so each person too, is granted the liberty of disposing at will, only such goods and liberties as the community (the general will), allows.

This concept of the “general will” in Rousseau, even if it may be interpreted to favour the democratic principle of popular sovereignty,³¹ still brings a particular difficulty in terms of how it relates to individual freedom. The “General Will” is like a universal psychological mood, or an *abstract artificial corporate person* (systematized and harmonized individual wills), standing above every individual, guiding, approving and disapproving of their actions, both collectively and severally. Every citizen must obey this general will, and this obedience to the general will constitutes the freedom of individual citizens, for Rousseau. An individual who operates in disobedience to it must be forced to obey it by means of penalties, i.e., the individual is *forced to be free*.³² For Rousseau, then, the opinion of the society is absolute over the individual, yet it must not suppress the opinion of individuals. Individual citizens still retain their fundamental freedom to determine what they want. To this extent, then, Rousseau’s thoughts are democratic, though of a cryptic type, for he seems to make the general will a tyrant over individual wills.

Critical of Rousseau’s theory is Alexis de Tocqueville (1805-1859), who argues that the principle of moral equality of humans, taken to be central to popular sovereignty, can as well work against democracy as anchor it. In *Democracy in America*, Tocqueville presents equality as the principle which can very well co-exist with both tyranny and liberty.³³ If not mitigated, democracy can foster tyranny, of either one over all, or of many over a few, or of all over all.³⁴ The point lies in creating a balance between individual freedom and social order, that is,

explaining exactly what the democratic principle of popular sovereignty is, and indicating how it relates to corporate political responsibility among citizens. If not well understood and organized, democracy can engender a form of despotism in which the society tyrannizes over itself.³⁵

Democracy, as a system of government, claims to use power to achieve ends for the entire citizen body, or at least for the majority of citizens. To this extent, it has generally been accepted³⁶ as the best form of government, and thus as a measure against which political activity is evaluated. Because it places ultimate sovereign power and mandate in the citizen, it is assumed that the ideals of good governance will be achieved, because the citizen cannot willfully go against his/her own interests. Even if the citizen delegates authority to a representative, he/she will do so to the representative who will best achieve the aims. In other words, democracy is construed as a model of employing power for the benefit of the entire citizenry. The two normative models of democracy, liberalism and republicanism, each of which claims to represent the best means for achieving popular sovereignty as the ideal of democracy, do not however, quite succeed in this task.³⁷ They do not adequately address the question of the limits of power, especially in regard to that between the ruled and the rulers, which is the fundamental question in democracy. The question of the balance of power between the rulers and the ruled in society is a crucial one, and attempts to resolve it must be made, if humans are to avoid conflicts which are a daily occurrence within society.³⁸ If democracy is to maintain the propitiousness it currently enjoys, then it must address the balance of power between the rulers and the ruled. This research attempts to contribute to the democratic debate by analyzing popular sovereignty as the key element in explaining the balance of democratic power between rulers and the ruled.

1.2. Statement of the Problem

In the available scholarly literature on democracy, there is a general consensus that democracy is currently the best paradigm for organizing a political community.³⁹ This leaves the issue of how to make one form or other of democracy relevant to the life of a people as the major issue to be addressed. The grounds for the very existence of democracy are taken to be conceptually non-problematic. The assumption, here, is that democracy is rooted in certain irreducible human characteristics, as freedom, equality, and some minimum rational capacity for decision-making in matters of governance. This makes the problem rather simple: how to make democracy work.

However, "...despite the agreement that democracy is a good [political system]",⁴⁰ there are still problems that make democratic practice fail as a paradigm of good governance. An immediate problem associated with this revolves around the concept of "popular sovereignty". By "popular sovereignty" is meant that "the people", i.e., citizens of a political community possess ultimate power to determine how the community is governed. The extent to which the citizens determine this without risking anarchy is important to demarcate, against the extent to which restrictions for the sake of social harmony are to be established. This translates into the question of the limits of the people's involvement in the processes of governance. How this is to be achieved and the principles which ensure its efficacy is which this research undertook to investigate.

1.3. The Goal and Objectives of the Study

The overall goal of the study is to interrogate the concept of "popular sovereignty" as a basis for good democratic practice. Specific objectives of the study are:

1. To examine the concept of popular sovereignty and its basic principles

2. To investigate the limits of popular sovereignty *vis á vis* delegated power
3. To attempt a formulation of a new democratic theory based on a clear conception of popular sovereignty

1.4. Justification and Significance of the Study

This research is inspired by the belief that good governance as a value sought by every society cannot be gainsaid. Yet, as humanity develops, the theoretical and practical issues regarding good governance keep changing in their complexities and demands. This calls for a constant study and re-evaluation of the principles and practice of governance.

The case of democracy, as a form of governance, claiming to represent the interests of every citizen in a political community, therefore, deserves our attention. One of the major pillars of democracy is that citizens must have ultimate power. Yet this very key democratic principle is itself elusive in its meaning and manifestation. In order to develop a theory likely to inform an appropriate democratic practice, it is important that this fundamental concept of democracy be properly understood. Who has what powers and to what extent, between the ruled and the rulers is a constant question, ever manifesting itself in different forms, including violence. It is a question which certainly needs our attention in an attempt to improve the society we live in.

1.5. Scope and Limitation of the Study

This research has examined the concept of popular sovereignty in democratic theory and practice. We restricted ourselves to pure conceptual analysis of the theories encountered and employed during the research. We have analyzed what Sovereignty means, concentrating

particularly on the conceptions shared by Jean Bodin and Thomas Hobbes, indicating its development into the concept of Popular Sovereignty by J. J. Rousseau. We have equally analyzed the concept of deliberation and attempted to connect it to popular sovereignty. We have thus not gone into general considerations of the nature of democratic governments, or to the empirical issues of how such governments work. We have, therefore, restricted ourselves to the analysis of concepts, principles and norms of democracy. The major text forming the basis of this study was J.J. Rousseau's *Social Contract*, but frequent reference was also made to J. S. Mill's *On Liberty*. In our view, the texts referred to make the best attempts, so far, at explaining the meaning and extent of popular sovereignty as the core principle of democracy.

1.6. Operational Definition of Terms

The following terms and concepts will be applied in some specific ways in this work, which may not necessarily reflect the lexical definition of the terms themselves.

Sovereignty – The condition of possessing supreme or ultimate political authority to make and execute laws and decisions, independently of any person or body of persons obstructing one. Sovereignty is usually attributed to states when they govern themselves by their own institutions, and laws.

Popular Sovereignty – The state of rational mature adults, possessing the ultimate power to determine for themselves whatever kind of organization is appropriate for their wellbeing. The major variable here is the concept “popular”.

Power – Ability to act, or to influence an action, or to achieve a goal by an individual, or a group of them, which otherwise would not have been achieved.

Political Community – A consociational body of persons, mutually and deliberately operating to attain social order, for the sake of satisfaction of basic needs and enjoyment of leisurely ends.

Authority – The right or mandate with which a person is entrusted to carry out functions on behalf of a community of people. A person, institution, or organization is said to have authority when the power it exercises is founded on some form of law.

Democracy – A form of government in which citizens share in the decisions, as well as direct the process and activities of the state.

1.7. Literature Review

The existing scholarship in democratic and general political discourse, one notices a general presumption in favour of democracy as the system of government which best represents the people's collective will and achieves their aspirations. A brief review of the existing literature reveals this fundamental assumption, yet there is also some consensus that the problems of governance still elude democratic solutions. At the same time, democracy itself has become a rather difficult concept to precisely formulate within the divergent political milieus of our contemporary world.

In a historical survey of the different phases of the development of democratic theory, B. Dewiel, in *Democracy: A theory of Ideas*, argues that there has been a gradual progressive democratic thinking, which has given rise to two major normative conceptions of democracy; the conservative and liberal conceptions. Political virtue, based on the virtue of individual citizens informed the ancient Greek political thinking, and much of the medieval political theory. This forms the conservative paradigm of democratic thought. In the enlightenment there was a shift in

political thinking from virtue as the principle of political activity and civic responsibility, to individual contribution to the political community, based on individual value. This became the liberal dimension of democratic thought. These two normative conceptions of political activity have characterized the democratic discourse, and are largely responsible for the differences in the understanding of the role of rulers and the ruled in democratic discourses and practice. This lies at the very centre of the discourse on sovereignty in political practice. Their attempts to resolve the conflict of the limits of power between rulers and the ruled have met with difficulties ever since. The author seems to have set the problem of establishing the limits of power relations between rulers and the ruled, which is the key question of democracy aside, claiming instead, that “democracy is not the pursuit of harmonious self-determination but the contest among positive liberty and other values.”⁴¹ The very nature of democratic discourse, according to the author, involves conflict of values, which may not be exhausted. Yet, at the centre of the conflict, lies the question of the people’s sovereignty. This is the central issue in democracy, and the author’s apparent dismissal of it does not solve the fundamental problem of democracy.

In *Comparative Political Philosophy: Studies Under the Upas Tree*, Parel and Keith examine the beginnings of political philosophy from verbal controversy and struggles for power, arguing that the task of the political philosopher is to settle such controversies. The fundamental concern of political theorizing and practice in different human societies and epochs has been to achieve harmony between the existing order of society, and the ideals that the human mind conceives of as what ought to prevail. Questions of legitimacy: What is it that makes a person fit to rule, or what is it that makes a system of rule desirable? have found considerable attention in different political societies. Some forms of political organization have been justified on the basis of desire

for wealth, others on desire for recognition, while still others, on the desire for honor, and for still others, on the desire for comfort. The book argues that there is not a single system of political thought and practice conceivable as valid for all human societies. Democracy too, as a political system cannot lend itself to only one interpretation, since human environments are different and produce different modes of adaptation to reality, even to the reality of democracy. Democracy must adapt itself to the different human realities found in different human environments, and must get itself domesticated by and fathomable in these contexts. No human society, "... creates a politics on borrowed ideas ... Political ideas are obviously attached to economic, cultural, and moral ideas with different perspectives that have strong influences."⁴² The authors take China as a case study, and argue that for the Chinese, "democracy is not so much an ideal in itself as a means to the ideal of a better society,"⁴³ as opposed to the West, where democracy is an ideal to be reached by means of increasing the domain of rights enjoyed by citizens of a particular country. China is attempting to domesticate democracy according to its environment, and to make it understandable to its people within its circumstances.

Comparing one political theory or paradigm to another does not yield correct interpretations of what the best political practice is. This is because societies and theories pertaining to them are diverse and complex, and these diversities and complexities significantly affect the political theories and practices. There are several non-political variables like ethics, economics, and culture, which determine political theories and practices. The book opens up the fringes of the debate on democracy, by simply showing the appropriateness of adapting the debate to particular instances, and goes no further than showing how it has been treated in different societies. An analysis of the fundamental democratic principles which must be domesticated within a society is not attempted, and this leaves the debate still wide open. As a political ideal, democracy

cannot be domesticated to different systems, but different systems ought to adapt to its principles. The task, then, is to outline and understand these principles, for the sake of matching political practice to them. This is a task that the authors do not address, yet, in our thinking, it is the task that democratic discourse ought to accomplish first, in order to set grounds for proper democratic practice.

The problem of democracy, it seems, lies exactly in what looks obvious. The very conditions for the possibility of the existence of democracy seem to convolute the understanding, and practice of democracy. Democracy rests on the fact that ‘the people’, understood generally as citizens of a state, have *ultimate* or *sovereign* power of decision – making. This, however, presents some difficulty because of the differences in interpretation, resulting in different theories and forms of democracy. The kind of democracy a society adopts, we are told, should depend on that society’s organizational conditions.⁴⁴ Writing from an African point of view, A. K. Fayemi, argues that there is need to develop an African theory of democracy, which will take into consideration both the traditional elements and elements from other cultures, with a view to enriching Africa’s democratic understanding and practice. Such a suggestion is a fairly brilliant one. Yet it still treats democracy as a means to achieving traditional ideals, which runs democracy into the risk of being faceless and amorphous. It is no longer an ideal of popular sovereignty, which directs actual power relations between the ruling and the ruled classes in the society, but a tool to domesticate and manipulate to justify even oppressive forms of social organization. The author’s treatment of democracy, primarily, leaves the question of sovereignty of the people as the key element in democracy, unaddressed. Considering popular sovereignty, which the author ignores,

is fundamental to any conception of democracy. An African theory of democracy can only be reasonably worked out within a frame – work of popular sovereignty.

In “Technocracy and Democracy: The challenges to Development in Africa,” Owakah and Aswani argue that the conventional sense of democracy is inadequate in its attempts to foster development in and for Africa. Their suggestion is that technocracy; an “... *in-built problem-solving*”⁴⁵ system is necessary as a practical approach to the problem of realizing the ideals of governance. The authors argue that there is a problem with democracy, which cannot be solved by just arguing for the sovereignty of the people, but that this ought to give way to expertise in governance practice since, the people might not be able to grasp the intricacies and technical issues of modern societies. This argument seems to lean on the age-old “guardian” concept proposed by Plato’s *Republic*. Impressive as it is, the argument overlooks the core problem of governance which democracy purports to address: the problem of people’s sovereignty, focusing instead, on some purported expertise and virtue of leaders. In decision-making, regarding people’s aspirations, no individual can claim expertise, for on one can possibly know what is good for everyone else. Again, the guardians (technocrats) being human, may run the risk of excess in operations. Who will guard the guardians, given that human nature is corruptible? This still leaves the question of the sovereignty of the people that the authors try to avoid the main point to address.

In order to adequately address the problem of accountability in democracy, it is imperative that the issue of the sovereignty of the people be addressed. The issue of sovereignty, though, is intricately intertwined with the issue of power and authority. Sovereignty is sovereignty in power

and authority. Sovereignty refers to the justification of a political authority with power to secure obedience. In *Social Ethics: Natural Law in the Western World*, Johannes Messner outlines different theories regarding the concept of sovereignty, arguing that sovereignty may mean the command and coercive power of the state as a body politic, or the command and coercive power of a prince, or the command and coercive power of a political community (citizens). The last one betrays Rousseau's conception of sovereignty, which is referred to as "popular sovereignty". Of this, too, there are two conceptions, one maintaining that political authority comes from God and resides in the people. The people possess the legal conscience arising from the natural law, commanding that "... no ruler and no government stands above the law or may create the law at will."⁴⁶ The role of political authority is to discover the popular will and make it its guiding principle in every political activity. The people delegate political authority to the rulers, but, the people have no power to change the rulers at will, since the rulers rule the people on behalf of God. Their sovereignty lies in the fact that their will must be the guiding principle in every political activity, and that the rulers are bound by the natural law, not to violate the citizens. In the second variation, absolute political authority rests with the people, who can change their rulers, or even the form of governance at will. Nothing stands in the way of the decision of the citizens to do whatever they think fit with political authority. This betrays the conception of J. Locke, and J. S. Mill.

The two conceptions of popular sovereignty just outlined present some difficulty. The natural law conception is too narrow and rigid, tying political authority to divine origin, and making political authority and element of religious dogma. Such a conception is philosophically problematic, since it is difficult to determine whether God has really given any individual or a

group of individuals power and authority, to decide issues on behalf of the rest. In the second interpretation, the danger lies in the two possibilities: 1) of the people becoming either tyrannical, or lethargic and passive, abdicating their duties of governance or, 2) of the people lacking conscious and articulate expression of their roles in governing themselves.⁴⁷ In this case, there is danger that the society will mistake its goals in most important ways. With these difficulties, the problem of power relations between rulers and the ruled still stands in need of address.

The *Second Treatise of Government*, of John Locke takes the position that people were born fundamentally free, equal and independent, and nobody can contravene this without going against reason. This freedom obtains in the state of nature as well as in society; the only difference being that in the state of nature, there is no common arbiter to decide disputes among people whenever there are contentious cases. Political community is, therefore, formed primarily for the sake of adjudication, and resolution of disputes, and the custodians to the society's means of restitution act in trust of the individuals who repose with them such mandate. They do not have original power, but act only in trust of the people. The people still command the supreme authority and can change the rulers, if the rulers do not carry out the mandate of the people, and Locke did not rule out the possibility of armed rebellion, should the rulers be dangerous, as to make war on the people. Where the people and their rulers are in conflict, and there is no law stipulating any remedy, Locke argues that the entire body of the people is the judge of that situation. This is a theory of popular sovereignty, albeit in its undeveloped form. However, it still presents a problem since Locke still allows that the majority can overrule the minority. To this extent, it sanctions the dictatorship of the majority, and it makes the balance of sovereign power

between the people and the rulers, or between the people themselves become difficult to attain. Eventually, it goes against Locke's expressed opinion that every person was born free, equal and independent, and does not lose his/her autonomy by entering the commonwealth.

"The struggle between liberty and authority", John Locke recognizes, "is the most conspicuous feature" in the history of political thought and practice. The clash is almost always between the ruled and the rulers, yet there is also the clash between the minority and the majority (or those who succeed to make themselves accepted as the majority – the active part of the society). Protection against tyranny of the government against the society is not enough. There must be protection against the tyranny of the society against individual members. Collective opinion must not be absolute upon individual opinions. As Locke rightly observes, the problem is where to place the limit between the province of government actions and actions of the individual, an aspect which Locke fails to address adequately.

Political activity, according to Bernard Crick, arises out of the multi-dimensional human aspect. In the book, *In Defence of Politics*, Crick argues that politics arises from the phenomenon of simultaneous existence of different groups occasioning different interests and traditions. Politics is basically a response to the problem of governing a complex society, consisting in public actions of free persons. To this extent, Crick seems to equate politics to what is generally called democracy, especially in his assertion that politics is just one solution (and not always the usual one) to the problem of social order, others being tyranny and oligarchy (which are obviously forms of political activity, just like democracy). Politics means, for him, deliberate conciliation. "Politics, then, can simply be defined as the activity by which differing interests within a given

unit of rule are conciliated by giving them a share in power in proportion to their importance to the welfare and the survival of the whole community.”⁴⁸ This description is characteristic of what is called proportional representation in democratic political thought.

Yet Crick argues that democracy, taken as the rule of the majority, can be very consistent with tyranny, since the majority can be very tyrannical against the minority. It is not enough that a government is democratic. Principles upon which this democracy is anchored must be established if democracy is to avoid tyranny of whatever kind. Establishing the principles of democracy is to establish the foundations of popular sovereignty, which however, Crick does not attempt, thus leaving the debate wide open.

In *The Problems of a Political Animal*, Bernard Yack, presenting the political theory of Aristotle argues that human beings are, by natural endowment, political animals, seeking their good under highly contingent and fragile conditions. Ordinarily, people tend to find themselves bound to one another by certain standards of mutual obligation, which determine the extent of their communal attachment to each other. “Members of political communities...devote a great deal of attention to determining what they think are the intrinsically correct standards of mutual obligation.”⁴⁹ Each member competes for the power to set and determine, interpret and enforce these rules. A third party comes in when the individuals cannot themselves summon this power. The issue of where to draw the line between the individuals, and the third party becomes the central political question. The political third parties in this dispute are the two normative models of democracy: liberalism, and conservatism. Either of the two is inadequate in solving political problems arising out of living together. Liberalism ignores the ways in which communities shape individual identities and character, as well as ignoring communal attachments that are essential to

individuals and social health, while conservatism overemphasizes the question of *standards of obligation* ignoring the fact that standards are not static, just as they are not the same in different political communities. It likens the state to an organism in which every part (citizen) has a definite role to play, with a further assumption that there is inherent in human nature, a way in which political systems should be organized, just as in an organism, there is a definite system of operation for each organ. This inherent human nature is doubtful. As Yack himself argues, nature has not provided humans with hierarchies among themselves, and has also not provided them with sufficient conditions to produce the good life, but only with sufficient conditions to produce the possibility of the good life.⁵⁰ Nature, therefore, has not given humans any canons for organizing the state, and it depends solely upon us to adapt our state as would be of benefit to us. Constructing a democratic society based on sound principles of sovereignty belongs to this task, which Yack's work does not address.

In *Theories of the State: The Politics of Liberal Democracy*, Patrick Dunleavy outlines the different conceptions of the state by the different schools of Liberal Democratic thought, revealing in the process, the strengths and weaknesses of the different conceptions of the State by the liberal democratic thought. The treatment gives an insight into the liberal democratic understanding of power relations between the rulers and the ruled. In Liberal democratic theories and practice, citizens are, ideally, sovereign, with executive decision-making powers. Yet this, Dunleavy reckons, exists only in name, with citizens reduced to exercising this power only during periodic elections of leaders, or at occasional plebiscites. He reckons too that liberal democracy can also operate in a very illiberal fashion, as when the majority suppresses the liberties of the minority, that is, the minority freedoms being constantly denied, not because the

freedom of the minority offends against the freedom of others, but simply because the majority has become tyrannical.

To safeguard the liberties of citizens, one of the core pillars of liberal democratic thought has been a belief in a plurality of institutions. Such institutions as political parties, workers' unions, professional guilds and pressure groups work to protect citizens against tyrannical tendencies of dominant groups in the society which may have the power to manipulate the state to their advantage, or against the tendency of the State bureaucracy to be overbearing on its citizens. This is a system of polyarchy, which however, has another problem of creating cartel-like groups, conspiring for their advantage, rather than the advantage of every citizen. Polyarchies, being a special feature of liberal democracy, seem more of another face of the problem of power balance in democracy than a solution to the problem. Sections of the society incapable of being heard are effectively excluded from power relations. The constant struggle for power between the dominant group(s), and the rest of the citizens, still remains an unresolved problem. Concerned simply with an analysis of the power relations within the different models of liberal democracy, the book does not delve into the problem of the limits of power play between the ruled and the rulers. It leaves the issue open, after stating the power relations which exist within the different models of liberal democracy. It does not prescribe, or suggest any means of dealing with the different tilts of power which work against political tranquility.

Deep Democracy: Community, Diversity and Transformation, by Judith M. Green addresses the issue of democracy from a normative point of view, treating it as an ideal, and a normative guide for the development of diversity – respecting unity in habits of the heart that are shaped and

corrected by reflective inquiry. The book argues that democracy must engage deeply in transforming society, by instilling a sense of social unity and commitment to democratic ideals. The diverse society ought to find commonalities through democratic paradigm which engages in a critically reconstructive role in today's intellectual and social climate. It must dialogue with concepts such as liberalism, communitarianism, postmodernism, critical theory, cultural pluralism, among other contemporary social and political theories. The book analyses various concepts such as that of community and diversity in democracy, dialogical transformation towards greater democracy based on pragmatism and the critical theory, and concludes that deep democracy can be built out of proper analysis and understanding of these concepts. A proper understanding of these concepts should lead to "... the expansion of the implications of the democratic ideal into habits of the heart and a shared way of life" rather than "... a merely formal, institutional conception of democracy ..."⁵¹ This is a powerful and impressive argument. However, as impressive as this argument might seem, we must admit however, that the question of the prophylactic tendencies of government and the freedom of the people, which the author ignores, must be addressed, if the "deep democracy" advocated by the author is to find an appropriate treatment. What is the purview of rulers, and how does it compare to that of the citizens under that rule. If not addressed, the perennial problem of who has what power and for what reason will always remain. There will always be conflict between the ruled and the rulers. Popular sovereignty will always remain a question to be begged at every instance of democratic discourse.

Investigating the possibility of creating a well ordered society within a set-up of divergent views on different political and non-political issues in a society, John Rawls, in *Political Liberalism*,

looks at the conditions and nature of legitimacy of political power. He inquires into the question of whether legitimacy alone is sufficient in a liberal democratic system, or whether a structure of power relations sensitive to minority needs is also an important factor in liberal democracy. Rawls recognizes that one of the fundamental problems of democracy is how to organize governance institutions to answer to the fundamental need of cooperation among citizens regarded as free and equal. He asks this fundamental question: “How might political philosophy find a shared basis for settling such a fundamental question as that of the most appropriate family of institutions to secure democratic liberty and equality?”⁵² This forms the core of *Political Liberalism*, treated by Rawls also as a theory of political justice, arising from Rawls earlier conception of justice as fairness, presented in his book *A Theory of Justice*.

In *Political Liberalism*, Rawls seeks to expand his conception of justice as fairness, into a more comprehensive political dimension, in order to accommodate a plurality of what he calls *comprehensive doctrines*. He seeks “... to work out a political conception of political justice for a (liberal) constitutional democratic regime that a plurality of reasonable doctrines, both religious and nonreligious, liberal and non-liberal, may endorse for the right reasons.”⁵³ Rawls is looking for the most comprehensive political conception of political justice that will apply to all without compromising the particular peculiar positions of the different social strata, beliefs and intellectual orientations. In his attempt to formulate a political conception of justice, he considers different aspects of political and non-political spheres in which consensus is required, and proposes what he calls overlapping consensus of reasonable doctrines as the moral yardstick, rendering the consensus stable over the distribution of doctrines. Rawls’ conclusion is that a more comprehensive understanding of justice which will “...gain the support of an overlapping consensus of reasonable religious, philosophical, and moral doctrines in a society... a political

conception of justice as a freestanding view”⁵⁴, is the solution to the problems of cohesive and peaceful society. This is an impressive conclusion. However, Rawls, treatment, still does not address the limits of power relations between what seems like the two sovereign aspects of the society: the ruled and the rulers. He leaves the issue wide open, yet it is the crux on account of which getting consensus on overlapping issues can be established. Still the question remains begging for answers.

From what has been exposed above, one easily realizes that the extant academic work on democracy falls short of addressing the main principle of democracy as a theory and form of governance. The literature so far, is biased towards liberal democracy, which seems to be largely accepted as the form of democratic governance relevant to our mode of life today. Republicanism seems to have fallen into oblivion after the fall of the Soviet Union, the only remaining variation of it being the Chinese Communist system, which has still to make a political impact. With its attendant difficulties in governance, liberal democracy still gets the greatest attention from scholars, and alternatives to it seem almost impossible to imagine.

Also from the sample of literature, one can discern an appreciable discrepancy in the conceptual debate about democracy as a system that purports to organize political communities on the principle of popular sovereignty. The conditions of possibility of popular sovereignty are left entirely unattended to within the academic discourse on democracy. There is a general assumption within the academic discourse on democracy, that the people are sovereign in democracy, but what it means for the people to be sovereign, and the conditions that must be met by the people so that they may claim sovereignty, or the conditions which must obtain so that the

people might rightly be said to be sovereign are never addressed by the academic discourses on democracy. Confusion, then, reigns, when conflicts arise between rulers and the ruled, when it is realized that the people are not sovereign in practice, causing a considerable degree of disillusionment with the entire system of democracy. It is important, then, that a study of the main characteristic of democracy be conducted, if democracy has to solve its perennially attendant problems, and if it has to achieve its aims as a system of government.

As the sampled literature reveals, there is still a wide gap in the democratic discourse of the exact relation of power between the ruled and the rulers which needs to be addressed. This thesis has, therefore, attempted to address this problem with the purpose of working out the for the possibility of realizing a well ordered society.

1.8. Theoretical Framework

Democracy is a generic concept. It has been variously interpreted, giving rise to various schools of thought, which, though different in fundamental areas, still bear certain commonalities. The most noteworthy of these commonalities include the rejection of "... the idea that one person or a few have any warrant to rule the rest"⁵⁵ without the will of the rest. Democratic theories also share in the belief that each member of the political community possesses elemental rational capacities sufficient for governing. These capacities further entitle a person to certain minimum freedoms such as that of speech, assembly and opinion.⁵⁶ Public power, for democrats, flows from public approval and the legal system in a democratic society must always reflect public preferences. As Terchek, *et al.*, argue, "the logic of democratic model, therefore, assumes that

public officials are responsible for their conduct and accountable to the citizens and that present politics can be challenged.”⁵⁷

Despite these common tenets in the various theories of democracy, there still exist fundamental variations in the interpretation of democracy, which have effectively “... produced profound disagreements, some of which can be traced to the permanent tension between democracy as an ideal, on the one hand, and as a set of actual public institutions on the other.”⁵⁸ While all the theories of democracy share a vision of a government by free and equal and actively participating citizens, it turns out that it is precisely this conception of freedom, equality and participation where democratic theories differ.⁵⁹ These concepts have been interpreted variously by the existing schools of democratic theory.

Traditionally, theories of democracy have revolved around two normative interpretations of key democratic principles. These interpretations are the “republican” (communitarian) and “liberal” interpretations. However, in recent times⁶⁰, a new development in the interpretation of democracy has surfaced, championed by, among others, Jürgen Habermas. The theory is called Deliberative, or communicative democracy.⁶¹ This theory holds that democracy is a system of governance that relies on public deliberation to make policies.

Like the republican model, the deliberative model gives primacy to discourse as the deciding factor in the creation of institutions, at the same time, as it considers, like the Liberal model, a commitment to the respect for pluralism of values within society. It fuses in an original way, these two main aspects of the republican and liberal models of democracy and comes up with a

model in which procedural institutions of political opinion and will-formation become the paradigm and driving force for political activity.

The deliberative procedure is regarded, in this understanding, as the source of legitimacy of political decisions since through deliberative decision-making procedures, citizens, as members of a community, co-operate with each other in forming their opinions and will. In the legislative processes, citizens owe each other reasons, which form the basis for each one's compliance to the outcome of the deliberations. Political activity becomes, in this model, a reasoned activity, rather than a result of deals made by competing actors, bound by market-like considerations of self interest, utterly divorced from the needs of mutual obligations.⁶² Deliberation becomes the driving force of politics. The deliberative process then, is a process which aims at a rationally motivated consensus. It works towards finding reasons acceptable to all who are committed to such a system of decision-making.

In our opinion, the deliberative model of democracy provides a more reasonable perspective from which to analyze the concept of popular sovereignty, compared either to the liberal or communitarian model. Its relevance becomes clear when we consider the multiplicity of forms of communication in which a common will is produced in a political community. Such multiple forms include, not just ethical self-understanding, but also the balancing of interests and compromises, the purposive choice of means, moral justification, and legal consistency. It is appropriate for a culturally plural society such as is our political world today, since this model combines both the theoretical and practical aspects of politics in the medium of deliberation. In this case, then, it has advantages over the liberal and republican models. Due to its inter-

subjective element of discussion, it has the capacity to foster an attitude of mutual obligation among citizens, who see themselves as co-operators, seeking common conditions for survival. It then solves the twin problem of the democratic space for individual participation (freedom), and collective decision-making and action (unity).

The liberal model has the deficiency of regarding political activity as a market arena where competing interests converge for attention. It is modeled on an atomist social structure where each individual seeks to out maneuver others in gaining political advantages. By over emphasizing individual freedom, it fails to address the question of good democratic governance because it is not concerned with creating conditions for mutual understanding in search of common conditions necessary for survival for all. It has a tendency to degenerate into social disorder. The republican model on the other hand, has the deficiency of being rigid, over-emphasizing common consciousness and collective action arising from shared traditions, to the neglect of individual participation. It constricts individual citizen activity to the level of precluding individual freedom, rendering decision-making a function of bureaucratic institutions following rigidly understood laws and mechanisms.

1.9. Study hypotheses

The study was guided by and sought to test the following hypotheses:

1. That, democracy presents the best principles and framework for organizing a political community.
2. That, the existing theories of democracy are limited and inadequate in their treatment of the concept of popular sovereignty as a democratic principle.

3. That, an appropriate conception of democracy would properly delineate the limits between popular sovereignty and delegated power.

1.10. Methodology

This study was anchored on conceptual analysis. The research has relied on the material from the library, books and scholarly journal articles, since the nature of the research demanded analysis and interpretation of concepts presented in these materials, and not a field study. The fundamental methods employed were the phenomenological and critical methods. A combination of the two methods was necessary because of the nature of the study. Being a conceptual analysis, the phenomenological method was important owing to its hermeneutical nature, while the critical method was necessary to allow us draw implications from our interpretations.

1.10.1. The Phenomenological Method

The phenomenological method is a method of doing philosophy, arising from the works of Franz Brentano, and Edmund Husserl. The aim of this method is to be un-prejudicially attentive to data, and to attempt as careful a description of them as it presents itself to consciousness, as possible. The method has been adopted because it represents a paradigm which is most appropriate for the evaluation of political problems of our time.

As B. Campbell argues, “the move from modernity to post-modernity, from nationalism to globalization, from cultural supremacy of one group over others to the concept of multi-

culturalism and the acknowledgment of cultural diversity... are some of the major changes [that must be accommodated today].”⁶³ Socio-political phenomena do not belong to the scientific or positivist research paradigm, which is quantitative in character. A philosophical study of socio-political phenomena aims at outlining normative principles, which are best captured by qualitative or “post-positivist” research methods like the phenomenological method. Questions of value and norms are best answered by qualitative means, and that is the reason for which the phenomenological method was adopted. Political institutions, theories and practices are “phenomena” which present themselves in the human realm, as objective realities, but realities which are unquantifiable, and so empirical methods of investigation cannot be used to investigate them. They require descriptive-interpretive method, which identifies meaning rather than statistical significance.

The phenomenological method aims to present meaning in an unalloyed freedom from prejudice – striving for a universal description, i.e., describing the phenomena as they are, which in turn becomes “...the foundation for a radical and universal criticism.”⁶⁴ For the sake of collecting unadulterated data, this method proved quite helpful. The theories discovered were subjected to a phenomenological analysis and criticism, which is a means of interrogating the democratic concepts with the aim of crystallizing their implications. Phenomenological method, though, does not go beyond interpretation. There is need to go beyond mere interpretation to the realm of creativity, drawing practical implications the analysis portends. This is the reason for adopting the critical method as a complementary method to help in creating new paradigms of democratic political theory and practice.

1.10.2. The Critical Method

The critical method is a method of evaluating facts as well as of drawing implications of these facts. It therefore, supplies the practical aspect, which the phenomenological method, being essentially descriptive and hermeneutical lacks. Critical method, just like the phenomenological method, is a post-positivist research paradigm, aimed at investigating issues in social studies and humanities. The theoretical framework this study has adopted demands the use of this method since Jürgen Habermas, whose deliberative theory of democracy is adopted as the unit of analysis in this research, is a proponent of the “Critical Theory” school, which adopts the critical method as a means of studying political questions.

1.11. Chapter Summary

This thesis has been concerned with the analysis and implications of the concept of popular sovereignty for democracy. It has five chapters in total. In the first chapter, we have taken, as a background to the study, a general look at political organization as a human phenomenon. We have found that for several centuries, humans in different portions of the earth have organized themselves into political units, or communities, with the aim of achieving a common good. In the beginning, human political organization was conceived of in divine terms, as replicating what happened in the divine world as humans imagined it to be. Human leaders were representative of the divine and since the divine power was imagined to be infallible, absolute and mysterious, the power of the human superior was to replicate that, albeit in a temporal fashion. With time, however, this thinking changed, especially with the discovery by the Greeks, that organizing human affairs belongs to humans and is not related to the divine world. Humans, the Greeks seem to have concluded, can organize themselves in a way which is sufficient to guarantee their wellbeing without imitating the divine world. The kind of political organization drawing upon

this understanding has been referred to as *democracy*. We have seen, however, that the concept of democracy is a rather convoluted one, which needs proper analysis, especially with regard to its major variable of popular sovereignty, and how to balance power between citizens and political representatives. We have identified this as our research problem, our main objective being to interrogate it, and drawing implications based on this analysis for democracy as a means of organizing the society.

Following the identification of the task and the setting of the parameters of the task done in the first chapter, we have proceeded in the second chapter, to discuss popular sovereignty as the foundation of democracy, tracing roots in the classical conceptions of the theory of sovereignty in general, beginning with the works of Jean Bodin and Thomas Hobbes, who conceived of sovereignty in a strictly consolidated fashion. We have found out that to Bodin and Hobbes, and to thinkers in this tradition in general, sovereignty belongs to one person, at best, or to an assembly of people at worst. It cannot belong to the entire body of citizens. The reason for this proposal is that dispersing power among the entire body of citizens slackens its operations and makes power generally ineffective. Ontologically, power is a quality of individuals, and not societies, since it is individuals, and not groups *as such*, who actually do utilize power.

In chapter three, we have outlined and discuss some of the core principles/norms, which anchor and explain the nature and operations of popular sovereignty, and to draw their implications for citizens as individuals and as members of a political community. Popular sovereignty is anchored on certain core norms and principles, and it operates under certain conditions. The key principles identified include residual epistemic capacity, communicative disposition, homogeneity, autonomy, participation and fairness of power. We have argued that for popular sovereignty to

be a reality in any democratic political community, these principles must not only be recognized as essential, but must also find expression in all citizens. The conditions for the possibility of realizing these principles, however, are not the same for all people, and across all human communities. With such difficulties, it appears as though popular sovereignty is unattainable. For popular sovereignty to be a reality, a new conception of popular sovereignty which makes it consistent with the fact that its norms and principles may not be equally realized among all citizens at all times must be developed. This means that another means of executing the mandate of the sovereign citizens, but which does not necessarily involve the action of all citizens at all times without precluding their sovereignty must be devised.

In the fourth chapter, then, we have looked at the concept of political representation as a way of delegating power by the sovereign citizens to their deputies, and the impact of such representational action on popular sovereignty. We have noted that given the complexity of current political societies, direct participation by all citizens is logistically impossible. The idea of political representation is, therefore, indispensable within contemporary democratic politics. Representation has been introduced into democratic politics as a way of encapsulating the disparate private individuals' wills into policy frameworks for achieving the common good. As a tool for channeling collective wills into a common goal, representation has experienced some significant difficulties. We have outlined and discussed those difficulties, citing the usurpation of sovereign powers from the citizens by the representatives as the major difficulty.

In the fifth chapter, we have presented our findings and recommendations, alongside our conclusion. We have argued that democracy is still the best form of government. However, it has

failed in a number of cases, due to the fact that it has not analyzed and understood. This has made its implementation problematic and unsatisfactory, causing disappointments and disillusionments. With a proper understanding of the principles of democracy, it can be realized.

NOTES

¹ Aristotle, *Politics*. Bk. I. Ch. 2, in *The Basic Works of Aristotle*. Richard McKeon, ed. (N.Y.: The Modern Library Classics, 2001).

² For Aristotle, the political community originated as a natural outgrowth of human impulses directing him towards association with others, in a natural association (cf. T. Chando, *The politics of Excellence: An Investigation of the Moral Ground of Politics in Aristotle*. (Unpublished, 2010), p. 22, while for Locke and Rousseau, humans formed themselves into a political community to procure justice and social equilibrium for themselves.

³ G. H. Sabine, *A History of Political Theory*, (New Delhi: Oxford & IBH Publishing, 1973), pp. 9-13

⁴ *Ibid.*, Pp.15-6.

⁵ *Ibid.*, P. 15.

⁶ *Ibid.*, P. 19ff.

⁷ Walter O. Oyugi, et al., (eds), *Democratic Theory & Practice in Africa* (Portsmouth: Heinemann, 1988)

⁸ Plato and Aristotle are the most ardent opponents of democracy as a form of government. Other political theorists, who may be said to have argued against democracy, though with reservations, include Niccolò Machiavelli, and Thomas Hobbes.

⁹ *Republic*, Bk. V.451d-458d. In proposing women to serve as guardians, together with men, Plato is certainly going against the popular opinion here. Popular Greek thought did not admit women into the community of citizens, and for that reason, no woman could take up any ecclesial obligations, let alone being a guardian.

¹⁰ G. H. Sabine, and T. L. Thorson Op. Cit, P. 100.

¹¹ *Ibid.* P. 163.

¹² Marcus Tullius Cicero, *On the Republic*, in S. M. Cahn (ed), *Classics of Political and Moral Philosophy*, (N.Y.: Oxford University Press, 2002), P. xxv.

¹³ *Ibid.* 282.

¹⁴ *Ibid.* P. 282.

¹⁵ G. H. Sabine, and T. L. Thorson, Op. Cit. 172.

¹⁶ *Ibid.* P. 172.

¹⁷ *Ibid.*, P.211.

¹⁸ *Ibid.*, P. 211.

¹⁹ *Ibid.*, P. 216.

²⁰ *Ibid.* P. 276.

²¹ *Ibid.* P. 278.

²² *Ibid.* P. 279.

²³ N. Machiavelli, *The Prince*. Trans.G. Bull. (N.Y.: Penguin Books, 1981(1961)), Book xv.

²⁴ G. H. Sabine and T. L. Thorson, Op. Cit., P. 422.

²⁵ G. H. Sabine remarks in his *History of Political Thought*, that Hobbes acquired these lines of thought from Machiavelli's contention that since men are generally evil and ego-centric, the sovereign must take the sole responsibility of directing their wants to a harmonious end by the use of force, if need be.

²⁶ T. Hobbes, *Leviathan*. C. B. Macpherson (ed) (London: Penguin, 1981), Ch. 11.

²⁷ *Ibid.* Ch. 8.

²⁸ S. E. Stumpf, *From Socrates to Sartre: A History of Philosophy*. (N.Y.: McGraw_Hill, Inc., 1993), P. 233.

²⁹ J. Locke, *Second Treatise of Government*. Ch. XIII, in S. M. Cahn. *Classics of Political and Moral Philosophy*. (Oxford: Oxford University Press, 2002).

³⁰ J. J. Rousseau, *Social Contract*, as quoted by G. H. Sabine, Op. Cit., P. 542.

³¹ Bryan Garsten, "Representative Government and Popular Sovereignty" *Midwest Journal of Political Science*. Vol. 11, no. 14. 2007, P. 3.. Accessed 1.11.'13.

³² Freedom is understood here in a fairly restricted way, that is, freedom to operate within the conventions accepted by the society (the society here understood as the majority, whose particular wills are embodied in the abstract artificial person, the "general will").

³³ L. Strauss and J. Crospey (eds), *History of Political Philosophy*, 3rd ed. (Chicago and London: University of Chicago Press, (1963) 1987), P. 763.

³⁴ Ibid. P. 768.

³⁵ Ibid. P. 770.

³⁶ See Walter O. Oyugi, et. Al., (eds.), *Democratic Theory and Practice in Africa*. (London: Heinemann Educational Books, Inc., 1988), Pp. 4-6, and Robert A. Dahl, *Democracy and Its Critics*. (New Haven and London: Yale University Press, 1989), P. 2.

³⁷ The Liberal and Conservative democratic theories, which are the most elaborate democratic theories do not

adequately address the scope of power relations between the ruled and the rulers. Liberalism equates popular sovereignty to a market forum where individuals compete to win zero-sum game of winners and losers without regard for a common welfare, where as republicanism equates popular sovereignty to a collective consciousness rigidly obedient to laws governing the whole body of citizens, leaving no room for individual initiative and operations outside the prescribed structures of common law.

³⁸ By the time of the writing of this thesis, Kenya was undergoing some uneasy moments because its leaders were under trial by the International Criminal Court (ICC), at the Hague, in the Netherlands, due to allegations that they led or encouraged sections of the Kenyan population to kill each other; the Republic of South Sudan had internal problems of the President and his vice differing on the decision to disband the existing government and creating a new one, dismissing the vice in the process. The vice president went to the bush to start a war against the president; in eastern Europe, Russia invaded part of Ukrain.

³⁹ Cf. Robert A. Dahl, *Democracy and Its Critics*. (New Haven, London: Yale University Press, 1989), P. 82.

⁴⁰ B. Dewiel, *Democracy: A History of Ideas*, (Vancouver, Toronto: UBC Press, 2000), P. 21.

⁴¹ B. Dewiel, Op. Cit., p. 148

⁴² A. J. Parel and R. C. Keith(eds), *Comparative Political Philosophy: Studies under the Upas Tree*(New Delhi: Sage Publications..), P. 18.

⁴³ Ibid. P. P. 119.

⁴⁴ A. K. Fayemi, "Towards an African Theory of Democracy" in *Thought and Practice: A Journal of the Philosophical Association of Kenya (PAK)*, vol. 1. No. 1 June, 2009, Pp. 101-126.

⁴⁵ F. E. Owakah, and R. D. Aswani, "Technocracy and Democracy: The Challenges to Development In Africa", in *Thought and Practice*, Op. Cit, Pp. 87-99.

⁴⁶ J. Messner, *Social Ethics: Natural Law in the Western World*, (St. Luis and London: B. Herder Book Co., 1965), P. 587.

⁴⁷ Ibid.

⁴⁸ B. Crick, *In Defence of Politics*.....p. 21

-
- ⁴⁹ B. Yack, *The Problems of a Political Animal* (Berkeley: University of California Press, 1993), p. 58
- ⁵⁰ Yack, *Ibid.*, p. 107
- ⁵¹ J. M. Green, *Deep Democracy: Community, Diversity and Transformation*. (Boston: Rowman & Littlefield, 1999), P. vix.
- ⁵² J. Rawls, *Political Liberalism* (N.Y.: Colombia University Press, 1993(2005)), P. 8.
- ⁵³ *Ibid.*, P. xxxiv.
- ⁵⁴ *Ibid.* p. 10
- ⁵⁵ R. J. Treck, et al., eds. *Theories of Democracy* (Lanham: Rowman and Littlefield, 2001), P. 6.
- ⁵⁶ *Ibid.*
- ⁵⁷ *Ibid.*, 6 – 7.
- ⁵⁸ *Ibid.*, 7.
- ⁵⁹ *Ibid.*
- ⁶⁰ Procedural democracy is a theory which sprang up with the works of thinkers like, J. Cohen, J. M. Basset and J. Habermas in the 80s.
- ⁶¹ *Ibid.*, P. 1122.
- ⁶² <http://wikipedia.org/JuergenHabermas>. Downloaded, 20/01/10.
- ⁶³ B. Campbell, “Phenomenology as Research Method” (Unpublished article)
- ⁶⁴ E. Husserl, *Cartesian Meditations*, Trans. D. Carins. (The Hague: Martinus Nijhoff, 1960), p. 36.
- ⁶⁴ A. K. Fayemi, “Towards an African Theory of Democracy” in *Thought and Practice: A Journal of the Philosophical Association of Kenya*. Vol. 1. No. 1, 2009., P. 10.

Chapter II

Popular Sovereignty:

Its Key Principles and their Implications for Democracy

2.1. Introduction

In this chapter we have analyzed the concept of popular sovereignty and its basic principles as the foundation of democracy. We have traced its development from the concept of Sovereignty itself, as understood by two most prominent writers who have explored the concept of Sovereignty, the French Jurist and Political Philosopher, Jean Bodin, and the British Political thinker, Thomas Hobbes. We have outlined the beginnings and development of the concept, linking it to the works of J. J. Rousseau, in the 17th Century, A. D. Rousseau was the first to insist that the people are the ultimate decision makers in matters regarding governance. This was opposed to the traditional conception of sovereignty which concentrated power in one person, or a restricted number of individuals. In Rousseau's opinion, the people as a whole are the legislators, and therefore are sovereign over themselves and the processes of organizing the society. We have, equally, outlined and analyzed the principles upon which popular sovereignty is anchored, indicating their significance for the concept of popular sovereignty itself, and ultimately, for democracy. The following key principles have been identified and analyzed: 1) Personal Autonomy; 2) Residual Epistemic capacity; 3) Communicative Disposition; and 4) Participation. We have attempted to explain and analyze these principles, with the aim of using the outcome of that analysis to evaluate the possibility of realizing genuine popular sovereignty among citizens.

2.2. Sovereignty

As a term, sovereignty originates from the Latin word, *superanus*, which translate as, supreme¹ in English. As a political variable, the term sovereignty, perhaps, gets its thematic origins from Jean Bodin's political writings. In the *Six Books of the Commonwealth* (*Les Six livres de la République*), Bodin writes that "sovereignty is that absolute and perpetual power vested in a commonwealth..."² Differently rendered, Sovereignty is "...the 'commanding power of the state: it is the will of the nation organized in the state; it is the right to give unconditional orders to all individuals in the territory of the state,'"³ or, it is the "... 'original, absolute, unlimited power over the individual subjects and over all associations of subjects'."⁴ Sovereignty, or the "supreme power over citizens and subjects, unrestrained by law",⁵ he argues, must be vested in one person, for the entire term of his natural life, in an *absolute* manner.⁶ Within this traditional understanding, the sovereign is "a determinate human superior, *not* in a habit of obedience to a like superior, *not habitual* of obedience from the *bulk* of a given society."⁷ The sovereign, as can be seen, is entirely separate from, and is above the citizenry, and exercises unlimited power over the individual citizens. He/she obeys only his desires and wishes, which is to say, he/she obeys only him/herself. The locus of sovereignty also, is simply a question of fact and not of right. Where one locates the determinate human superior, there one has one's sovereign.

Thomas Hobbes, on the other hand, argues that in order to save themselves "...from that miserable condition of war, which is necessarily consequent...to the natural passions of men,

when there is no visible power to keep them in awe, and tie them by fear of punishment to the performance of their covenants... .”⁸ Our natural passions tend to dominate over us and bar us from following the laws of nature which urge us to treat others as we would like others to treat us.⁹ People can obey agreements they make to others when they are under fear of harsh punishment (the sword). Hobbes argues that the safety of the people can only be assured when one person, carries out the wills and judgments of the people. Each individual is obliged to transfer his/her will to this one man, so that it is upon him/her to make whatever decisions on behalf of the people. “...the multitude so united in one person,”¹⁰ becomes the common wealth, the leviathan, or the mortal god, to which entrust the preservation of our peace and safety. By the authority :...given him by every particular man in the commonwealth, he hath the use of so much power and strength conferred on him, that by terror thereof, he is enabled to form the wills of them all...”¹¹ Hobbes recommends that once established, the sovereign must have absolute powers, and everybody else remains his/her subject.

As a political variable, the concept of Sovereignty, therefore, attempts to encapsulate organizational beliefs of a society, and how the people relate to the institutions embodying those beliefs. As Eddy Asirvatham and K. K. Misra argue, “theories of sovereignty...are reflections of the social facts, political institutions and cultural backgrounds which they are intended to explain and to justify.”¹² The concept of sovereignty is a summation of a people’s understanding of the nature and operations of power, and where power is located.

Some important elements to be distinguished here about sovereignty include its absoluteness, perpetuity (the fact that the sovereign's power is not interrupted in the entire life of his/her sovereignty), and that it belongs to the state and is exercised over individual subjects. These are important since they stand at a central point in the understanding of the shift from the "consolidated" form of sovereignty, which conceives of sovereignty as indivisibly and perpetually placed in the hands of (at best) one sovereign, to the "dispersed" form of sovereignty. When transposed to popular sovereignty, they take different meanings and dimensions.

2.3. Popular Sovereignty

With the development of political thought, the concept of sovereignty as traditionally understood by J. Bodin and T. Hobbes underwent some form of transformation, when a new conception linking it to citizens was introduced, for the first time by J. J. Rousseau in the 17th Century A. D. In the *Social Contract*, Rousseau attempts to "... find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain free as before."¹³ Here, Rousseau is attempting to establish a regime of organization where each individual citizen is a participant within a framework of collective responsibility. He is attempting a paradigm shift by introducing a concept of sovereignty which is based on right rather than fact. In the introduction to Rousseau's *Social Contract*, J. D. Cole terms this conception of sovereignty as the philosophical sense of sovereignty.

The Sovereign, in the philosophical sense [Cole explains], is neither the nominal Sovereign, not the legal Sovereign, not the Political Sovereign of fact and common sense: it is the consequence of the fundamental bond of union... . The Sovereign is that body in which political *power ought* always to reside, and in which the *right* to such power *does* always reside.¹⁴

With this, a gradual but dramatic shift in the conception of power is taking shape, and shall determine to a large extent how citizens relate with one another and with those in authority.

As R. Axtmann writes,

[The]...idea[of popular sovereignty] centers on the assumption of the capacity of individuals as citizens to govern themselves or...to determine for themselves their collective life. It is assumed first, that every adult individual can be rightly considered to be, in principle, sufficiently well qualified to participate in the ... process of governing the state to whose laws they are subjected. It is further assumed that 'among adults no persons are so definitely better qualified than others that they should be entrusted with complete and final authority over the government of the state.'¹⁵

Broadly understood, therefore, popular sovereignty is a view, or any set of views which holds that the citizens are the legitimate holders of political authority and the means to *operationalise* it. When the people set the agenda of the activities performed, and direct the activities till the end, then the people rule; they are sovereign. We must state here, however, that this is popular sovereignty as an ideal of political organization, and not necessarily as a practical dimension of human political activity. Historical evidence has not yet furnished us with situations where citizens are actually in full control of their political affairs. The empirical scenarios have been those of perpetual struggle between the rulers and the ruled.¹⁶

The implication of this Rousseauian shift, though, is an intractable debate. Whether and how sovereignty can belong to the entire body of citizens is still a questionable proposition. The very idea of popular sovereignty as proposed by this shift has even been thought to represent a mere "... dream that breaks itself against the hard historical reality of political societies."¹⁷ Popular

sovereignty, this seems to suggest, is an unworkable figment of the imagination. We argue, however, that this assumption is mistaken as our subsequent arguments will indicate. With a proper identification and establishment of norms and principles which anchor popular sovereignty, it can be achieved.

2.4. Principles of Popular Sovereignty

As we have already noted, the basic to the conception of popular sovereignty are the principles of: personal autonomy, residual epistemic capacity, communicative disposition, and participation. These principles are quintessential to the conception and realization of popular sovereignty. Understanding the meaning of these principles in the most appropriate manner will yield an appropriate understanding of popular sovereignty. Below, we analyze these principles.

2.4.1. Residual Epistemic Capacity

By residual epistemic capacity we understand the primeval ability to grasp and recognize implications of systematic discussions involving analysis of issues and events, and to draw independent personal conclusions from such. It is the capacity to comprehend and decipher meaning. The residual epistemic capacity is the basis on which rational choice is anchored. Informed consent is a product of the ability to situate oneself within the matrix of alternatives and to evaluate them hierarchically. This is only possible with the basic ability to understand any issue and to draw implications from what is understood. It allows for the possibility of making choices for which one stands accountable. With this basic capacity, one is able to acquire

knowledge, including that of the nature of power, how power operates and where it resides. One can then engage in meaningful and adequate public discourse necessary for the realization of popular sovereignty.

Plato and Aristotle had rejected democracy on the basis that the masses are either ignorant of the art of leadership, or that they do not have the virtue that leadership requires. Leadership, being technical, should be entrusted to people who have the necessary skills and dispositions to carry it out. But the fact that every individual has this residual epistemic capacity, a principle which makes every individual capable of making decisions on matters affecting him/her makes it necessary for the people to rule themselves and not place themselves under the guidance of purported experts as Plato and Aristotle contend. Because of the principle of residual epistemic capacity, democracy still remains the best form of government, contrary to what Plato and Aristotle thought.

Reflective capacity which grounds political deliberation is formed out of adequate knowledge. It requires reflective endorsement of the values that a person is to live by, and not a forced adherence. The state does not make a person's life better by forcing him to live by the values he/she rejects. The values by which a person is to live are not to be imposed on one, but proposed for consideration by the individual, who will then endorse or reject them out of personal independent analysis. This is different from moral paternalism, which in our opinion,

rests on an incorrect theory of the good life. "... it fails to appreciate the constitutive role of reflective endorsement in the value of a life."¹⁸

Epistemic capacity as the basis for acquiring knowledge presupposes the need for civic information to allow for reasonable and independent opinions and decisions. This is important for popular sovereignty, for no one can make decisions while ignorant of what to make decisions on. In the words of J. Feinberg, "...[ability] to decide on one's own while fully informed of the facts ... tends to promote the good of the person who exercises it, even if it permits him to make foolish or dangerous mistakes."¹⁹ Inability to grasp or synthesize information reduces chances of informed decision-making, thus destroying any meaningful conception and exercise of sovereign powers. The right to knowledge is anchored on this epistemic capacity, and according to Joshua Cohen, the right to knowledge is inseparable from the moral right of liberty.²⁰ Democratic liberty, which is a manifestation of popular sovereignty is grounded on epistemic capacity.

2.4.2. Personal Autonomy

Autonomy means self regulation. An individual is said to be autonomous if he/she is the originator of his/her actions and directs them towards a goal chosen independently without coercion. One who puts him/herself under the direction of another in order to achieve his/her desires, without directing whatever the processes of achieving these desires, is not autonomous.²¹

The concept of Popular Sovereignty requires that each citizen be autonomous in thought and in action so that he/she may generate or consider ideas leading to collective decision making and action as an equal of the rest. Popular sovereignty, then, rests upon the principle of autonomy; precisely upon “the presumption of personal autonomy.”²² Each person has a primary responsibility to him/herself, to conduct him/herself in a manner not injurious to self. This is a quintessential element of human existence, which cannot be denied an individual without grossly infringing on the rights of the individual to act without coercion. As Robert Dahl argues, “in the absence of a compelling showing to the contrary, everyone should be assumed to be the best judge of his or her own good or interests.”²³ No individual can, presumably, be a better judge of another individual’s wellbeing than that individual him/herself, in all circumstances. This is not to mean that persons cannot make wrong judgments on matters regarding their private affairs. All it means is that in regard to such matters, it is best to seek the individuals’ opinion if a meaningful judgment is to be made. Otherwise this would, certainly, lend itself to the charge of majoritarian *ad baculum*. J. S. Mill is of this persuasion. Even if we suspect an individual to be mistaken in the assessment of his/her personal needs, we must not stop him/her from expressing it. Rather than suppress it, it should be subjected to a deliberative procedure so that the person sees that clearly, he/she was mistaken.²⁴ Autonomy, according to Mill, cannot be sacrificed, except in cases where it is a danger to the possessor, like in the case where one destroys one’s body through excessive consumption of alcohol, while certain members of the society are dependent on the good health of his/her body for the good of those members.²⁵

We need to remark here briefly, though, that in regard to the question of autonomy, Rousseau differs from Mill. Rousseau is more constrictive, conservative, and more egalitarian than Mill, his theory being anchored on a paternalistic organismic conception of society. In this conception, the society is viewed as an organism, and the individual citizens are its functional parts, and without the whole society, the individual parts cannot exist.²⁶ Rousseau introduces the concept of the General Will to explain how the society stands to the individual and the role of each.

With the general will, though, Rousseau intends to achieve another, and more significant objective, than just that of the manner in which the individual and the society interact. With this concept, Rousseau primarily seeks “...to capture the intuition that all citizens ...[have] to be regarded as equal, that no one ...[can] impose his or her views on the rest, and that the only legitimate source of authority in politics ...[is] the vote of the people as a whole, where every individual ...[has] an equally weighted vote.”²⁷ The concept is advanced as a liberating force, but essentially, it is an authoritarian instrument. It is the voice of the society expressed in law, dictating over the individuals. As Paul Johnson writes, for Rousseau,

laws made under the General Will must, by definition, have moral authority. ‘The people making laws for itself cannot be unjust.’ ‘The General Will is always righteous.’ Moreover, provided the state is well intentioned, (i.e., its long-term objectives are desirable) interpretation of the General Will is left to the leaders since they know the public interest. Hence any individual who finds himself in opposition to the General Will is in error: ‘when the opinion that is contrary to my own prevails, this simply proves that I was mistaken and that what I thought to be the General Will, was not so....if my particular opinion had carried the day I should have achieved the opposite of what was my will and I should not therefore have been free’.²⁸

This is an illiberal conception of popular sovereignty, and destroys autonomy, which is a key principle of popular sovereignty. Rousseau’s system then fails the test of popular sovereignty, which it at first seems to champion, when it destroys autonomy by giving dictatorial powers to

the General Will, and by extension, to the individuals who interpret it. This organismic concept of society is susceptible to majoritarian tyranny.

Robert Dahl provides an appropriate interpretation of autonomy, which he calls “...the human-centred ground for collective decisions,”²⁹ as opposed to the impersonal General Will – centred ground of collective decisions.

*The general good of a city or a nation [Dahl argues] can always be decomposed into what is good for the persons in the community or nation or who are affected by it. The general good is not something different from the interests or the good of the persons who compose the collectivity or are affected by it.*³⁰

There is no general good different from and beyond individual goods. There is no general good for the society considered abstractly apart from the individuals composing it. We cannot have society, oppose it to individuals, and ask each individual to work for its good. What is called the good of the society is the good of each individual, considered together with the rest of members of that society. This conception of society presupposes individual autonomy as a basic principle, so that, no individual should assume to “enforce” the interests of another without the other’s consent.³¹

2.4.3. Communicative Disposition

The principle of communicative disposition is borrowed from Jürgen Habermas, the 1929 born German Philosopher and democratic theorist. The re-endorsement of political deliberation, which finds its ground on the principle of communicative disposition, within the last decade, as the hallmark of popular sovereignty owes tremendously to his works.³² His theory of communicative action which anchors deliberation as a key element of democracy is tied to his theory of rationality. Rationality, according to Habermas, is a tool for understanding and adapting to nature, rather than dominating and controlling nature. With this theory, Habermas seeks to

construct a conception of society in which citizens seek to understand and adapt to each other's opinions and will through a deliberative procedure, rather than to dominate each other. This is what is called the "communicative disposition". It is the capacity for each citizen to regard the others as possessing minimal capacity to engage in a meaningful political discourse. With this capacity enhanced in citizens, political deliberation is expected to take root, resulting in collective decisions which bear the moral force of all citizens. Decisions arrived at are owned by all concerned, so that actions arising there from become binding to all, not as coerced, but as rationally recognized as legitimated by the process of deliberation.

Rather than just the mere capacity to engage in "a rare and peculiar form of linguistic activity performed mainly by philosophers and pedants, ... [communicative disposition is the ability] for a reflective form of speech that aims at reaching a rationally motivated consensus."³³ This capacity underlies every form of meaningful political discourse. In the exercise of popular sovereignty, discourse, meant to reveal truth as the teleological upshot of human reason is the procedural normative essential, and the primeval capacity to engage in it is significant for the realization of popular sovereignty. Justification of procedures and their outcomes is only possible on condition that co-locutors understand each other, and that they are capable of reflective consideration of the agenda of discourse; otherwise, no consensual/communicative action can materialize. Communicative action as conceived by Habermas, then, explains the significance of communicative disposition as a bench-mark for popular sovereignty. In a quite appropriate endorsement of the theory of communicative action, James Johnson urges that

...we might follow Habermas, and argue that democratic deliberation embodies something like his concept of communicative reason. ... On this view, parties to democratic deliberation necessarily rely on communicative reason and, by rising and challenging the validity claims (to truth, normative rightness, and sincerity) that constitute the pragmatic presupposition of all linguistically mediated interaction, aim to establish a shared understanding of the context of their interaction. In so doing they eschew strategic behavior...For Habermas, the crucial, categorical distinction here is between strategic and communicative action. The former is oriented toward success, at purposively inducing others to behave in particular ways. The latter aims at the cooperative search for mutual understanding. Whereas strategic action coordinates social interaction by external influence or force, communicative reason does so via 'consent,' where this involves arriving at an agreement that is justifiable only by reasons in light of generalizable interests of the relevant parties.³⁴

Popular sovereignty involves, as Habermas argues, communicative reason, arriving at mutual understanding, rather than mere aggregation of fixed preferences. Deliberation, conceived in this manner is viewed as a logic of action oriented toward reaching common understanding and action.

2.4.4. Participation

Participation is the ability to act by accepting or rejecting opinions, giving reasons for the preferences taken over the options rejected. Robert Dahl, in agreement with this principle, sees participation by each individual as an essential element of personal autonomy also:

Throughout the processes of making binding decisions, citizens ought to have an adequate opportunity, and an equal opportunity, for expressing their preference as to the final outcome. They must have adequate and equal opportunities for placing questions on the agenda and for expressing reasons for endorsing one outcome rather than the other.³⁵

Participation by each concerned party guarantees, in Dahl's opinion, the principle of equal consideration of interests. Collective decisions, then, require a recognition and operationalization of this fundamental principle, so that as Dahl argues, "...each citizen must be ensured an equal opportunity to express a choice that will be counted as equal in weight to the choice expressed by any other citizen. In determining outcomes at the decisive stage, these choices, and only these

choices, must be taken into account.”³⁶ Dahl’s argument underlies the central argument in popular sovereignty that, “each citizen ought to have adequate and equal opportunities for discovering and validating (within the time permitted by the need for a decision) the choice on the matter to be decided that would best serve the citizen’s interests.”³⁷

2.5. Participation as a Deliberative Process

In the *Theory of Communicative Action*, Habermas writes:

I speak of communicative actions when the action orientations of the participating actors are not coordinated via egocentric calculations of success, but through acts of understanding. Participants are not primarily oriented toward their own success in communicative action; they pursue their individual goals under the condition that they can co-ordinate their plans on the basis of shared definitions of the situation.³⁸

Political deliberation, according to Habermas, is founded upon fundamental conceptions of social interactions. A shared rationality among humans makes it possible for them to have common definition of the good, based on some moral understanding of their equality as humans. Discussing publicly with one another on the different individual preferences, citizens form comprehensive views of the different interests and their implications, and decide from a reasonable stand-point. This is the hall-mark of popular sovereignty and of democracy.

A look at the ancient Greek democracy demonstrates that the concept of deliberative democracy is not so much of a new invention as it is a revival of an old concept, so that it is safe to conclude that the concept of political deliberation is as old as democracy itself.³⁹ For the ancient Greek citizen, democracy was deliberative, and whoever did not participate in the deliberations in the

assemblies and councils was regarded as useless, and not merely as un-ambitious.⁴⁰ To the ancient Greek, government was democratic only when *citizens discussed issues, publicly, and agreed on them collectively*. Discourse was the hallmark of democracy for the Greeks.

Equally, Jon Elster sees in deliberation, a convergence of two normative principles: The principle of equal and free participation of individual citizens, and the principle of fundamental rational capacity. He writes:

...the notion includes collective decision making with the participation of all who will be affected by the decision or their representatives: this is the democratic part. ... decision making by means of arguments offered by and to participants who are committed to the values of rationality and impartiality: this is the deliberative part.⁴¹

Through deliberation, the will of citizens is expressed, and whether the action really corresponds with the wishes expressed or not, citizens feel part of the process. They may criticise the action for not taking their wishes into account, but not that they were never part of the entire process. Citizens may then make informed evaluation of the action process and point out the weaknesses and strengths of the action process. With deliberation comes information and with information knowledge is expanded, together with the capacity to evaluate agenda and actions, and as André Bächtiger, et. al., argue, this “...suggests that a kind of ‘deliberative capacity’ or desire to understand, explore and ‘get to the heart of the matter’ may in fact lie at the foundations of deliberation”⁴² which citizens must acquire.

A norm rooted in citizens for honest and exhaustive discussion of political agenda, with the aim of finding common grounds of action must be inculcated in the citizen, together with an enthusiasm for truth, and amity in resolving issues. For this reason, as David Lafrancois and

Marc-Andre Ethier, suggest, the citizen must develop “...a deliberative competence that by definition underlies the development of critical and autonomous thought.”⁴³ Without this critical disposition political deliberation is likely to be usurped and misdirected by strategists, whose aim may be to exploit the people’s gullibility for partisan benefits.

Popular sovereignty, as the foregoing argument indicates, is different from *epistocracy*: rule “...based on claimed moral expertise”⁴⁴ similar to Plato’s prescriptions for the “Philosopher King”, or Aristotle’s men of virtue. It is not a rule by the elite, but by all citizens, having gained certain basic deliberative competences, enabling them to exercise their sovereignty in the process of collective opinion and will-formation. For this reason, it makes no pretence to aristocratic ideals of highly refined intellectual or academic standards.

2.6. Deliberation and other forms of Discourse

It is important to clearly spell out what democratic deliberation entails, especially, against the fact that currently, there is still some confusion regarding its parameters, as some scholars confuse it with all forms of speech/communication like story-telling, humour, and even violent protests.⁴⁵ Diego Gambetta argues, for instance, that deliberation is “... ‘a conversation whereby individuals speak and listen sequentially’ before making collective decision”, and such conversation may fall within these extremes: “... *bargaining*, which involves exchanging threats and promises, and *arguing*, which concerns either matters of principle or matters of fact and causality.”⁴⁶ Amy Gutmann and Dennis Thompson are, however, in disagreement, and rightly so,

with this generic conception of deliberation. Deliberation, in their opinion, involves "...a *set of principles*⁴⁷ that are intended to establish fair terms of political cooperation in a democratic society."⁴⁸ Jon Elster puts it the plain way: "Deliberative democracy rests on argumentation, not only in the sense that it proceeds by argument, but also in the sense that it must be justified by argument."⁴⁹ This is what we understand deliberation to be. It is a non-rigid procedure of collective decision making: "...an unconstrained exchange of arguments that involves practical reasoning and always potentially leads to a transformation of preferences."⁵⁰ Participants seek to persuade each other by appealing to their reason, rather than emotion and force. This presupposes a disposition that seeks to open up hidden assumptions and exploration of hidden dimensions of human experience and interaction, from which rational decisions may arise.

Deliberation can broadly be contrasted to bargaining. While deliberation takes the form of mutual reciprocal reason giving, bargaining takes the form of demands, threats, protests and such like actions. In practice, deliberation almost always finds itself integrated with elements of bargaining. The two represent opposite ends of the continuum, but they always occur together in practical deliberative contexts.⁵¹ Bargaining procedures, however, are not to be reduced to deliberation procedures. The two are not the same. A conception of communicative procedure which includes bargaining may prove coercive when employed deftly by shrewd interlocutors, and emotional manipulators.⁵² Collective decisions are likely to represent the opinions of the majority, or opinions of the dominant section of society.

As Gerry Mackie explains, there are, "...two mechanisms of coordinating social actions: in strategic interaction (bargaining), one person seeks to influence another by means of threatened punishment or promised reward...; in communicative interaction (deliberation), one person seeks to convince another by means of rational argument."⁵³ In communicative action, participants adopt an orientation toward a common understanding, with the moral requirement of sincerity and honesty: people saying what they mean and meaning what they say.⁵⁴ This is the requirement which legitimizes deliberative outcomes, as each regards the other as an equal and worthy of moral respect. As Gerry argues,

Outcomes are democratically legitimate if and only if they could be the object of free and reasoned agreement among equals' ...Mere talk, conversation, or information-sharing do not directly qualify as deliberation, because they lack standards of rational justification. Even more importantly, they also lack the perception of focusing on disagreements over validity claims...discourse proper should be unconstrained, non-coercive and non-distorted. Concretely, '[t]his requirement...rules out domination via the exercise of power, manipulation, indoctrination, propaganda, deception, expressions of mere self-interest, threats (of the sort that characterize bargaining), and attempts to impose dialogical conformity.'⁵⁵

Identifying political deliberation with bargaining runs deliberation into the danger of being directionless, or worse, pointless. Political deliberation's aim is to reach binding decisions, and not just to maximize gains for the successful party, while the unsuccessful party acquiesces. Its result is not a zero – sum game of winners and losers.

As Amy Gutmann and Dennis Thompson argue, in deliberation, citizens seek to give each other reasons mutually accepted to justify the decisions that they adopt. They don't grandstand each other.

...[political] deliberation – the process of mutual reason-giving – is not equivalent to the hypothetical justifications... The requirement that actual deliberation take place is not simply a matter of trying to ensure that citizens feel that their views were taken into account even when

they disagree with the outcome. Actual political deliberation at some time is required to *justify* the law for this society at this time.⁵⁶

A slightly concealed but implied norm here is *reciprocity*. “Reciprocity is to justice in political ethics what replication is to truth in scientific ethics. A finding of truth in science requires replicability, which calls for public demonstration. A finding of justice in political ethics requires reciprocity, which calls for public deliberation.”⁵⁷ Mutual reason-giving and consideration of interests imply reciprocal action. This, again, implies adopting the procedural norm of “...openness and impartiality associated with fair process...”⁵⁸ Short of this, popular sovereignty is routed out.

It can be seen from the foregoing considerations that deliberation has a strong *epistemic* foundation and value, and is actually the mainstay of popular sovereignty. The mutual seeking and giving of reasons by citizens, improves the epistemic value of citizens, as they continuously formulate their opinions and will. The fact of *bounded rationality* makes it imperative that there be an on – going epistemic element, supporting the decision by analyzing issues into their different implications to facilitate informed judgments. “The practice of deliberation is an ongoing activity of reciprocal reason-giving, punctuated by collectively binding decisions. It is a process of reaching mutually binding decisions on the basis of mutually justifiable reasons.”⁵⁹ It is a public action, involving everyone competent to deliberate. It is an activity, open in principle, to all citizens. As André Bächtiger, et. al. write:

No one with the competence to speak and act may be excluded from discourse; all have the same chances to question and/or introduce any assertion whatever as well as express their attitudes, desires, and needs; no one may be prevented, by internal or external coercion, from exercising these rights; all have the right to question the assigned topics of conversation; all have the right to

initiate reflexive arguments about the very rules of the discourse procedure and the way they are applied or carried out; and discourse must be public.⁶⁰

The publicity of deliberation has the effect of enforcing moral obligation upon actors to respect the provisions of collective judgment, and to treat each individual with equal respect. It also has the effect of allowing different opinions to get expressed with the possibility of marrying them in some kind of compromise where clear-cut decisions are impossible. This guarantees the people a feeling that they have the power to control their affairs.

2.7. Conclusion

In this chapter, we have discussed the concept of Popular Sovereignty, arguing that the concept has developed to what it means today from a traditional rigid understanding of sovereignty, which understood it as strong, absolute power, perpetually placed in the hands of one person, whose prerogative it is to employ it as he/she wishes. Two political thinkers, Jean Bodin and Thomas Hobbes, are the main proponents of this trend of thought. We have also attempted an analytical exposition of the principles of Popular Sovereignty, such as, residual epistemic capacity, personal autonomy, communicative disposition, and participation, arguing that these principles are key to the realization of popular sovereignty. It is these principles which must find expression in citizens so that they may be disposed to exercise sovereignty. In other words, for citizens to be sovereign, they must possess residual epistemic capacity to allow them grasp and analyze political issues. This is the mainstay of popular sovereignty as a principle, which establishes democracy against its critics such as Plato, Aristotle, and the absolutists like Jean Bodin and Thomas Hobbes. In order to be sovereign, citizens must possess basic autonomy which allows them to operate confidently as makers of their own individual contexts in the larger

political community. Every citizen must have the conviction that he/she is constructing his/her life situation and is taking charge in directing it. Equally, for citizens to interact meaningfully with each other in the process of making their life contexts, they must be able to communicate with each other as equals. This presupposes the cultivation of the communicative disposition, which allows them to be open enough to discuss with fellow citizens as equals. Finally, for citizens to be sovereign, they must be able to participate in the collective decision making procedures through public deliberation. Through a structured and publicly conducted process of mutual reason-giving, citizens try to justify their positions to one another, with the aim of forming a collective will so that the decision taken becomes a collective decision, owned by everybody concerned. This, in our opinion, is the way to establish popular sovereignty, and balance the operations of power in democracy.

In the next chapter, we look at the implications of these principles of popular sovereignty for individual citizens in terms of how their realization or lack thereof affects the organization of a democratic society along the principle of popular sovereignty. We attempt an evaluation of these principles *vis á vis* individual capacities to manifest them.

Notes

¹ E. vatham and K. K. Misra, *Political Theory*. 13th ed. (New Delhi: S. Chand and Co. Ltd., 2009), P. 287.

² J. Bodin, *Six Books on the Commonwealth (Les Six livres de la République)*, Ch, VIII. abridged and trans. by M. J. Tooley (Oxford: Alden Press, 1955).

³ E. Asirvatham and K. K. Misra, Op. Cit. P. 287.

⁴ Ibid. P. 287.

⁵ J. Bodin, as quoted by G. H. Sabine, and T. L. Thorson, in *A History of Political Theory* (4th ed.). (New Delhi: Oxford & IBH Publishing Co., 1973), P. 377. Cf. also, Eddy Ashirvatham and K. K. Misra, Op. Cit., P. 287.

⁶ Jean Bodin, Op. Cit Ch. VIII.

⁷ G. D. H. Cole, in the Introduction to *The Social Contract or Principles of Political Right* (London & N.Y.: J.M. DENT & SONS LTD., E.P. DUTTON & CO. INC., (reprint)1947), P. xxii.

⁸ T. Hobbes, *Leviathan*. Ch. 17, in S. M. Cahn, *Classics of Political and Moral Philosophy*. (N. Y.: Oxford University Press, 2002).

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² E. Asirvatham and K. K. Misra, OP. Cit, P. 287.

¹³ J.J. Rousseau, *The Social Contract or Principles of Political Right*. Bk. I. Ch. V. Trans. With Intro. By D.G.H. Cole. (London & N.Y.: J.M. DENT & SONS LTD., E.P. DUTTON & CO. INC., (reprint)1947).

¹⁴ G. D. H. Cole, Op. Cit., Pp. xxiii – xxiv.

¹⁵ R. Axtmann, “The State of the State: The Model of the Modern State and Its Contemporary Transformation”, in *International Political Science Review*. Vol. 25. No. 3. 2004. Pp. 261 – 262.

¹⁶ J. S. Mill, *On Liberty* Ch. I, in S. M. Cahn, *The Classics of Moral and Political Philosophy* (Oxford: Oxford University Press, 2002).

-
- ¹⁷ D. Lefrançois and M. Ethier, “Translating the Ideal of Deliberative Democracy into Democratic Education: Pure Utopia?” in *Educational Philosophy and Theory*. Vol. 42, no. 3. 2010., P.271.
- ¹⁸ J. Cohen, “Democracy and Liberty”, in *Deliberative Democracy*, (Cambridge: Cambridge University Press, 1998), P. 221
- ¹⁹ J. Feinberg, *Social Philosophy*. (Englewood Cliffs, New Jersey: Prentice-Hall, Inc. 1973), P. 22.
- ²⁰ J. Cohen, Op. Cit., P. 216.
- ²¹ F. Bergmann, *On Being Free*. (Notre Dame, London: Notre Dame University Press, 1977), Pp. 1-4.
- ²² R. A. Dahl, *Democracy and Its Critics* (New Haven and London: Yale University Press, 1989), P. 100.
- ²³ Ibid., P. 100.
- ²⁴ J. S. Mill, Op. Cit. Ch. I.
- ²⁵ Ibid. Ch. IV.
- ²⁶ R. A. Dahl, Op. Cit. P. 72.
- ²⁷ B. Garsten, “Representative Government and Popular Sovereignty” Unpublished Paper , April, 2007, P. 3.
- ²⁸ P. Johnson, *Intellectuals*. (N.Y.: Harper & Row Publishers, (1988), 1990), Pp. 24 – 5.
- ²⁹ R. A. Dahl, Op. Cit., P. 72.
- ³⁰ Ibid. , P. 72.
- ³¹ Ibid., P. 85.
- ³² Cf. J. Habermas, *The Theory of Communicative Action*. Vols. 1&2. Trans. Thomas McCarthy (Boston: Beacon Press, 1984 & 1987); *Legitimation Crisis*. Trans. Thomas McCarty (London: Heinemann, 1976).
- ³³ J. G. Finlayson, *Habermas: A Very Short Introduction*. (Oxford: Oxford University Press, 2005), P. 41.

³⁴ J. Johnson, “Arguing for Deliberation: Some Skeptical Considerations”, in *Deliberative Democracy*. (Cambridge: Cambridge University Press, 1998) P. 172 – 3.

³⁵ R. A. Dahl, Op. Cit., P. 109.

³⁶ Ibid., P. 109.

³⁷ Ibid., P. 112.

³⁸ J. Habermas, *Theory of Communicative Action*, as quoted by André Bächtiger, et. al. Ibid. P. 36.

³⁹ J. Elster (ed). *Deliberative Democracy*, (Cambridge: Cambridge University Press, 1998), P. 1 – 2.

⁴⁰ Ibid.

⁴¹ Ibid. P. 8.

⁴² A. Bächtiger, Op. Cit., P. 52.

⁴³ D. Lanfrancois and M. Ethier, Op. Cit. P. 278.

⁴⁴ J. Bohmann, Op. Cit. P. 406.

⁴⁵ Cf. A. Bächtiger, et. al. Ibid. P. 33.

⁴⁶ D. Gambetta. “‘Claro!’: An Essay on Discursive Machismo”, in *Deliberative Democracy*, (Cambridge: Cambridge University Press, 1998), P. 19.

⁴⁷ Italics are mine.

⁴⁸ A. Gutmann and D. Thompson, “Deliberative Democracy Beyond Process.” In *The Journal of Political Philosophy*. Vol. 10, No. 2, 2002, p. 155.

⁴⁹ J. Elster, Ibid. P. 9

⁵⁰ M. Cooke. "Five Arguments for Deliberative Democracy", in *Political Studies: 2000*. Vol. 48, P. 948.

⁵¹ A. Bächtiger, et. al., Op. Cit. P. 47.

⁵² Ibid., P. 48.

⁵³ G. Mackie, "All Men Are Liars: Is Democracy Meaningless?" In *Deliberative Democracy*, (Cambridge: Cambridge University Press, 1998), P. 71 - 72

⁵⁴ A. Bächtiger, et. al. Op. Cit. P. 37.

⁵⁵ Ibid. P. 37.

⁵⁶ A. Gutmann and D. Thompson, Op. Cit., P. 157.

⁵⁷ Ibid. P. 158.

⁵⁸ J. Cohen, Op. Cit., P. 192.

⁵⁹ A. Gutmann and D. Thompson, Op. Cit. P. 158.

⁶⁰ A. Bächtiger, et. al. Op. Cit. P. 36.

Chapter III

Principles of Popular Sovereignty and Citizen Democratic Capacity

3.1. Introduction

In this chapter, we have attempted to evaluate the norms and principles of popular sovereignty with the aim of establishing their efficacy to anchor popular sovereignty.. We have attempted to relate these principles to individual citizens, drawing implications for popular sovereignty and for democracy. We have evaluated them in terms of the inherent difficulties they pose for individual citizens' participation and for the realization of democracy. We have attempted to demonstrate that the difficulty in democracy lies in the inappropriate interpretation of these principles. Along with these principles, we have also analyzed two other variables of popular sovereignty: homogeneity and power. The main aim of this chapter has been to redefine popular sovereignty in a way compatible with the requirements of these principles, which anchor it, in order to generate an understanding of the concept and of democracy.

3.2. Homogeneity of Citizens

For popular sovereignty to be realized, some kind of homogeneity among citizens is required. The very idea of homogeneity is, however a confusing one, and has a likelihood of rendering popular sovereignty unintelligible and hard to realize. Homogeneity is the quality of similarity, or sameness of characteristics found in things which are distinct from each other. In the society, though, individual citizens are distinctly different from one another in several ways. Popular sovereignty would, however, require them to bear similarity to each other, for this is the only

basis on account of which they can co-operate for common goals. Without this, the society would be chaotic and disorderly. Homogeneity is supposed to engender social harmony. This, though, is not a feature of society today. “The reality,” of modern societies, as Ian O’Flynn argues, “... is that very few (if any) societies can claim homogeneity...”¹ Modern societies are characterized by deep cleavages and heterogeneous interests which sometimes threaten their very existence.² Cultural, ethnic and sometimes, even professional disparities among individuals, threaten social harmony by fracturing society into opposing and almost mutually adversarial units, with only occasional and accidental interactions. This fracturing of society has serious implications for the concept of popular sovereignty. In the first instance, individual citizens tend to develop rivaling attitudes towards one another, because of diverse and competing ideological world views. This normally results in tensions and eventual divisions among individuals in the absence of harmonizing forces. The end result is that these individuals cannot form a common view of society and of the goal of political institutions. They cannot, then, harmonize their individual powers into a collective whole, and exercise popular sovereignty. Modern societies are more heterogeneous and constantly tend more towards heterogeneity than homogeneity.

Heterogeneity, taken in itself, apart from its disruptive corollaries, however, is not a undesirable thing. The nature of society itself demands some kind of heterogeneity of people, if the society is to sustain itself. It is not possible, or even desirable therefore, for people to achieve and maintain homogeneity in an absolute sense. Homogeneity, understood in the most strict sense, as the condition of entities lacking diversity or variation; as the state of “being uniform throughout in composition and structure”³ would, in practical terms, subvert the very existence of society.

Homogeneity, therefore, must be understood in a way that integrates heterogeneity. It must be understood as a harmonization rather than uniformity. A homogeneity which balances the different heterogeneous aspects of society is the principle that anchors popular sovereignty; a homogeneity that is at the same time a harmonization of heterogeneity. This is what must find expression in a definition which does not dilute the value of diversity as an element of democratic action. Arguably this kind of homogeneity is a possible achievement. It is a homogeneity based on “civic consciousness” as a regulating political mood. As Ian O’Flynn rightly argues, “the mere fact that groups and communities mobilize politically around such things as language, culture or religion need not mean that they cannot share a sense of political society at some level.”⁴

Homogeneity of a political community must not be understood in the strict sense of absolute sameness of individuals in character, likes, and motivation. Homogeneity must be understood in terms of the basic capacities and dispositions of individuals to engage in a rational manner with others in a similar social context, necessary to cultivate civic consciousness. This, at the very minimum, calls for attitudinal training, meant to instill, what Jürgen Habermas calls a “lifeworld”⁵ of rational engagement. Homogeneity, then, is possible to the extent that a public that is aware of its basic existential conditions is possible. It is based on a rational fabric developed out of shared objective norms that citizens recognize as forming their common socio-political heritage. This would be the basis of a reasoning public, which engages itself in a rational evaluation of its intentions, procedures, and outcomes. A theory of popular sovereignty would still be workable within this conception of homogeneity of citizens. Individual citizens do

not have to be the same in education, or religious beliefs, or in ideological persuasion. They only need the capacity to harmonize their diverse constitutions and orientations. Homogeneity, understood in this way, is the basis for popular sovereignty.

3.3. Power

Power is, perhaps, the most central phenomenon in political discourse. Politics is primarily understood as the manner in which power is utilized within society to achieve certain desired aims. It is concerned with “...the organization of productive forces, the organization of consensus and the organization of coercive... [forces]”⁶ for the sake of achieving a determined end. Power is a tool used by agents to organize themselves. In its operation, power may manifest itself as “... control, influence ... force...persuasion, coercion, domination...”⁷ or some other means necessary to have ends met. Power, then, is “...an ability, strength, or capacity ... to do things and ... to produce effects *within social interaction*.”⁸

Popular sovereignty, as a theory about the use of political power, regards power from a *relational* perspective, according to which individuals do not seek to assert dominance over each other, but to interact in a mutually supporting way, to obtain compliance of each other in carrying out common social obligations. It is contrary to the other interpretation: the *substantialist/subjectivist* interpretation. The *substantialist/subjectivist* interpretation sees power as a commodity, in the form of a mechanism in the hands of an expert, to employ in extracting obedience and compliance from another person, or other persons, who would otherwise not have willingly complied.⁹ The substantialist conception, then, regards power in physical and

constrictive terms. Military power, which exerts itself through institutionally “instrumentalized” force, constituted by some kind of legalized process; or power seen in psychological terms, “... based on threats of punishment and promises of reward”¹⁰ belong here.

Individual persons may regard power differently. Some may understand it from a relational perspective, while others may regard it from a *subjectivist/substantialist* point of view. This individual difference has effect on popular sovereignty. The *subjectivist/substantialist* view which regards power as belonging to the individual holding it by natural default, tends to concentrate power in a narrow locus, and the holder of such power usually employs it as a private, personal property. The subject holding power is entitled to it as a personal private property, to be used at whim. The *substantialist* and *subjectivist* views differ only genetically, but not functionally. In the substantialist view, power is an object to be grabbed by whoever has the means to do so, while in the subjectivist interpretation, an individual is born with a mark of authority over the rest; power is an inherent quality in an individual, bestowed upon the individual by birth.¹¹ Functionally, however, both conceptions consider power as a tool to extract and enforce compliance from unwilling individuals. Power, thus, serves the whims of its holder.

The *substantialist/subjectivist* interpretation sees power as that which manifests itself in perceptible effects, and that whose operations are justified, not by its inherent virtues, but some undesirable alternative to it which, if permitted, the society would be worse off than when the society had allowed itself to be *forced* into order under a cruel power. The alternative of this power is anarchy – a state of lawlessness, where every person is his/her own individual

sovereign, and the regulating principle in all activity is individual desires. Thomas Hobbes dreads this situation, in which in his opinion, life would have to be invariably solitary, poor, nasty, brutish and short.¹² A dispersed sovereignty as recommended by the theory of popular sovereignty would mean that each person has equal opportunity and power to visit harm upon another if he/she so wishes, granted the capacity to do the same. There would be no society ultimately, since a war of each against each would eliminate everybody and leave the earth a waste land. Persons must be coerced into doing what is right, since, of their own wills, humans are incapable of doing what is right.

The substantialist and subjectivist theories of power misconstrue the nature of power. Being essentially public in operations, power must in some way be subject to public scrutiny and control. Power is a way in which citizens relate to each other by bringing together their skills and competencies to bear upon rationally determined common goals. This is popular sovereignty exercised by all citizens in different capacities. The qualification, “different capacities”, is significant, especially when one considers a possible objection, that not *all* citizens can be subjects of political power. With the objection to the universal quantifier, *all*, the problem becomes intractable for the theory of popular sovereignty. The theory of popular sovereignty must then try to respond to the fact that there are in society, people whom nature has denied the capacity to be sovereign, even over themselves. Those mentally incapacitated, for instance, must of necessity be subjects of decisions made by other more cognitively competent persons. This group of persons cannot be counted among the sovereign, and as long as even the smallest number of persons is excluded from sovereignty, popular sovereignty is not possible, both in

principle and practice. How the proponents of popular sovereignty responds to this is important, because it inevitably re-shapes our understanding of popular sovereignty as a theory of power, and of the position of every citizen within the power balance.

A different objection to popular sovereignty is procedural in nature. Popular sovereignty demands a contractual mode of operation where individuals, in a *voluntaristic* manner, deliberate upon the known alternative decisions and settle on what best represents their interests as a whole. The cost of this type of decision making would be enormous. Individuals will not achieve unanimity of opinion in any one matter, and this may fracture the society to the detriment of all the individuals concerned. Aside from this, the time taken to come to a single agreement, about even a very small matter, would be too much to bear for a meaningful “implementation space”. A decision made after inordinately long deliberations because parties cannot come to a reasonably quick agreement on issues will certainly drag the society to an agonizingly slow pace in having its projects implemented. To the extent that dispersal of power among a wide range of actors is susceptible to bureaucratic delays, it does look like popular sovereignty, which regards this dispersal as an essential element of democracy, misunderstands the motives and dynamics of power. Power’s chief role is effectiveness – to get things done. This cannot be done when power is dispersed along a wide range of actors, as popular sovereignty requires. Power is like a surgeon’s knife, which must be placed in the hands of a competent professional, to avoid any disastrous misadventure which might cause disrepute to the profession. The ignoramus citizen must hold power in awe, perpetuated by the aura of secrecy that surrounds power operations. The more discrete and invisible power is from the populace, the more effective and in keeping with

its aim it is.¹³ Opening it up to the savagely and lethargic public, which, “like a ‘savage beast’ that must be domesticated, dominated as it is by strong passions which prevent it from forming rational opinion on the common good, short-sightedly egoistic and the ready prey of demagogues who use it for their own profit”¹⁴ is pernicious to society, so the objection goes.

The tension between the aforementioned understanding of power and popular sovereignty is paradigmatic. Popular sovereignty understands power, not as a tool in the hands of specially trained experts, but as essentially, a public element; power belongs to citizens, as it is engendered by them. “...political society as a voluntary product of individuals, who decide in mutual agreement to live in society and set up a government,”¹⁵ are the experts to decide on how to use power to organize themselves. Power cannot be kept in secrecy, for, by its nature, it manifests itself in public arena any time it is employed, even for private ends. The publicity of power ensures that control and safeguards against the misuse of power are put in place. The worry of the proponents of Popular sovereignty would be that invisibility and secrecy of power provides an incentive for making non-public decisions, “...and by the non-publicity of decisions and, psychologically, through the professed and recognized license to simulate and dissimulate: a principle of state action which breaks the moral law against lying”,¹⁶ the state can obviate citizens’ rights without incurring repudiation. When ranged along a wide spectrum of actors, power achieves its aims without prejudice to any section of society. Power does not lose its efficacy, but enhances it through the cooperative efforts of members collectively forming their opinion and will, and enforcing action as a civic unit. But again, the issue of whether or not popular sovereignty would still have a coherent meaning even if some citizens do not have

ability to exercise the powers of sovereignty must be addressed. Against this objection, one might conclude that popular sovereignty is not possible to achieve. Here, one necessarily conceives of a need to re-conceptualize popular sovereignty in a way that is consistent with the fact that not every individual citizen has necessarily to exercise power, or not at all times. As shall be seen elsewhere in this work, the theory of popular sovereignty admits the idea of political representation and institutionalization of political activities as a way of solving this difficulty.

3.4. Individual Independence versus Social Integration

In popular sovereignty, the idea of personal independence is paramount, but so is collective action which presupposes social integration. The principle of personal autonomy considered in the previous chapter is the foundation of independence of individual citizens within the larger group. This ideal of the independence of individuals as an aspect of popular sovereignty, may present a challenge for the ideal of social integration as another aspect of popular sovereignty. From an anarchist perspective, independence/autonomy requires total absence of control, a licentious mode of existence in which no one has regard for any principle of behavior.¹⁷ This version of autonomy is contested, for as the very word suggests in its etymology, autonomy as the ground of individual independence, involves regulation, that is, control by some kind of law. It is not the absence of regulating principles, but the absence of inhibiting conditions. Autonomy is based on the understanding that reason provides us with principles which would help the self in conducting its affairs in an orderly way. Autonomous acts are not those which yield *out of nothing*, such that even acting judiciously must be considered some kind of servitude.¹⁸ An

autonomous act is that act arising out of the individual's agency and regulated by the individual, and is therefore, foremost, judicious.

An anarchic conception of autonomy would be self-contradictory, as well as dreadfully dangerous to popular sovereignty and to any conception of society itself. Particularly, an anarchic conception of autonomy would advocate a behavioural situation where every person has counter liberty against the other in equal measure, which would, in the long run, go against the very foundations of anarchy. For instance, if W has liberty to walk in direction D, R would have equal liberty to restrain him/her from walking in that direction, as long as R has the ability, and wishes to do so. But the very attempt of R to use his/her liberty to restrain W from walking in direction D would cause a breach of anarchic autonomy of W, which R has no authority to infringe on. An anarchic conception of autonomy would simply be inconsistent with itself.

Autonomy, in our opinion, implies being under the direction of reason.¹⁹ The difficulty with this position, however, is that the manifestable signs which indicate direction by reason are relative and hard to pin down. Equally difficult to pin down are the conditions upon which an individual may be said to be guided by reason, and whether each person can be guided by reason in equal measure. The reasons one would have to dismiss the other's mode of action as unreasonable, while sanctioning his/her own acts as reasonable are a matter of contestation. Identifying the foundation of autonomy with reason seems to create a difficulty which must, in some way, find a solution if a large number of people are not to be excluded from the conception of popular sovereignty. The mentally infirm, and children, for instance, are excluded from the conception of

popular sovereignty. But this ultimately means either that popular sovereignty is not possible, if *all* persons cannot be equally autonomous, or that the principle of autonomy does not, and perhaps cannot anchor popular sovereignty.

Most significantly, though, is the issue of social integration. Popular sovereignty demands that citizens, as a collectivity, act together in organizing their society. The people are only sovereign when as a whole, they come together and express their opinion and will through deliberation and action. This requires that they cooperate in interdependent and inter-subjective networks, which foster social integration. As James Buchanan rightly argues, a society is a group of "... free individuals related to one another in a network of interdependence."²⁰ This, Interdependent and inter-subjective mode of interaction demands a re-evaluation of autonomy in a way that is consistent with collective action. What this means ultimately, is that in collective action, there must be some degree of regulation, setting up behavioural limits for individuals, for orderly transactions to take place. As Buchanan explains,

...if there are no ...[regulations], individuals have a stronger incentive to invest resources in attempts to secure control over collective decisions. Control over collective decision – making apparatus becomes the instrument for securing the winning of a zero – sum component of the game of politics. And, for the community in total, all resources invested in gaining this control are wasted.²¹

Popular sovereignty is realized with an orderly framework of transactions by individuals, each seeking mutual assistance from the other, as an autonomous other, who, nevertheless, is still a member of the collective whole. Regulation is not servitude, as the anarchist conception of power may conceive it. Even in situations where one were a solitary sojourner of an island, one would have to set limits to what one would do if one were to be truly autonomous. If one were a lover of sleep, one would have to regulate one's activities accordingly. For instance, one would

have to forgo the pleasure of uninterrupted sleep all day, to go and look for food early before the sun is too hot, if one were to escape starvation. Setting behavioural limits is indispensable for any person. In terms of the entire society, however, setting such behavioural limits may be tricky, since the amount of limits to impose on individuals without risking more restriction than is necessary for order is not easy to determine. This problem highlights the difficulty of demarcating order from servitude within society. Equally, the degree of allowable space of action which would not risk anarchy is difficult to determine. This problem underlines the difficulty of demarcating autonomy from anarchy. Yet limits are necessary if the society is to avoid slipping into either of the undesirable extremes: disorder, or tyranny. Compounding the problem further, is the issue of the mechanisms for setting this limit. The instruments for setting the balance between order and anarchy are the evolved institutions of society. These institutions are interpreted and operated by humans, whose judgment may well exceed the mandate of the institutions, thus rendering the institutions ineffective.²² Such institutions ensure that citizens' power is regulated and harnessed for the benefit of themselves as a collectivity.

3.5. The Moral Norm of Honesty and the Communicative Disposition

In a democracy, the efficacy of decisions depends on the fact that citizens join efforts to ensure that whatever agreement arrived at is fulfilled. This is possible only if the initial act of discussion is successful. This initial act requires a citizenry that has the disposition to engage in an honest deliberation with one another. Communicative disposition, as a principle of popular sovereignty, presupposes moral honesty and amity among individual citizens. If citizens are dishonest and

hostile to one another, they cannot find a common ground for deliberation, and their interactions will, in most cases, be adversarial. There must be a readiness to dialogue with each other as free and equal co-owners of the political community. This readiness is bi-faceted: it is both a readiness to communicate to the other party, and a readiness to listen to what the other party has to say. This disposition presupposes an honest regard of the situation under discussion and of the communicating parties, and of oneself as a member of that particular group. It involves a moral disposition of mutual trust among individual citizens. As Ian O’Flynn argues in *Deliberative Democracy and Divided Societies*,

...democratic deliberation requires a certain level of trust or mutual understanding if it is to succeed – if I am going to listen to your arguments, with an open mind and be willing to shift my own position in the light of what I have heard, then I must trust that you will listen to mine in the same spirit, and that you will also be willing to comply with whatever we have agreed at the end of the day.²³

The disposition of trust is only possible if and when individuals discern a psychological mood of honesty among each other, and proceed in turn, to endorse and cultivate similar dispositions in themselves as individuals. If one does not trust that the other will keep to his/her word, there will be a tendency to withhold one’s intentions, and not make them appear in his/her interactions with the other. This is a spontaneous act since one would naturally want to protect oneself from possible harm that might arise from a perceived hostility from the other, since the other is keeping some unknown secrets which may cause harm later. One is better off prepared, by holding back what is dear to him/her.

Although as the disposition of honesty towards inter-subjective communication is important for popular sovereignty, in practice, it is quite difficult to cultivate equally among individual citizens. Dispositions are products of moral and intellectual training, which is never the same for

all people even within a similar social set-up. They are products of capacity and training, which are never always in tandem. As any other disposition, the communicative disposition cannot be uniformly developed in all individuals at all times. It varies from individual to individual, depending on the intellectual traits and the shared values an individual inherits in the process of his/her upbringing.

Another difficulty one identifies with this principle is the “manifestable” characteristics of this disposition in persons. Identifying these characteristics is not an easy task. To identify this disposition in an individual, one must first manifest it. It is a habit of mind which manifests itself each time one is in a deliberative situation. As it stands, then, communicative disposition is partly cultivated by the very act of communication and, partly, by prior formative processes aimed at creating the disposition before it can be manifested in practice. A few indicators of this disposition, include: ability and willingness to pay keen attention to one’s own speech; ability and willingness to engage in self criticism; ability to listen and to appreciate another person’s speech, and to change one’s position in light of reasonable evidence, among possible other indicators. Without the communicative disposition, popular sovereignty would not be possible.

Popular sovereignty depends on mutual understanding, whose hallmark is communication/deliberation by individuals, reasoning as free and equal agents. Without the disposition to engage in rational discourses culminating in rational actions, popular sovereignty is impossible. But the question of attaining this disposition is another important one. How this disposition is acquired, and whether every person can acquire it needs clarification. The capacity

for communication, we argue, is innate in humans, but its development is dependent on the social world a person grows up in. Each person with the potency to acquire rudimentary knowledge has the potential for communication. Yet this potential, like all the other potentialities that humans may be said to have, must be actualized. This means, then, that not every individual is capable of communicative disposition, or at least, to the same level, depending on one's natural capacities or one's social world. The mentally infirm and those who lack the enabling social environment to develop this capacity cannot acquire communicative disposition. Would this mean that popular sovereignty is impossible, if *all* cannot be said to participate in the principle of communicative disposition? If popular sovereignty is to maintain its claim, then a remedy which is consonant with some citizens not having the disposition to communicate with others must be found. Advocates of popular sovereignty must agree, in some sense, with the notion that some citizens may not fit within some of its principles like that of the communicative disposition, without affecting the nature of popular sovereignty. Members who cannot be part of the requirements of communicative disposition, as a principle of popular sovereignty, need not suffer any harm connected to the principle, if their lack of it is to be consistent with popular sovereignty as a theory of political power. This idea finds ample consideration in the fourth chapter of this work, where the concept of representation is treated as a way of solving such difficulties.

3.6. Individual Intellectual Disposition

Popular sovereignty equally depends on individual citizens' mental capacities, which may be enhanced by training. The capacity to understand and analyze organized discourse, and to draw independent personal conclusions from it, as well as to construct an organized discourse, is

important for the deliberative aspect in popular sovereignty. If popular sovereignty is to have a coherent meaning, then one would expect that the residual epistemic capacity should be at the fore to make it possible. Whether this is at all possible is an important question to explore. In as much as it is important, it seems impossible that every individual citizen should have this capacity. The mentally impaired again, come to mind. They are persons whom natural or social contingencies have denied the possibility of possessing this capacity. They cannot be expected to reason at the same level with the rest who have this capacity. Considered from this perspective, it appear that the emphasis of popular sovereignty on reason-giving would disadvantage

the inarticulate, or at least those who may not have access to a sophisticated political vocabulary... Put simply, in a deliberative democracy, those who are good at arguing – or, more accurately, at arguing in the right kind of way, using the right kind of language – will have a much better chance of having their preferences reflected in public policy, irrespective of the views and opinions of those around them. By contrast, those who are not so good at arguing, or whose experiences and values cannot be so easily expressed within the prevailing style of political reasoning, may well be denied an effective voice within the decision-making process.²⁴

This certainly is a legitimate concern for popular sovereignty. It would appear that popular sovereignty would defeat its own purpose, if some of its core principles would deny sovereignty to a section of citizens. The residual epistemic capacity is beyond the mere ability to cognize; it is the ability to operate rudimentary logical principles that enable one to have “good sense” in speech and argumentation. This is the starting point of social interaction, and the condition for the possibility of acquisition of those social and intellectual norms which make deliberation possible. One stands capable of appreciating another’s position because one can make logical sense out of it, and one can add to one’s knowledge by engaging in the process of mutual opinion and will formation. In a situation where one is confirmed to lack this capacity, the person cannot share in the sovereignty of the people, and this has quite significant consequences for the theory

and practice of popular sovereignty. If residual epistemic capacity is not open to all individual humans, then the possibility for popular sovereignty as its superstructure seems impaired, unless it can be amply shown that popular sovereignty does not mean that all citizens, taken absolutely, must have this capacity, and that those who do not have this capacity need not suffer any harm related to the possession of this capacity. One way of showing this would, perhaps, be to indicate safeguards that would protect those without this capacity, as well as ensuring that such persons acquire the positive benefits connected to this capacity. Institutional safeguards are the most appropriate way to ensure that sovereignty is not impaired by this possible drawback. Education for democratic citizenship comes to mind here.

3.7. Individual Citizens and the Exercise of Sovereign Mandate

Active involvement in real processes and acts of decision making is the hallmark of popular sovereignty. It is the empirical aspect of popular sovereignty, and the extent to which it is manifestable indicates the extent to which citizens are sovereign. The principle of participation anchors this. Popular sovereignty requires that citizens, taken severally and collectively, should determine the democratic processes and out comes in such a way that all own them as personal initiatives and products. This would mean that all citizens participate equally in bringing the democratic processes and outcomes to realization.

At any particular time, however, the number of individuals who can participate in any democratic process cannot be absolute. Even in deliberation, an absolute number of citizens

cannot get involved, for it would pose insurmountable logical and empirical impossibilities. It is impossible that in a large population of citizens, as is the case in the current societies, all should participate in every process that affects them. Further still, it would not be possible that all participate in equal measure due to contingencies such as interest, difference in knowledge and competence, time, physical and mental abilities. The theory and practice of popular sovereignty, then, does not include the consideration that *all* individual citizens must participate in a democratic process. Yet this, again, seems to have some significant implications for the theory itself. If, again, all citizens cannot participate in the process of their sovereign activities, then it would be contradictory to claim sovereignty of *all* the people. A part does not belong to the category of the sovereign, and if popular sovereignty has to be consistent with the conception that not *all* citizens can participate in the sovereign process, then a new understanding must be worked out in a manner consistent with that principle. Otherwise, it must be shown that the fact that not everybody can participate in the sovereign process would not cause them harm of whatever kind and proportion. Or, the principle of participation must receive a new and perhaps more appropriate definition which will be connected with popular sovereignty.

Aside from the logistical difficulty treated above, a different, though related problem, also springs up in regard to the nature of participation. As has been alluded to in the argument above, it is not possible, or even desirable for all people to participate in democratic processes at all times. Yet participation is a *conditio sine qua non* for popular sovereignty. My argument is that participation would only make sense if it is understood in terms of political deliberation. Yet one might have some objection to this. One might argue, that understanding participation in terms of

political deliberation restricts participation to a point too narrow to sufficiently guarantee popular sovereignty. It might appear that democracy understood in this way, is a mere talk shop, where persons engage in chit chats, which are untranslatable into any concrete actions. Or, for practical reasons, people are not really sovereign, if their sovereignty remains at mere deliberation, after which they lose it to other agencies which may not be answerable to them at all. Having deliberated on an issue does not necessarily translate into its successful implementation by whoever is responsible for that phase of events. Deliberation may be an necessary, but not a sufficient condition for popular sovereignty. This objection seems to throw wide open the question of the nature of popular sovereignty. We argue, however, that the society is better off deliberating on its issues because deliberation itself has safeguards in the norms of publicity and the moral requirement of honesty, which ensure that discussion is leads to the productive phase of implementation. The public self audit which is likely to follow decisions will instill a sense of moral commitment to implement decisions reached.

3.8. Conclusion

In this chapter, we have attempted to evaluate the principles of popular sovereignty in order to establish their efficacy for the realization of citizen participation as an expression of popular sovereignty. We have, therefore, attempted to analyze them in connection to what they portend for individual citizens, and for the society in general. We have found that for popular sovereignty to be a reality, individual citizens must act in accordance with these principles, in the sense of being able to manifest them as individuals, before they can apply them in collective contexts. Without this, popular sovereignty cannot be a reality. We have discovered, however, that these

principles are such that they are not equally distributed among individuals within society. Not all individuals can effectively manifest these principles, and even for those who can manifest them, they cannot do so at all times. This may seem to create challenges for the realization of popular sovereignty, and may very well create doubts as to the very possibility of genuine democracy itself. We have argued, however, that the lack of uniformity in the manifestation of these principles of popular sovereignty, does not impair popular sovereignty, since as a concept, it does not necessarily require citizens to operate at an equal optimum always. Citizens do not have to be equal in every respect in order that they may achieve their collective aims. What is required for popular sovereignty to establish itself in a democracy is some institutional safeguard, so that those unable to operate at par with the rest are not harmed by their inability to operate in that manner.

In the next chapter, we explore the concept of political representation as one of the main institutional safeguards in democracy. We attempt to outline its relationship to popular sovereignty, in order to determine how it safeguards those who cannot directly share in the collective sovereignty of the people, and how this safeguard itself, may be protected from the possibility of usurping the sovereignty of the people whose interests it is supposed to protect.

Notes

¹ I. O'Flynn, *Deliberative Democracy and Divided Societies*. (Edinburgh: Edinburgh University Press, 2006), P. 6.

² Because of the heterogeneous nature of modern societies, conflicts of very disruptive kinds have occurred in different parts of the globe. The Tamils in Sri Lanka, Ossetians in Georgia, or even Sunni Muslims in Iraq, and several inter ethnic wars in Africa, like the Tutsi – Hutu war of 1994 in Rwanda, and the war in the Democratic Republic of Congo.

³ <http://www.thefreedictionary.com/homogeneity>. Accessed 16/10/2013.

⁴ I. O’Flynn, Op. Cit. P. 33.

⁵ Cf. J. Habermas, *The Theory of Communicative Action*. Vols. I & II. Trans. Thomas McCarthy (Boston: Beacon Press, 1984; 1987).

⁶ N. Bobio, *Democracy and Dictatorship: The Nature and Limits of State Power*. Trans. Peter Keneally, (Minneapolis: University of Minesota Press, 1981), P. 77.

⁷ J. C. Johari, *Contemporary Political Theory*. 2nd ed. (New Delhi: Sterling Publishers Private Ltd., 1987), P. 515.

⁸ N. Menon, “Power” in *Political Theory: An Introduction*. Rajeeve Bhargava and Ashok Acharya (eds). (New Delhi: Person, Longman, 2008; reprint 2010), P. 149.

⁹ N. Bobio, Op. Cit, P. 70.

¹⁰ Ibid., P. 70.

¹¹ Ibid. P. 70.

¹² Cf. F. Ochieng – Odhiambo, *A Handbook on Some Social and Political Philosophers* (Nairobi: Consolata Institute of Philosophy Press, 1998), P. 34.

¹³ N. Bobio, Op. Cit., P. 19.

¹⁴ Ibid., P. 19.

¹⁵ Ibid., P. 18.

¹⁶ Ibid., P. 19.

¹⁷ J. Buchanan, *The Limits of Liberty. Between Anarchy and Leviathan*. (Chicago, London: The Chicago University Press, 1975), P. 5.

¹⁸ F. Bergmann, *On Being Free*. (Notre Dame, London: University of Notre Dame press, 1977), Pp. 15 – 22.

¹⁹ Ibid., P. 26.

²⁰ J. Buchanan, Op. Cit., P. 21 – 22.

²¹ Ibid., P. 49.

²² The consideration of these corollary problems of autonomy is beyond the scope of this thesis, but they are matters worth investigating, for a better conception of popular sovereignty.

²³ I. O'flynn, Op. Cit., P. 4

²⁴ Ibid., P. 5.

Chapter IV

The Concept of Political Representation and Its Relation to Popular Sovereignty

4.1. Introduction

In this chapter, we explore the concept of political representation as a way of delegating power to elected officials. We attempt to link it to the concept of popular sovereignty, outlining and analyzing its implications for the concept of political participation by the sovereign citizens. Our central argument here is that, modern democratic politics has almost necessarily got tied to the concept of representation, such that democracy inevitably involves the practice of representation. We have outlined and explained the nature and purpose of political representation and its impact on popular sovereignty. We have argued that, as significant and seemingly inevitable to democracy as representation is today, there is a likelihood of conflict between its dynamics and popular sovereignty. We have, therefore, attempted to indicate conditions within which representation can work harmoniously with popular sovereignty. Our main objective in this chapter has been to relate the concept of representation, to the concept of popular sovereignty, and to show that representation can be organized in a way that is consistent with popular sovereignty, and that when properly implemented, it can resolve the difficulties that the principles of popular sovereignty pose for the democratic capacity of individual citizens.

4.2. Representation

Democracy is, in a sense, representative. Direct democracy has never been fully practiced, even within the ancient Athenian system, for not every member of the city could carry out every

function at the same time. There were some representing the society as jurors, some as senators, while some as generals in war. This concept of democracy as representative has received a prominent emphasis in modern times with what has been termed the liberal revolution. Monroe Eagles and Larry Johnston capture this in their assertion that "...since the liberal revolution, democracy has been generally understood as a form of representative government in which people choose their rulers."¹ The idea of direct democracy seems to have practically died down, largely due to the population and territorial size of modern democracies.

Due to the central position of representation in modern democratic politics, it has inevitably to reconcile itself with the concept of popular sovereignty. The norm that the people must take charge of their affairs places upon representation an uneasy task of making sure that any of its practices do not contravene this fundamental democratic requirement. In modern societies, it is practically impossible for *each* citizen to carry out *every* sovereign mandate in equal measure, and the practice of representation by delegated deputies becomes paramount as a way of mediating between the sovereign wishes of the people, and the realization of the ends expressed in these wishes. Here in, though, seems to lie some difficulty of a practical kind, in regard to the relation that should obtain between citizens as the sovereign, and the delegates. It is often the case that in representative democracy, the delegate assumes the authority of the sovereign, acting on his/her own terms for the period of time he/she is in office as a delegate. The result of this is that the true sovereign who is the citizen in the theory of popular sovereignty ends up being "de-sovereignized" during this representation period, leaving him/her with very limited chances of controlling the actions of the representative. Mostly, the sovereign is left, either to wait until the

end of the representative term to express his/her will through voting, or to engage in protests to compel the representative to act according to the citizen's will.

The tension between the sovereign citizens and the representatives does not arise because, as a practice, representation is inappropriate. Representation arose out of necessity, as political conditions evolved, and its function in democratic politics is very significant. Its beginnings might have had an aim rather than that of securing the interests of the people, but it has evolved to be an institution concerned with securing the people's wellbeing. In their article, "Representative Government in Evolution", Charles A. Beard and John D. Lewis argue that representation began as "an instrument of political power, in a given complex of social and economic circumstances, to serve the purposes of the ruling monarchs..."² Representation was originally meant to serve rulers, and from its inception, it has played a significant role in shaping political power adaptability and manipulation for political actors throughout the different epochs of political history.³ Being primarily, instituted for the sake of the ruling class and not the ruled class, there has been the tendency of the ruling class to use it to usurp the sovereign power of citizens, creating tension between representatives and the citizens they represent.

As a variable in democratic discourse, the term "representation" was borrowed into English from its Latin original *repraesentare*. In the Latin form, apparently, the term did not have political meaning as it has now.⁴ According to Beard and Lewis, it is only around the seventeenth century that representation began to be connected with the parliamentary form of government which had evolved in England, thus giving it express political meaning, from the fourteenth century non-

political usage. In its 14th century usage, the term had the meaning of "... to symbolize, to serve as a visible and concrete embodiment of ..." ⁵ By the Sixteenth Century, the term had undergone a shift in meaning to acquire a quasi-political significance of taking or filling "the place of another in some capacity or for some purpose; to be a substitute in some capacity for another person or body; to act for another by deputed right." ⁶ The sixteenth century usage was not, strictly speaking, a political usage, but it implied some kind of "agency, deputation and authorization, and hence mark[ed] an easy transition to the purely political terminology..." ⁷ Thomas Smith was able, for instance, to write about the British Parliament in a manner that succinctly referred to the political connotation, now acquired by the concept. Parliament, he wrote,

representeth and hath the power of the whole realme both the head and the bodie. For everie English-man is entended to be there present, either by person or by procuration and attornies, of whatever preheminance, state, dignitie, or qualities soever he be, from the Prince...to the lowest person of England, and the consent of Parliament is taken to be everie man's consent. ⁸

With Thomas Smith, parliament begins to assume a key role as the locus of representations, and gradually rises it to an overarching realm over the individuals, almost similar to the realm of J. J. Rousseau's General Will. Smith seems to give parliament a position of authority which encourages and foments feelings of patronage, so that whatever parliament legislates becomes automatically the wish of the people. In this conception, parliament cannot go wrong, for it would imply that the entire citizenry has gone wrong, collectively and severally. This is an incorrect attitude for democracy, and can create a monster out of parliament. It is our contention that parliament does not necessarily represent every person's consent.

As an institution, parliament is designed, ideally, to represent every citizen's opinion, and what it sanctions should be endorsed by the citizens. The fact is, however that, parliament in most cases, ends up representing the opinions of the members of parliament who command it as an institution. Once in parliament, the representatives have representative autonomy⁹ to act as they think best, and citizens have no control over them anymore, except in rare cases where there are recall clauses in constitutions. Parliament is therefore not necessarily the institution for popular sovereignty. The conception that makes it sovereign over the people risks usurping the power of the sovereign by placing it in the hands of an institution evolved by the people to carry out specific mandates as directed by the people, making the institution direct the people instead of the people directing the institution. It is a conception which is based, therefore, on some wrong assumptions about the general character of ordinary citizens, taken collectively. It assumes that ordinary citizens are generally incompetent, and therefore, fallible in matters concerning governance. We examine this assumption in the following section.

4.3. Representation and the People's Fallibility

In democratic thought, the presumption in favour of representation is sometimes justified by the fact that the people, being diverse as they are, cannot all converge in one accord in regard to the common good. Closely connected to this is a related view that the people, in their undifferentiated composition, are generally as inept in the knowledge of the good as they are lethargic in civic responsibility. It is, therefore, important to get those who are sufficiently knowledgeable and enthusiastic about the common good, to give it expression and realization.¹⁰

This view, as Andrzej Rapaczynski reports, has been favoured by contemporary political thought, James Madison¹¹, being an example of such thinkers. Madison, Rapaczynski writes, argued that representation has a superior quality of outcome in democratic practice, compared to the entire population acting directly, because "...the people may act rashly and may have to be protected 'against their own temporary errors and dilutions'."¹² Being inevitably fallible, provisions need to be made "...to insulate the 'true' will of the people from its momentary aberrations."¹³ The people's representatives, presumably being more rational than the people themselves, are the true embodiments of the people's will and are therefore best placed to translate it into policy for the common good. The representatives are supposed, among other responsibilities, to protect the people from themselves, since as representatives, they are expected know both what is good and what is bad for the people.

The assumption, fundamental to the understanding of any claim to the desirability of representation, then, is that elected politicians, standing in the position of the guardians of the people, are responsive to the preferences and interests of the people.¹⁴ This assumption, worthy of circumspection as it is, seems to explain the free-hand manner with which representatives tend to run political affairs during the time they occupy office. The representative's voice is assumed to be identical to that of the people since it is the collective voice of the people, speaking through their medium. On this understanding, it would be expected that what the representative does is not inimical to the people's wishes.¹⁵ This is not usually the case in practical circumstances.

4.4. Representation and the Usurpation of Sovereign Powers

There is a complex relationship between the representatives of the people as the medium for exercising and expressing the people's sovereignty and the people themselves. In representation, the sovereignty of the people is often usurped. The usurpation of the sovereign powers of the people often arises when the elected representatives begin to operate (as they must at a certain point) without reference to the people from whom they got the representative mandate. Why the representative must, at some point, even if it is only occasionally, operate without reference to the people is simple: "... the representative is more than an agent in the private law sense of the term. He helps to make the ideas and wills which he represents. Often he has to deal with issues which his constituents have scarcely considered, if at all – issues on which they have expressed no will."¹⁶ The representative is, therefore, not only standing in the place of another person not present, but is also presenting his/her own will at the same time. For his/her own will, he/she is not responsible to anyone else. Even in the case of re-presenting his/her constituents' wills, if he/she is to be effective, he/she must limit the references he/she makes to them, given the diverse and often times incongruent nature of individual wills he/she represents. He/she will have to employ individual discretion occasionally.

The danger of usurping the sovereign power of the people, however, lies precisely in the very requirement that the representatives have some discretion in their operations. When representatives start to operate out of their own will, they inevitably begin to operate as though they were the sovereign, and to this extent, the people begin to lose their sovereignty. This leaves

the people with very narrow opportunities for exercising control over the representatives, such as the plebiscites and public action initiatives, mentioned above. This reduces sovereignty only to an occasional phenomenon on the part of the people, which makes nonsense of the very idea of sovereignty itself.¹⁷

J. S. Mill's counsel against majoritarian dictatorship may very well be cited to parliamentary representation.

The 'people' who exercise the power [read: make and execute decisions] are not always the same people with those over whom it is exercised; and the 'self – government' spoken of is not the government of each by himself, but of each by all the rest. The will of the people, moreover, practically means the will of the most numerous or the most active *part* of the people – the majority, or those who succeed in making themselves accepted as the majority; the people, consequently, *may* desire to oppress a part of their number, and precautions are as much needed against this as against any other abuse of power.¹⁸

Parliamentary representation may take the form of majoritarian dictatorship: the legislator, having been elected by the majority of voters, assumes their position and sees his/her opinions and activities as the opinions and activities of the majority which elected him/her. He/she thinks of him/herself as the majority personified, and on that account takes leave to make decisions without regard to any individual's sentiments. This position is not consistent with popular sovereignty, and as J. J. Rousseau would argue, the representatives do not, and cannot embody the "general will", that is, they do not embody the sovereignty of the people, and to act as if they did so is to contravene their terms of contract. "When the government and sovereign are confused, as when the government claims sovereign authority for its particular acts, this legitimacy is destroyed and sovereign authority is usurped. Usurpation occurs whenever the government claims the authority that rightfully belongs to the sovereign."¹⁹ The representatives

(carrying out particular acts of governance on a day to day basis) cannot be sovereign. “Sovereign authority always remains with the people and cannot be transferred to government; any effort by the governors to claim sovereign authority for themselves, by saying that they represent the people ... [is] nothing other than a form of usurpation.”²⁰ Consequently, mechanisms to check representatives against usurping the sovereign authority of the people must be institutionalized in such a way that citizens can easily access and effectively utilize them to retain their sovereignty.

From the foregoing, it turns out that contrary to the belief that people are necessarily fallible, and stand in need of the more enlightened lot among them to represent them and to protect them from their own whims and illusions, it is the other way round. The people need protection, not from themselves, but from whoever may pose as their representative. “...it ...[is] the representatives who often...[become] dangerous once they...[are] separated from the people. “An assembly, the power of which is unlimited, is more dangerous than the people’.”²¹ Employing the language of popular sovereignty, “we the people have decided”, representatives justify their usurpation of sovereign powers, against a claim to epistemic competence and civic zeal. Parliament then proposes itself as the institutional locus of popular sovereignty, claiming more powers than any other public institution, thus buttressing the usurpation of the sovereignty of the people.²² The will of representatives (the governing part) of the people, whichever institution they belong to is not, “by definition the true will of the people.”²³

It is impossible for one person to represent the wills of many people. "...when individuals have sufficiently widely diverging preferences or interests (as they are bound to have in diverse modern societies), it is impossible to aggregate those preferences in a consistent way into a social policy that could be said to "express" them. In fact, if an attempt at such an aggregation is made, the political process will always be subject to *strategic manipulation*."²⁴ The representatives, being human, inevitably have their personal interests, which they may, very easily mask as public concern.²⁵ "It is axiomatic in much contemporary literature that individuals act in the name of their own self-interests"²⁶. It would require a great deal of good faith and commitment to the meaningfulness of and openness to the pursuit of the common good for representatives "to subordinate personal needs and private desires to a sense of the public interests as defined by the community..."²⁷ A simple act of voting does not guarantee moral commitment to normative standards enshrining representation in the common interest. Rapaczynsky argues rightly that:

The rulers are never 'one' with the people, no matter how carefully they are selected to reflect their constituents' interests. This is not so much because power corrupts (which it does), but because good government cannot, at least in ordinary times, be based on the virtue (corruptible or not) of the representatives...The rulers will thus always have their own agenda, and no popular ointment will ever make them into a mere medium through which the voice of the people may be heard.²⁸

In the light of this argument, it is necessary that better and complementary systems that buttress popular sovereignty be devised alongside the act of voting periodically resorted to by citizens as a means of stating their wishes. Popular sovereignty is not some kind of occasional manifestation of sporadic acts of decision, but is an element of self-determination, constantly exercised by citizens at all times of their lives as political animals. Citizens must be able to exercise their authority in decision making, and in directing actions of representatives at all times.

4.5. Sovereignty, Representation, and Popular Participation

Sovereignty of the people, then, is only legitimized by the fact that they do in fact make and enforce the laws governing them; the people must in fact set the agenda, deliberate on the agenda, and enforce the outcome of their deliberation, quite literally. For this reason, sovereignty as the capacity to "...command – not in the moral or potential sense but in the sense of holding real power to make law and to enforce it,"²⁹ must be actual, and not only potential. This situation is not, however, quite applicable in modern parliamentary democracies. As has been seen in the sections above in parliamentary democracy, the legislature regards itself as the embodiment of the people, which creates a belief in the representatives that all power has been transferred to parliament,³⁰ with the consequence that "...in practical terms sovereignty" tends to be associated "with the legislature rather than with the people at large."³¹ Parliament, then, begins to see itself as "vested with unlimited political authority,"³² since it regards itself as the embodiment of the people's aspirations and the legitimate conception of the public good. For this reason, too it is assumed, it is only reasonable, and in keeping with the wishes of the people, not to limit what the representatives of the people in parliament can do, for this would be tantamount to protecting the people from themselves.³³ The problem is to ensure that the people have spoken through regular democratic elections, but once this is settled, the rest is expected to go according to the original speech of the people.

There is a problem in this conception, which inevitably conflicts with and results in a tag-of-war between the people and their representatives. This calls for safeguards against parliamentary dictatorship so that the people still retain their sovereignty. To assume that the people's initial act of voting validates the entire representational set of activities of the elected delegates is to assume an impossible disposition in humans, in the first instance, and secondly, it is to task the representatives with a logical and moral impossibility. In the first instance, it is to assume that elected representatives, upon election, shall shed off some essential elements of their human nature: emotions and personal interests, which, ineluctably get into their decision-making and action process. This would amount to expecting them to cultivate, as though by transfiguration, a disposition of pure and absolute selflessness, removing them, almost completely from certain essentials of human nature. The very fact that humans are born and bred within society creates bonds which do not easily succumb to the ideal of selflessness. One's natural bond to one's close relations such as parents, spouses and children is never so easily sacrificed for the social ideal of being other regarding. Secondly, the representatives would be expected to be logically and morally infallible, at all times. All their premises would have to be true and their inferences to violate no rule of logic so that they commit no error in judgment. This would be an arduous task for the representative as it would be an unreasonable expectation. The moral implication of this stipulation is equally unreasonable. It would compel the representative to acquire the knowledge of the good as understood by *every* individual citizen he/she represents. This would be an absurdity, as one person would try in his/her thought and action to be everybody at once, which is impossible.

4.6. Popular Sovereignty, Representation and the Notion of Rights

Political discourse, since the works of J. J. Rousseau, has been concerned that rulers, being human, have their individual personal interests, and this makes them susceptible to the tyranny of whims and the corruption of power. This combination can easily ruin the society. In J. S. Mill, for example, we find the express demand for the limitation of the activities of rulers, and Mill refers to rights as those safeguards against the excesses of rulers.³⁴ The notion of rights, introduced into political theory, has had the intention, as Mill argues, of creating a balance between the activities of the ruled and the ruling classes of society.

Politically, rights are sometimes understood as synonymous to liberties, or as intertwined. J. S. Mill understands the two terms as having the same signification: those immunities that the leader is not allowed to infringe against, and upon whose infringement, a general resistance or even outright rebellion would be justifiable.³⁵ Maintaining a similar line of thought, J. C. Johari argues that "... freedoms are inseparable from rights because, otherwise, their realization is hedged about with an uncertainty which destroys their quality."³⁶ Other trains of thought see a dichotomy between the two terms. Tedd Honderich and Joel Feinberg do separate the two terms and assign them to different concepts.³⁷ In this work, however, we use the two terms interchangeably. Rights, however conceived, are entitlements to persons, which at the same time protect persons against injuries which may be caused to them by others. Liberty is seen as a "...protection against the tyranny of political rulers."³⁸

Taking the lead from the conception of rights above, the usurpation of the sovereignty of the people, then, is tantamount to a denial of the right of self-determination, and a circumscription of the liberty for self-development. The concept of sovereignty implies the notion of liberty as the arena in which political rights are realized. Denial of liberty is denial of the arena for exercising rights as entitlements.³⁹ The more the representatives arrogate upon themselves sovereign duties, the more the liberty of citizens is restricted, and the more popular sovereignty is destroyed, and the opposite holds true. Liberty is, therefore, related to popular sovereignty in the sense that it "...consists in one important part in the possibility or existence of one person's...legal rights and of related legal obligations on the part of others,"⁴⁰ allowing for opportunity for participation in sovereign duties and processes by all concerned.

Rights spell the boundaries of allowable behavior and interaction. They indicate obligations and parameters of permitted social exchange for a harmonious life. Popular sovereignty is hinged upon a correct demarcation of organizational powers due to each individual citizen within a particular political community; the powers necessary for equal participation in the political processes by each citizen, disposed to contribute to the common history of the political community to which he/she belongs. As Buchanan argues, "a necessary starting position for a society of free individuals, related one to another in a network of interdependence, is some agreement on a structure of rights which, in effect, defines the entities who enter negotiations."⁴¹

Rights set reasonable allowance for behavior, so that no one interferes with another's personal space unduly. There must be some agreement on the limits of behavior among members of the society for any meaningful transactions to take place. It is by establishing rights due to each

person, that the society begins to operate in some orderly manner. “In other words, civil or social liberty consists in the rights and privileges that the society recognizes and the state protects in the spheres of private and public life of an individual.”⁴² Individual and institutional order is guaranteed by rights, setting mutual obligations. Freedom, is ultimately, guaranteed by rights, mutually agreed upon, and a further agreement on the means to enforce these rights. Freedom in any society, then, is based on contractual arrangements according to which there is a basic minimum agreement on behavioral limits by individuals. These limits are the first instance of establishing rights to be respected by all individuals within that community. This sets the condition for participation for both representatives and citizens, on mutually agreed terms.⁴³

For effective operation of a contractual arrangement where rights are defined and assigned to individuals, there must be unanimity among the contracting individuals. It is only within the unanimity rule that decisions, if made, are guaranteed to be efficient. Ordinarily, though, in contractual situations, certain individuals would expect to gain more than the cost injected into the decision. If decisions are made in situations which are less than unanimous, such as majority voting, efficiency is not guaranteed, and those who are negatively affected by such decisions are likely to feel robbed of their position within the sovereign whole. This makes it imperative that a system of inviolable rights, setting terms for equal treatment of every member of a collective political order be set to bridle the excesses of recalcitrant individuals not wishing to obey mutual obligations.⁴⁴ To ensure this, the norm of publicity, enhanced by deliberation must be established, as a deterrence against any incentives for personal strategic aims and actions.

As Buchanan suggests, therefore, all collective action must be controlled constitutionally. The reason being that

...if there are no constraints [in our case, restraints], individuals have a stronger incentive to invest resources in attempts to secure control over collective decisions. Control over the collective decision – making apparatus becomes the instrument for securing the winning of a zero – sum component of the game of politics. And, for the community in total, all resources invested in gaining this control are wasted.⁴⁵

We must recognize, however, that, constitutions are not enough safeguards of individual rights. Being abstract by design, the constitution presents a different problem to the ordinary citizen, lacking in expertise of interpreting the constitution. His/her lack of knowledge of the constitution makes him/her vulnerable to the shenanigans of unscrupulous constitutional experts, a situation which ultimately ends up working against the recommendation that rights should guarantee popular sovereignty.⁴⁶ Constitutions enshrine rights, but not the assurance that rights will find expression within the practical sphere. Without the mechanisms to ensure practical realization, rights can easily be overthrown by representatives, and their place taken by whimsical decisions. As norms, rights only bind morally, on people's conscience, but not to their practical manifestation. The constitution does not embody the conscience of the people, even if, abstractly, it embodies their will.

Yet certain decisions involving the entire society, we argue, cannot be efficient if every individual has to be allowed the latitude that he/she wants. Such decisions must be in most cases, non – unanimous, which will mean that some people will have to accept some terms against their

will. Such is always the case with governmental decisions concerning issues such as taxation and security, for instance. As J. Buchanan states,

Governmental decision – making in its operative form departs from voluntaristic contracting, despite the contractarian basis for the state’s productive role. Indeed the relative efficacy of governmental institutions stems from the cost-reducing impact of allowable departures from strictly voluntaristic negotiations. But, in their turn, these departures guarantee that some participants in almost every decision will be coerced into abiding with undesirable terms. Budgetary and taxing decisions are not reached through ... unanimity, and to the extent that they are not, some participants suffer losses in an opportunity – cost sense. The existence of these opportunity losses become an additional source for the basic government paradox.⁴⁷

Governmental decisions will, by their very nature, be oppressive, but at the same time they will achieve the common good to a good degree, because of their centralized nature. In Rousseau, they represent the General Will as “...the idea of collective control over the common life.”⁴⁸ They represent not individual, but common freedom. Now this conception of freedom, as V. Sriranjani rightly remarks, can lead to tyranny and authoritarianism. It would accord with what is referred to in Ted Honderich’s *Conservatism* as “the monstrous tyranny of king numbers.”⁴⁹

In the name of the common good, estimated to benefit even the dissenting minority, the majority may exercise unmitigated authority over the actions of the minority to the extent of extinguishing completely all the personalities of the minority. J. S. Mill finds this kind of majoritarian rule disagreeable, and legitimately so. In the name of the majority and sanctioned by it, decision – makers may easily tyrannize the rest of the society, yet as Mill rightly remarks, “...‘the tyranny of the majority’ is now generally included among the evils against which society requires to be on its guard.”⁵⁰ As Feinberg argues,

...social progress is more likely to occur where there is free criticism of prevailing ways and adventurous experiments in living. ... true understating of human nature requires freedom, since

without liberty there will be little diversity, and without diversity all aspects of the human condition will be ascribed to fixed nature rather than to the workings of a particular culture.⁵¹

Such are the grounds for presumption of freedom, which make it necessary that faced with a dual situation of forcing a person to do something and letting him/her decide, it is always better to let the person decide. Forcing one to do something may arise from fear that one may go wrong if left without guidance, but it would be much better if a person went wrong freely, therefore taking responsibility for being wrong, with the possibility of finding solutions to the wrong decision taken, rather than one doing the right thing without being able to take responsibility for the right thing done, and being unable to explain the process of doing that right, if challenged to do so.

4.7. Conclusion

In this chapter, we have attempted to relate popular sovereignty to the concept of delegation of power in democracy. We have analyzed representation as a form of delegation of power, arguing that in current democratic practice, representation is an inevitable element of democracy. Parliament is the locus of democratic representational activities, such that the people's wishes are assumed to be embodied in parliament as an institution, and the parliamentary representative inevitably sees him/herself as the embodiment of the wills of citizens. We have seen, however, that this conception of representation is faulty, as it foments usurpation of sovereignty from citizens. The people's representatives tend to operate without recourse to the people in the assumption that the people are ignorant of what the good life is, and so must not be consulted. Another assumption fomenting the usurpation of the people's power is that the people are generally lethargic, and do not really care about the manner in which collective decisions are

made. This has caused conflicts between the people and their representatives, resulting in the need to devise safeguards against the usurpation of the people's sovereign powers.

Parliament, as the institutional locus of representational activities, is not necessarily an institution of popular sovereignty. Representatives are likely to work against the aspirations of citizens, if not checked. For representation to be consistent with popular sovereignty, and for it to resolve the problems of citizen democratic capacity posed by the fact that the principles of popular sovereignty are not equally distributed among individual citizens, a condition which makes it impossible for all citizens to exercise sovereign mandates equally, rights must be institutionalized as safeguards against incentives to abuse the representative mandate of the people's representatives. The notion of rights is still a technical problem for the ordinary citizens, for enshrined in legal documents, which are familiar only to legal experts, it still can be disregarded by the representatives. Representatives, being human, are likely to succumb to the tyranny of their emotions and go against the popular will. Consequently, incentives against such behavior ought to be devised as a safeguard against the temptation to disregard the law. This safeguard, we have seen, is deliberation, publicly conducted by citizens at all levels of decision-making, so that no one gets the incentive to act privately for selfish gains. The publicity element in deliberation has the effect of creating a transparent atmosphere, thus deterring people from disregarding public sentiments. This, in our opinion, is what can ensure popular sovereignty, and genuine democracy, ultimately.

However, achieving the conditions for the possibility of popular sovereignty as explicated in this thesis, cannot happen unless a conscious effort is made to realize it. What has been outlined in this work as the constituting elements of popular sovereignty need to be established first, if popular sovereignty is to be realized.

Notes

¹ M. Eagles, and Larry Johnston. *Politics: An Introduction to Democratic Government*. (N.Y.: Brodadvew Press, 1985), P.191.

² C. A. Beard and J. D. Lewis, “Representative Government in Evolution.” In *The American Political Science Review*. Vol. XXVI. No. 2, 1932 – P. 223.

³Ibid. P. 223.

⁴ C. A. Beard, and J. D. Lewis, Op. Cit. P. 225.

⁵Ibid. P. 225.

⁶Ibid. P. 225.

⁷Ibid. P. 225.

⁸Ibid. P. 255.

⁹ M. Eagles and L. Johnston, Op. Cit., P. 198

¹⁰ F. Marini, “Popular Sovereignty but Representative Government: The Other Rousseau”, in *Midwest Journal of Political Science*. Vol. 11, No. 4 (Nov., 1967), P.455.

¹¹ A. Rapaczjenski, “Popular Sovereignty and the Concept of Representation: The Relevance of American Constitutionalism in Eastern Europe” in *International Journal of Sociology*. Vo. 26. No. 4. 1996/1997, P. 12.

¹² Ibid., P. 12.

¹³Ibid., P. 12.

¹⁴ B. Garsten, “Representative Democracy and Popular Sovereignty”, unpublished article, for Political Philosophy Workshop at Brown University, April, 2007. P.1.

-
- ¹⁵ A. Rapaczynski, Op. Cit., P. 11.
- ¹⁶ C. A. Beard, and John D. Lewis, Op. Cit. P. 228.
- ¹⁷ C. W. Morris, "The Very Idea of Popular Sovereignty: 'We the People Reconsidered'." In *Social Philosophy and Policy Foundation*.... P. 18.
- ¹⁸ J. S. Mill, *On Liberty* , Ch. I. in S. M. Cahn, *The Classics of Moral and Political Philosophy* (Oxford: Oxford University Press, 2002), P. 929.
- ¹⁹ B. Garsten, Op. Cit, P. 4.
- ²⁰ Ibid. P. 5 – 6.
- ²¹ Ibid. P. 8.
- ²² Ibid. P. 9.
- ²³ F. Marini, Op. Cit. P.465.
- ²⁴ A. Rapaczynski, Op. Cit., P. 14. The stress is mine.
- ²⁵ J. G. March and J. P. Olsen, "Popular Sovereignty and the Search for Appropriate Institutions", in *Journal of Public Policy*. Vol. 6. No. 4, 1986, P.358.
- ²⁶ Ibid., P.356.
- ²⁷ Ibid. P. 356.
- ²⁸ A. Rapaczynski, Op. Cit., P. 13.
- ²⁹ Ibid., P. 10.
- ³⁰ Ibid., P. 10.
- ³¹ Ibid. ,P. 10.
- ³² Ibid., P. 11.
- ³³ Ibid., P. 11.
- ³⁴ Loc. Cit., P. 11.
- ³⁵ J. S. Mill, *On Liberty*, Ch. I, in S. M. Cahn, Op. Cit.
- ³⁶ J. C. Johari, Op. Cit., Pp. 257 – 8.
- ³⁷ Cf. T. Honderich, *Conservatism*. (London: Penguin Books, 1991), P. 84, and Joel Feinberg, *Social Philosophy*. (Englewood Cliffs, New Jersey: Prentice-Hall, Inc. 1973), P. 25.
- ³⁸ J. S. Mill. *On Liberty*. Ch. I, in S. M. Cahn, Op. Cit, P. 927.

-
- ³⁹ F. Bergmann, *On Being Free*. (Notre Dame, London: University of Notre Dame Press, 1977), pp. 1 – 4.
- ⁴⁰ T. Honderich, *Op. Cit.* P. 84.
- ⁴¹ J. Buchanan, *The Limits of Liberty. Between Anarchy and Leviathan*. (Chicago & London: The Chicago University Press, 1975), Pp. 21 - 22
- ⁴² J. C. Johari, *Contemporary Political Theory*. 2nd ed. (New Delhi: Sterling Publishers Private Ltd., 1987), P. 268 – 9.
- ⁴³ J. Buchanan. *Op. Cit.* P. 17 – 33.
- ⁴⁴ *Ibid.* P. 39.
- ⁴⁵ *Ibid.* P. 49.
- ⁴⁶ *Ibid.* Pp. 49 – 51.
- ⁴⁷ *Ibid.* P. 101.
- ⁴⁸ V. Sriranjani. “Liberty”, in *Political Theory: An Introduction*. R. Bhargava and A. Acharya (eds.). (New Delhi: Pearson, 2008), P. 50.
- ⁴⁹ T. Honderich, *Op. Cit.* P. 135.
- ⁵⁰ J. S. Mill, in Cahn, *Op. Cit.*, P. 929.
- ⁵¹ J. Feinberg,, *Social Philosophy*. (Englewood Cliffs & New Jersey: Prentice-Hall, Inc. 1973), P. 22.

Chapter V

Summary, Conclusions and Recommendations

5.1. Summary

In this research, we have analyzed popular sovereignty as the key element in democracy. As a means of organizing the human society, democracy began with the Greeks in the fifth century B. C., and has ever since received recognition throughout the ages, as the best system of social organization yet. This is because, as a system of organizing human affairs, it rests the ultimate decision making on collective issues in the people as a whole, ensuring the sovereignty of the people. In our attempt to analyze this concept of the sovereignty of the people, we have identified a number of issues, as following:

Even though democracy has a long history of endorsement as the best political paradigm for organizing society, there have still been serious misgivings in regard to its efficacy, with some political theorists preferring a cautious approach to its claims, and others taking outright adversarial positions.

From the 17th century, there emerged a consistent presumption in favour of democracy, arising from interpretations of J. J. Rousseau's theory of the General Will, which has been considered as the herald of the theory of popular sovereignty. Rousseau's idea of the General Will represents the intuition that all citizens must take part in constructing their society, and once they express their will through legislation, that will remains sovereign and unchangeable. The idea of popular sovereignty, as this research found, is an attempt to rest the ultimate determination of what and

how the society is organized with the people, and that it rests on the assumption that individual citizens have the capacity to govern themselves and to determine the course of their lives collectively.

There is, however, tension between real political practice and the key democratic principle of popular sovereignty. Doubts still linger as to whether the people can really hold and use power as a collectivity without being unruly and consequently, becoming ruinous to social order.

We have found out too that the doubts about popular sovereignty are based on an inadequate analysis of popular sovereignty, which has led to a misunderstanding of the concept.

Popular sovereignty, as we have found out too, is a normative political concept, hinged upon key principles such as homogeneity, logical and epistemic capacity of individuals, personal autonomy, communicative disposition of individuals, and participation, anchored on institutionalized deliberation, publicly conducted, as the governing, driving force.

We have found out again, that the principles of popular sovereignty, being ideals, are not within the reach of every citizen equally and that their requirements, cannot be achieved by all citizens at all times.

This research has found out also, that popular sovereignty understands power from a relational perspective, according to which individuals seek to influence each other through offering mutual support rather than seeking to exert dominance over each other.

Another discovery of the requirement is that representation is a key practice in democracy, and within the contemporary political system, parliament presents itself as the one most significant institution of representation.

We have found out that as an institution of democracy, representation evolved in an attempt to address a number of political issues, based on certain assumptions such as, the fact that majority citizens are generally lethargic and uninterested in political participation; the fact that most citizens, even if they would be interested, are incompetent and therefore, lack skills that allow for effective participation; that even if citizens would both be competent and interested in political activity, the territorial and demographic size of modern democracies cannot support direct participation by all citizens.

In line with this, we have also discovered that in the process of representation, the representatives tend to usurp the authority of citizens, creating tension between the institutions of representation and the representatives on the one hand, and the citizens on the other.

We have discovered again, that the concept of rights has come into democratic discourse as an important means for safeguarding against the usurpation of sovereignty from citizens. However, being a legal concept, enshrined in an abstract form within the constitution, it presents challenges of understanding for the non-trained citizens, thus hampering its effective use to safeguard their sovereignty.

Another finding of this research is that the idea of deliberation is an important variable which acts both as a regulatory and validating principle of collective decisions. It is a form of activity which relies on reason to achieve its aims. It is different from other forms of communication,

such as bargaining, rhetoric, or protests, primarily because it is structured discourse, anchored on the moral norms of honesty and sincerity. It involves mutual reason-giving and reflection over opinions in an orderly manner, based on the norm of reciprocity which generates a feeling of co-ownership of collective decisions, and a commitment to co-operate in achieving them, because participants are aware of their role as agents in bringing the decision to bear on each other.

5.2. Conclusions

From the research findings, we see that there has been, and still is a presumption in favour of democracy a way of organizing human society. Notwithstanding this presumption in favour of democracy, the efficacy of democracy as a system of social organization has not always received universal and unequivocal approval. The criticisms and general misgivings about democracy have largely been occasioned by certain failures of democracy, which have contributed in creating disappointment and the subsequent skepticism, prompting some thinkers, such as Jean Bodin and Thomas Hobbes, for example, to prefer autocratic forms of government, due to their apparent effectiveness.

The main feature of democracy is that the people are the ultimate decision makers in regard to the use of power for public affairs. Every decision must be collectively arrived at by all the people. This is the theory of popular sovereignty. It is a theory of political organization according to which citizens are the legitimate and legitimizing administrators of political power. The entire body of citizens, then, is the proper locus of political power, and not individuals. The

people must be sovereign over themselves, and over their activities. They must be the final decision makers and executors of the decisions they arrive at collectively.

The main criticism leveled against democracy by its critics revolves around this very idea that the people as a whole, are the ultimate legitimate holders of political power. The gainsayers of democracy contest this assertion, citing the difficulty that if all the people are to take part in decision making, collective decisions would be slow, or would not be taken at all, either, because the people are lethargic and are uninterested in politics, or that they are unskilled about issues regarding governance and are thus, incompetent, and therefore, cannot be trusted to organize themselves in the best way.

This thinking has, however, produced more tension and conflicts, with the people constantly protesting against those who deny them the right and opportunity to decide upon their affairs. This still indicates that, somehow, the people have to decide on their affairs, giving more force of preference yet to democracy. If democracy, then, still persists in proposing itself as the best form of government, the next level of argument and action is, logically, how to make democracy work, in a way that it resolves the failures which result in doubts about its efficacy. To this extent, a system of democratic practice which uses representatives, has been devised, with parliament forming itself as the locus of this representative mandate. In contemporary democratic practice, therefore, decisions are made by the people, not directly, but indirectly, through representatives. Representation is not only effective in fast tracking political decisions in territorially and demographically large political entities, which characterize modern day societies. It is also important because, as Jürgen Habermas observes, in modern societies, “the people from whom all governmental authority is supposed to derive does not comprise a subject

with will and consciousness. It only appears in the plural, and *as* a people it is capable of neither decision nor action as a whole.”¹ Representation, then, creates the possibility of finding a common locus to delegate authority to execute the wills of the people.

The practice of parliamentary representation, meant to solve the problems of citizen participation through consolidating their wishes and having them represented by a few elected leaders, however, introduced another problem of usurpation of the people’s decision making powers. The representatives have always arrogated upon themselves extra powers and authority, setting themselves above the true sovereigns, causing further tensions and conflicts between the people and their representatives. There is always an unending tension between popular sovereignty and the institutions of representation, a problem which democratic theory must try to resolve.

In this research, our argument is that, as desirable as democracy may be, it cannot achieve its aim without a proper conceptual foundation of its mode(s) of operation. Democracy is a theory and practice of popular sovereignty. Before popular sovereignty, as a fundamental democratic concept and norm, is properly understood, democracy will always be a desired, but elusive form of government.

Our most important observation in this debate is that for effective realization of popular sovereignty, deliberation must be institutionalized in all sectors of public decision making as an

activity of on-going democratization and as a mediation pole between the sovereignty of the people and the unavoidable phenomenon of representation in democratic politics. Popular sovereignty is, essentially, action upon self. What this means is that citizens, as individual members of a political community and as a collective whole, do determine themselves in regard to the laws that govern them.

As the subjects of the law, they are at the same time the makers of the law they obey, so that the law does not come to them as an alien imposition. In obeying the statutes they have made, they obey themselves and each other as individuals and as members of that society. It is only in this way that the law takes on a voluntary perspective in the minds of citizens, and the citizens cease to see it as a command. It is seen for what it truly is: a tool arising from the deliberative activity of citizens. As a tool, it serves only an instrumental purpose of achieving the common aims as determined by the sovereign public, and is therefore, subject to the regulatory condition of deliberation that the sovereign population imposes on every other institution. Being subject to the democratizing effect of deliberation, the law must undergo the continuous discourse process which validates all its actions. The law, then, is not an autonomous and static institution, taking on a life of its own as an end in itself. It must undergo continuous public review by citizens, debating upon its efficacy as new socio-political scenarios unfold.

The law, being an embodiment of the people's wishes on how they should govern themselves, must not assume a position of superiority over the people, but must be an instrument of the

people, constantly reviewed for its efficacy. The law must not be alien to the people, since nobody can alienate him/herself from his/her wishes and aspirations. As Habermas rightly puts it, “the people program the laws, and these in turn program the implementation and application of the law, so that through the collectively binding decisions of administration and judiciary the members of society receive the benefits and regulations that they themselves have programmed in their role of citizens.”² The law, then, is a tool of popular sovereignty. It is an instrument used by citizens to produce their own life context, conceived as a product of conscious political – will formation. For citizens to form their own political will, translated into law obeyed by all, there must be a process of participation for all, in a free political environment in which each regards the others as ontologically and morally equal. The results of such a procedure are, therefore, owned by all concerned since they arise out of a publicly exercised reasoning by all concerned.

Our attempt to formulate a democratic theory in terms of popular sovereignty takes recourse also to the norms, and attitudes which constitute consciousness and commitment to the ideals of popular sovereignty. The intellectual and moral norms responsible for integral human development are necessary for realizing the ideal of popular sovereignty in democracy, and are thus indispensable in democratic theory. Such ideals must be inculcated in citizens, if a genuine democracy is to be realized. Inculcating such ideals has been the failure of democratic education, which must be taken on and corrected with vigour. AS J. G. March and J.P. Olsen argue,

many of the tools of democracy are directed toward socializing ordinary citizens into the responsibilities of citizenship, including the obligations of public servants. Education in the principles of unity, selflessness, and possibilities of human development is a frequent objective of a society, but the political socialization of citizens to those ideals is not reliably successful.³

There must be a deliberate effort to socialize citizens for democracy. The human mind is without any democratic ideas when it first receives its existence into this earth, and without a conscious and deliberate effort to inculcate those ideas and values, they do not spring up in people's minds. Formalized and institutionalized democratic education is needed for democratic ideals to find expression in individual citizens. Leaving the dynamics of democratic consciousness to liberal individualism does not inculcate the principles necessary for realizing popular sovereignty. As Habermas rightly argues, a truly democratic political community, anchored on the principles of popular sovereignty "...is not a possession we simply accept as our fortunate inheritance from the past. Rather it is a project we must [construct and] carry forward... [every day of our political life]."⁴ Liberal individualism assumes that citizens taken severally are competent enough to know without training; by just observing nature, the democratic principles arising out of the market-oriented behavior of the liberal paradigm will spring up. This assumption is unwarranted since rational capacity is not the same for everybody, and the situation out of which any consciousness may be spontaneously developed is not replicated within all human societies at all times.

As a normative theory, popular sovereignty must include participation based on competence and the cultivation of civic virtue. Politics, considered from this perspective is not a residual category of an economic system, adopting the rules and operation modes of market competition. It is not a zero sum game of winners and losers. Politics is here regarded as a *forum* for collective decision making based on mutual understanding. It is regulated by a deliberative process in which citizens give reasons to each other for accepting or rejecting different positions presented in a public

deliberation forum. The representational institutions of society are themselves not exempt from the democratizing act of deliberation. They must be anchored on constant public deliberation as the procedure for securing collective agreement. Deliberation is an on-going procedure of democracy, and must be carried out through all the step of the implementation of collective decisions. If this is not done, then the tendency for representatives to usurp the power of the citizens and act as though they were the sovereign themselves cannot be avoided. Deliberation protects reasonable collective opinions from being overrun by whims of shrewd machinations of strategic political interests.

The publicity of deliberation is an important element in protecting those who cannot participate in democratic processes, from possible harm caused by their inability to individually and personally express their intentions. Just as we secure the good of future generations which do not share in our present circumstances by conserving the physical environment for ourselves, our collective will in regard to what is good for us as human beings must of necessity include those who cannot directly and actively share in the collective sovereignty. Their interests are considered in considering what is good for human nature in general and not what is good for particular circumstances. The legitimizing criterion for any decision is that it must be generalizable. Whatever is not generalizable must be rejected. This will serve as a safeguard against strategic manipulation of representatives. Representation must not mean that citizens will have to lose their sovereignty. What is needed in representation is a system that will always repose decision in the citizen such that any tendency by the representative to usurp sovereign power from the citizen is forestalled. The generalizability criterion is that system. Coupled with

the institutionalization of deliberation in all organs of society, effective decisions respecting opinions of all citizens will be the hallmark of political activity. The principles of popular sovereignty will not take root in our souls unless reason has assured itself of its deliberative role as the fundamental energizing, evaluative, and governing element in democracy.

The moralizing effects of discourse are fundamental to the creation of an attitude responsive to the demands of popular sovereignty. As a democratic principle, popular sovereignty "...expresses itself only under the discursive conditions of an internally differentiated process of opinion and will-formation."⁵ Popular sovereignty is a theory of reason informing democratic political activity. Democracy is essentially a political paradigm which relies on the rational capacity of individuals to make the right decisions for themselves, and popular sovereignty demands that this reason be manifested in all stages of public action. Each individual citizen in a differentiated way, has to contribute in making his/her political context and history, through bringing his/her opinion to bear on the collective decisions made. Democracy, then, must champion itself as a rational and normative system of organizing the political life of humans for the sake of achieving happiness, freedom, and the dignity of individual citizens. It must champion itself as a system through which "...the perfection of the law and power of society springs from the *mutual understanding* and agreement of *all its members*."⁶ These are ideals that democracy has yet to achieve.

5.3. Recommendations

In the light of the findings of this research and the conclusion we have drawn from them, it is evident that for popular sovereignty to find practical expression within society and thereby for the ideals of democracy to be more closely approximated, at least five steps should be taken as outlined below.

First, there must be in place a concerted education of citizens aimed at equipping each person with the logical and epistemic capacity necessary for taking part in analyses and discussions in order to prepare individuals for deliberative participation. This education must be primarily meant to create a civic consciousness, which is important for cultivating a participatory democratic disposition. Alongside this education geared towards forming a liberal and critical mind, there should be moral education, aimed at inculcating a disposition of honesty and readiness to engage in an open dialogue with others who are members of the same political environment. Together with this should be basic legal knowledge, introduced at the early stages of citizens education, preferably from middle primary school when pupils are around ten years of age. This education should continue throughout the citizen's training, being adjusted accordingly, depending on one's level of intellectual development, through to the university level. Legal knowledge should not be treated as expert knowledge, left only to those considered of high intellectual calibers. It should be a requirement for every citizen capable of minimum logical comprehension to have basic legal knowledge. This would be important for enhancing awareness of political responsibilities and for fostering citizens' deliberative capacity.

Second, we recommend equally, a conscious and structured process of establishing deliberation as an institutional tool driving every process of decision-making in all sectors of society and all institutions of governance. Deliberation ought to be a norm of activity for every institution of society, starting from the family, to the school, extending to other areas such as the church, and all other institutions involved in decision – making.

Third, in the light of the finding that representatives normally have the tendency of usurping the sovereign power of citizens, we recommend that decision-making be decentralized to the lowest level of citizen engagement, and this must be practiced by every citizen by encouraging them to engage in free discussions and criticisms of ideas and policies at all levels. The attitude that makes leaders the custodians of truth and the bearers of infallible wisdom must be replaced with an attitude of skepticism and provisionalism, and a radical openness to unrelenting pursuit of a rational solution to any problem regardless of the time it takes to achieve it. This calls for an inculcation of the intellectual traits of tenacity and courage even to face those ideas that one is prejudicial against and to discuss them openly without compromising reason in favour of emotional comfort.

Fourth, culture as the framework of values is significant in shaping people's understanding of and commitment to any ideals. The ideals of democracy equally depend on the cultural dimensions of a people, especially the moral dimensions of that culture. Democratic, and civic consciousness in general, should be based on fundamental cultural moral elements, with a force

of sanctions deeply rooted in individual conscience, barring people from deviating from the ideals. Without a system of sanctions which appeals to the innermost moral foundations and sensitivities of a people, respect for institutions of collective action will not be maintained, and the tendency to misdirect representational activities against the common good towards private gains will over run the good will of the representatives of the people, elected to manage these institutions. A system of sanctions rooted in ethically refined cultural norms has the potential to depersonalize political authority and make it a tool for attaining the good of all by inculcating in citizens a sense of civic responsibility and responsiveness. This is the way to create a political culture appropriate for popular sovereignty. Popular sovereignty "...cannot operate without the support of an accommodating political culture, without the basic attitudes, mediated by tradition and socialization, of a population accustomed to political freedom..."⁷ For a real moral commitment to the realization of the ideals of democracy, therefore, "...the sovereignty of the people should be relocated to the cultural dynamics ..."⁸

Fifth, given the dynamism of society, and the volatile nature of political organizations, it is important to carry out continuous research on the theory of popular sovereignty, especially in regard to the appropriate institutions which might help in its establishment as a democratic principle.

Notes

¹J. Habermas, “Popular Sovereignty as Procedure,” in *Deliberative Democracy: Essays in Reason and Politics*. James Bohman and William Rehg (eds.), (Cambridge: MIT Press, 1997), P. 41.

² Ibid. P. 54.

³ J. G. March and J. P. Olsen, “Popular Sovereignty and the Search for Appropriate Institutions”, in *Journal of Public Policy*. Vol. 6. No. 4, 1986P. 357.

⁴ Jürgen Habermas, Op. Cit., P. 43.

⁵Ibid. P. 46.

⁶Ibid. P. 46.

⁷Ibid. P. 59.

⁸Ibid. P. 62.

Bibliography

Aristotle, *Politics*. Bk. I. Ch. 2, in *The Basic Works of Aristotle*. Richard McKeon, ed. (N.Y.: The Modern Library Classics, 2001).

Aseka, E. M., *Pitfalls of Ideology, Social Policy and Leadership in Africa: Instincts of Predatorial Leadership*. Nairobi: New EME Research Initiatives and Publishers, 2005.

Bergmann, F., *On Being Free*. Notre Dame, London: University of Notre Dame press, 1977.

Berlin, I., "Two Concepts of Liberty." In *Four Essays of Liberty*. Oxford: Oxford University Press, 1969.

Bobio, N., *Democracy and Dictatorship: The Nature and Limits of State Power*. Trans. Peter Keneally, Minneapolis: University of Minnesota Press, 1981.

Bochenski, J. M., *The Methods of Contemporary Thought*. N.Y.: & Evanston, Harper & Torchbooks, 1969.

Bodin, J., *Six Books on the Commonwealth (Les Six livres de la République)*, Ch, VIII. Abridged and trans. by M. J. Tooley. Oxford: Alden Press, 1955.

Buber, M., *Between Man and Man*. London & N.Y.: Routledge, 1993 (1974).

Buchanan, J., *The Limits of Liberty. Between Anarchy and Leviathan*. Chicago, London: The Chicago University Press, 1975.

Buultjens, R., *The Decline of Democracy: Essays on an Endangered Political Species*. N.Y.: Orbis Books, 1978.

Cahn, S. M., (ed), *Classics of Political and Moral Philosophy*. N.Y.: Oxford University Press, 2002.

Campbell, B. "Phenomenology as Research Method" (Unpublished article)

- Chando, T. *The politics of Excellence: An Investigation of the Moral Ground of Politics in Aristotle*. Unpublished, 2010.
- Cohen, J., “Democracy and Liberty”, in *Deliberative Democracy*. Jon Elster (ed.). Cambridge: Cambridge University Press, 1998.
- Crick, B., *In Defence of Politics*. 4th edition. N.Y.: Penguin Books, (1962), 1992.
- Dahl, R. A., *Democracy and Its Critics*. New Haven and London: Yale University Press, 1989.
- Dewiel, B., *Democracy: A History of Ideas*. Vancouver, Toronto: UBC Press, 2000.
- Eagles, M., & Johnston, L., *Politics: An Introduction to Democratic Government*. Ontario: Broadview Press, 1999.
- Eddy vatham and K. K. Misra, *Political Theory*. 13th ed. New Delhi: S. Chand and Co. Ltd., 2009.
- Elster, J., (ed). *Deliberative Democracy*. Cambridge: Cambridge University Press, 1998.
- Feinberg, J., *Social Philosophy*. Englewood Cliffs, New Jersey: Prentice-Hall, Inc. 1973.
- Freeman, S.,(ed.) *The Cambridge Companion to Rawls*. N.Y.: Cambridge University Press, 2006. (2003).
- Gatens, M., *Feminism and Philosophy: Perspectives on Difference and Equality*. Bloomington and Indianapolis, Indiana University Press, 1991.
- Green, J. M., *Deep Democracy: Community, Diversity and Transformation*. Boston: Rowman & Littlefield, 1999.
- Habermas, J. “Three Normative Models of Democracy”, in S. M. Cahn, *Classics of Political and Moral Philosophy*. N.Y.: Oxford University Press, 2002.
- Habermas, J., “Popular Sovereignty as Procedure,” in *Deliberative Democracy: Essays in Reason and Politics*. James Bohman and William Rehg (eds.), Cambridge: MIT Press, 1997.

- Habermas, J., *Legitimation Crisis*. Trans. Thomas McCarty. London: Heinemann, 1976.
- Habermas, J., *The Theory of Communicative Action*. Vols. I & II. Trans. Thomas McCarthy. Boston: Beacon Press, 1984; 1987.
- Hampton, J., *Hobbes and the Social Contract Tradition*. Cambridge: Cambridge University Press, 1986.
- Honderich, T., *Conservatism*. London: Penguin Books, 1991.
- Husserl, E., *Cartesian Meditations*, Trans. D. Carins. The Hague: Martinus Nijhoff, 1960.
- Johari, J. C., *Contemporary Political Theory*. 2nd ed. New Delhi: Sterling Publishers Private Ltd., 1987.
- Johnson, P., *Intellectuals*. N.Y.: Harper & Row Publishers, (1988), 1990.
- Kant, I., *The Moral Law: Groundwork of the Metaphysics of Morals* (Trans. H. J. Paton), London & N. Y.: Routledge, 1991 (2000, reprint).
- Kinoti, G., *Hope for Africa and what the Christian Can Do*. Nairobi: International Bible Society-Africa, 1997.
- Kolala, Z. K., *Psychotherapy for Contemporary African Political Leadership*. Nairobi: CUEA Publications, 2007.
- Lichtheim, G., *Marxism: An Historical and Critical Study*. N.Y. & Washington: Frederick A. Paeger, Publishers, nd.
- Locke, J. *Second Treatise of Government*, in S.M. Cahn, *Classics of Political and Moral Philosophy*. N.Y.: Oxford University Press, 2002.
- Macchiaveli, N. *The Prince*. Trans. George Bull. N.Y.: Penguin Books, 1981.
- Machiavelli, N., *The Prince*. Trans. G. Bull. N.Y.: Penguin Books, 1981(1961).

- Mackie, G., “All Men Are Liars: Is Democracy Meaningless?” In *Deliberative Democracy*, Cambridge: Cambridge University Press, 1998.
- March J. G. and Olsen, J. P., “Popular Sovereignty and the Search for Appropriate Institutions”, in *Journal of Public Policy*. Vol. 6. No. 4, 1986.
- Menon, N., “Power” in *Political Theory: An Introduction*. Rajeeve Bhargava and Ashok Acharya (eds). New Delhi: Person, Longman, 2008; reprint 2010.
- Messner, J., *Social Ethics: Natural Law in the Western World*, St. Luis and London: B. Herder Book Co., 1965.
- Mill, J. S. *On Liberty* , in S. M. Cahn, *Classics of Moral and Political Philosophy*, N.Y.: Oxford University Press, 2002.
- Munene, M., *The Politics of Transition in Kenya, 1995 – 1998*. Nairobi: Quest and Insight Publishers, 2001.
- Ng’ethe, N. & Owino, W., (eds), *Towards Indigenizing the Policy Debate*. Nairobi: Institute of Policy Analysis and Research, nd.
- Nozick, R., *Anarchy, State, and Utopia*. N.J.: Basic Books, 1968.
- Nyasani, J. M., *Philosophy of Development: An African Perspective. Reflections on why Africa Will Never Develop on the Western Model*. Nairobi: Consolata Inst. of Philosophy Press, 2010.
- O’Flynn, I., *Deliberative Democracy and Divided Societies*. Edinburgh: Edinburgh University Press, 2006.
- Ochien’g – Odhiambo, F. *A Handbook on Some Social - Political Philosophers*. Nairobi: Consolata Institute of Philosophy Press, 1994.
- Oyugi, W. O., et al., (eds). *Democratic Theory and Practice in Africa*. Portsmouth: Heinemann, 1988.

- Oyugi, W. O., *Politics and Administration in East Africa*. Nairobi: East African Educational Publishers, 1994.
- Oyugi, W.O., et al., (eds), *The Politics of Transition in Kenya: From KANU to NARC*. Nairobi: Heinrich Böll Foundation, 2003.
- Parel, A. J., & Reich, R. C. *Comparative Political Philosophy: Studies Under the Upas Tree*. New Delhi: Sage Publications, 1992.
- Plamenatz, J., *Man and Society: Political and Social theory: Bentham Through Marx*. Vol. II. N. Y. & San Francisco: McGraw-Hill Book Co. Inc., (1963) 1969.
- Plato, *The Republic*. Maryland: Penguin Books. 1928.
- Rawls, J., *Political Liberalism*. N.Y.: Colombia University Press, 1993(2005).
- Roger, J., *Women in Athenian Law and Life*. London & N. Y.: Routledge, 1989.
- Rousseau, J.J., *The Social Contract or Principles of Political Right*. Bk. I. Ch. V. Trans. With Intro. By D.G.H. Cole. London & N.Y.: J.M. Dent & Sons Ltd., E.P. Dutton & CO. Inc., 1947.
- Sabine, G. H., *A History of Political Theory*. New Delhi: Oxford & IBH Publishing, 1973.
- Seidman, S., (ed.). *Jürgen Habermas on Society and Politics: A Reader*. Boston: Beacon Press, 1989.
- Shutte. O., *Beyond Nihilism: Nietzsche Without Masks*. Chicago & London: The University of Chicago Press, 1984.
- Soffer, W. *The Crisis of Liberal Democracy: A Straussian Perspective*. Albany: State University of New York, 1987.
- Strauss, L. and Cropsey, L., (eds), *History of Political Philosophy*, 3rd ed. Chicago and London: University of Chicago Press, (1963) 1987.

Stumpf, S. E., *From Socrates to Sartre: A History of Philosophy*. N.Y.: McGraw_Hill, Inc., 1993.

Treck, R. J. et al., (eds.), *Theories of Democracy*. Lanham: Rowman and Littlefield, 2001.

Tyrrel, R. E. *The Future that Doesn't Work: Social Democracy's Failures in Britain*. N.Y.: Doubleday and Co. Inc., 1977.

Wanyande, P., et al., (eds), *Governance and Transition Politics in Kenya*. Nairobi: University of Nairobi Press, 2007.

Ward, J. K., (ed.), *Feminism and Ancient Philosophy*. N.Y. & London: Routledge, 1996.

White, S. K., *The Cambridge Companion to Habermas*. Cambridge: Cambridge University Press, 1995.

Yack, B., *The Problems of a Political Animal*. Berkeley: University of California Press, 1993.

E-Books

Finlayson, J. G., *Habermas: A Very Short Introduction*. Oxford: Oxford University Press, 2005.

Journal Articles

Axtmann, R., "The State of the State: The Model of the Modern State and Its Contemporary Transformation", in *International Political Science Review*. Vol. 25. No. 3. 2004. Pp. 261 – 262.

Bohman, J., "Survey Article: The Coming of Age of Deliberative Democracy." In *The Journal of Political Philosophy*. Vol. 6, No. 4, 1998. Pp. 400 – 425.

Bohmann, J. & Richardson, H., “Liberalism, Deliberative Democracy, and ‘Reasons that All Can Accept’.” In *The Journal of Political Philosophy*. Vol. 17 no. 3, 2009. Pp. 253 – 274.

Bächtiger, A., et. al., “Symposium: Toward More Realistic Models of Deliberative Democracy: Disentangling Diversity in Deliberative Democracy: Competing Theories, Their Blind Spots and Complementarities.” In *The Journal of Political Philosophy*. Vol. 18. No.1. 2010. Pp. 32 – 63.

Campbell, B., “Phenomenology as Research Method” (Unpublished article)

Charles A. Beard and John D. Lewis, “Representative Government in Evolution.” In *The American Political Science Review*. Vol. XXVI. No. 2, 1932.

Christopher W. M., “The Very Idea of Popular Sovereignty: ‘We the People Reconsidered’.” In *Social Philosophy and Policy Foundation*

Cleveland, F. A., “ Popular Control of Government.” In *Political Science Quarterly*. Vol. 34. No.2, 1919. Pp. 237 – 261.

Cohen, J. L., “Rethinking Human Rights, Democracy, and Sovereignty in the Age of Globalization.” In *Political Theory*. Vol. 36. No. 4, 2008. Pp. 578 – 606.

Cook, M., “Five Arguments for Deliberative Democracy.” In *Political Studies*. Vol. 48. 2000. Pp. 947 – 969.

De Marneffe, P., “Popular Sovereignty and the Griswold Problematic.” In *Law and Philosophy*. Vol. 13. No. 1, 1994. Pp. 97 – 112.

De Marneffe, P., “Popular Sovereignty, Original Meaning, and Common Law Constitutionalism.” In *Law and Philosophy*. Vol. 23. No. 3, 2004. Pp. 223 – 260.

Dumbauld, E., “Judicial Review and Popular Sovereignty.” In *University of Pennsylvania Law Review*. Vol. 99. No. 2, 1950. Pp. 197 – 210.

- Fayemi, A. K., "Towards an African Theory of Democracy" in *Thought and Practice: A Journal of the Philosophical Association of Kenya*. Vol. 1. No. 1, 2009, Pp. 101-126.
- Fritz, C. G., "Popular Sovereignty, Vigilantism, and the Constitutional Right of Revolution." In *Pacific Historical Review*. Vol. 63. No. 1, 1994. Pp. 39 – 66.
- Garsten, B., "Representative Government and Popular Sovereignty" Unpublished Paper, 2007.
- Glanville, L., "The Antecedents of 'Sovereignty as Responsibility'." In *European Journal of International Relations*. Vol. 17. No. 2, 2010. Pp. 233 – 255.
- Gutmann, A. & Thompson, D., "Deliberative Democracy Beyond Process." In *The Journal of Political Philosophy*. Vol. 10. No 2, 2002. Pp. 153 – 174.
- Hansen, T. B., & Stepputat, F., "Sovereignty Revisited." In *Annual Review of Anthropology*. Vol. 35. 2006. Pp. 295 – 315.
- Held, D. & Simon, L., "Toward Understanding Habermas; Thomas McCarthy." In *New German Critique*. No. 7, 1976, pp 136 – 145.
- Hunter, I., & Meredyth, D., "Popular Sovereignty and Civic Education." In *American Behavioral Sciences*. Vol. 43. 2000. Pp. 1462 – 1485.
- Johnson, J., " Habermas on Strategic and Communicative Action." In *Political Theory*. Vol. 19. No. 2, 1991. Pp. 181 – 201.
- Kalyvas, A., " Popular Sovereignty, Democracy, and the Constituent Power." In *Constellations*. Vol. 12. No. 2, 2005. Pp. 223 – 244.
- Lefrancois, D. & Ether M., "Translating the Ideal of Deliberative Democracy into Democratic Education: Pure Utopia?" in *Educational Philosophy and Theory*. Vol. 42. No. 3, 2010. Pp. 1469 – 5812.

March J. G. and Olsen J. P., “Popular Sovereignty and the Search for Appropriate Institutions”, in *Journal of Public Policy*. Vol. 6. No. 4, 1986.

Maki, J. M., “The Constitution of Japan: Pacifism, Popular Sovereignty, and Fundamental Human Rights.” In *Law and Contemporary Problems*, Vol. 53, No. 1, 1990. Pp. 73 – 87.

Marini, F., “Popular Sovereignty but Representative Government: The Other Rousseau”, in *Midwest Journal of Political Science*. Vol. 11, No. 4, 1967.

Owakah, F. E., and Aswani, R. D., “Technocracy and Democracy: The Challenges to Development in Africa”, in *Thought and Practice: A Journal of the Philosophical Association of Kenya*. Vol. 3. No. 1, 2011. Pp. 115 -129.

Pettit, P., “Deliberative Democracy and the Discursive Dilemma.” In *Philosophical Issues: Social, Political, and Legal Philosophy*, Vol. 11. 2001, Pp. 268 -299.

Phelan, D. R., “Natural Law and Popular Sovereignty: The Irish Legal Order.” In *An Irish Quarterly Review*. Vol. 86. No. 343, 1997. Pp. 215 – 224.

Rapaczynski, A., “Popular Sovereignty and the Concept of Representation: The Relevance of American Constitutionalism in Eastern Europe.” In *International Journal of Sociology*. Vol. 26. No. 4, 1996/1997. Pp. 7 – 16.

Roth, B. R. & Garber, L. A., “Popular Sovereignty: The Elusive Norm.” in *Proceedings of the Annual Meeting (American Society of International Law)*, Vol. 91, 1997 pp. 363 – 372.

Timney, M. M. & Kelly, T. P., “New Public Management and the Demise of Popular Sovereignty.” in *Administrative Theory and Praxis*. Vol. 22. No. 3, 2000. Pp. 555 – 569.

Trotter, G., “Bioethics and Deliberative Democracy: Five Warnings from Hobbes.” In *Journal of Medicine and Philosophy*. Vol. 31. 2006. Pp. 235 – 250.

Yack, B., "Popular Sovereignty and Nationalism." In *Political Theory*. Vol. 29. No. 4, 2001. Pp. 517 – 536.

Internet Sources

<http://wikipedia.org/JürgenHabermas>. Accessed, 20/01/2010.

<http://plato.stanford.edu/entries/critical-theory>. accessed, 12/02/2010.

<http://www.thefreedictionary.com/homogeneity>. Accessed 16/10/2013.