Feature

Building Democracy

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Today, at the end of that dark time when intolerance and authoritarianism covered a good part of Latin America with horror, the hope and possibility of a better future have spread throughout the continent.

Many of these countries—Argentina among them—are undergoing the transition from authoritarian governments to new democratic regimes which are striving to consolidate themselves. This process of transition presents great challenges to our societies. It is not easy to build democracy out of political cultures and civic habits undermined by decades of authoritarianism; nor is it easy to do so in the midst of a deep economic crisis which has left us with the aberrant legacies of injustice and poverty. Finally, it is not easy to build democracy in a world characterized by a conflict between two powerful blocs which is projected to other areas of the world and which promotes these blocs' security at the expense of the expansion and materialization of the values they profess to defend.

But with risk comes opportunity. In Latin American societies, building democracy is not just a process of restoration; it is essentially a process of founding new institutions, practicing new routines, and developing new habits and ways of living together. We are not rebuilding a system which worked well until put on hold by authoritarianism. Rather, we need to set a new foundation for an authentic democratic system which never developed fully among us.

The process of transition to democracy, initiated three years ago in Argentina, was basically a response to a state of social disintegration in which the fundamental links necessary for cooperation and solidarity among individuals had been destroyed. For years the country endured a state of generalized violence in which Argentines lost the set of guidelines that constitute public ethics, legality, and even primary social relations. This loss generated fear, uncertainty, self-criticism, and, above all, insecurity stemming from the impossibility of predicting the arbitrary exer-

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cise of public authority. One result was a general and self-defensive withdrawal; people sought shelter in the private realm, abandoning all interest in public affairs. In some sectors of society, this attitude was related to a certain indifference towards, and even tolerance of, the aberrant acts committed first by pseudo-revolutionary terrorists and then by those who from positions of power promoted their own terrorism, which demonstrated the same contempt for the dignity of the human person.

Another effect of this lawless state of affairs was the creation of the type of self-interested social dynamic in which the most rational-seeming behavior became harmful to others. When such behavior became the norm, it frustrated the self-interest pursued by each of the social actors and therefore damaged the community as a whole. This self-destructive political dynamic reproduced itself at several levels of social life, for example in urban behavior, and in economic and labor relations, where it created distortions such as a very high inflation rate and severe inefficiencies.

Another consequence of this dynamic was the emergence of a corporative society. Special interest groups gained excessive leverage at the expense of other associations, such as political parties, that normally unite those who champion societal ideals and principles of political philosophy. As a result of the usurpation of political space by these organizations, sometimes encouraged by the ideology of the regime in power, our legal order surrendered the principle of the universality of rights and obligations; it slowly became an aggregate of statutes of privilege, such as the ones regulating labor relations, health care, retirement benefits, tax systems, industrial promotion, and so forth.

This state of affairs placed society before an abyss of disintegration. As a result, anxious expectations developed in favor of restoring peaceful procedures for resolving conflicts and for the establishment of public, general rules for relations among individuals. These expectations became manifest in the general elections of October 30, 1983. Other significant manifestations included the broad consensus expressed in favor of a peaceful solution of our border dispute with Chile and the enthusiastic and popular acceptance of a severe austerity program to contain inflation.

In order to fulfill the mandate given us by society, our government's primary goals are to consolidate the democratic system as a peaceful means of solving conflicts and to establish the rule of law so that public, general, non-retroactive rules are enforced by agencies that are independent of those who dictate the rules.

However, neither democracy nor the rule of law can be definitively secured in a society if that society does not strongly internalize norms of public morality that enable the people to live in harmony and mutual tolerance. Such a morality must promote an expectation of reciprocity in a way that breaks the circle of self-interested, and ultimately self-defeating, behavior. This circle must be replaced by societal processes in which it is rational and advantageous to seek the common good.

Among us, public morality has too often been confused with the prevalence and enforcement of a particular conception of human excellence—specifically, the conception favored by the group in power. This conception at one time reached the most intimate aspects of individual behavior. Some people thus believed that public morality had less to do with the mistreatment of political dissidents than with the regulation of private life.

For us, however, the basis of public morality is to be found in respecting the dignity and autonomy of the human person and acknowledging basic human rights. We have said many times that the justification for the existence of a government is found in the need to preserve those rights that prevent the sacrifice of an individual to benefit others or society as a whole. As a consequence, any government becomes morally illegitimate the moment it subordinates these rights to other objectives.

It was precisely for the purpose of reestablishing the guidelines of a public morality centered on basic human rights, and not with a narrowly retributive spirit, that our government and Congress created the legal framework so that aberrant violations of these rights, by both pseudo-revolutionary terrorism and state terrorism, could be investigated and judged by an independent judiciary. This led to the creation of a commission of distinguished persons to investigate the fate of the "disappeared."[1] It also involved the annulment of an amnesty law enacted by the military government,[2] and the clarification of the legal system so that it unequivocally distinguishes between, on the one hand, those who gave the orders or committed atrocious or aberrant acts, and, on the other hand, those who in a general climate of confusion and compulsion simply obeyed orders without being implicated in atrocious or aberrant behavior.[3]

1. Decree No. 280/84, promulgated Jan. 18, 1984. *See generally* Nino, *The Human Rights Policy of the Argentine Constitutional Government: A Reply*, 11 YALE J. INT'L L. 217, 221 n.23 (1985).

2. Law 23.040, promulgated Dec. 27, 1983. Law 23.040 was affirmed by Federal Chamber of Appeals, Marino Amador Fernández [1985] La Ley 521 (1984).

3. *See* Nino, *supra* note 1, at 222.

As is known, the civil judiciary in Argentina has acted with an independence and courage that has earned the admiration of the world. At the same time, the government strives to avoid identifying the military institutions with those of their members who deviated from elementary ethical norms; thus the majority of men in the armed forces, having fulfilled their duty, should be integrated fully into society under the shared norms of the democratic way of life.

We also have adopted direct measures to prevent the violation of human rights in the future. The government and Congress have abolished all draconian and persecutory penal legislation enacted by previous regimes. They have both eliminated the death penalty for civilian crimes,[4] and passed a law that prescribes the same penalty for torture as for homicide, and makes the failure to report or take steps to prevent torture in police stations or prisons a crime.[5] The government and Congress have adopted laws that extend and strengthen habeas corpus,[6] liberalize the rules regarding parole and recidivism,[7] take into account the severe conditions of incarceration during the military regime by reducing sentences,[8] and eliminate the jurisdiction of military tribunals over civilian personnel as well as over military personnel accused of committing ordinary offenses.[9] There has been enacted a law for the defense of democracy that imposes a severe penalty on those who would threaten the democratic system of government, while preserving all the guarantees of due process.[10] The executive has sent to Congress legislative proposals against all kinds of discrimination, in the public or private sphere, based on race, religion, sex, or nationality.[11] These bills make possible conscientious objection to military service.[12] All censorship of the free expression of ideas has been abolished.[13]

4. Law 23.077, promulgated Aug. 22, 1984. *See also* CÓDIGO PENAL [CÓD. PEN.] arts. 79-80 (Códigos AZ 1983) (eight to twenty-five years for homicide and life sentence for murder).

5. Law 23.097, art. 1, § 1; arts. 2-3, promulgated Oct. 24, 1984.

6. Law 23.098, promulgated Oct. 19, 1984; Law 23.042, promulgated Jan. 19, 1984 (nullification of military sentences of civilians by writ of habeas corpus).

7. Law 23.050, promulgated Feb. 14, 1984; Law 23.057, promulgated Apr. 3, 1984.

8. Law 23.070, promulgated July 20, 1984.

9. Law 23.049, promulgated Feb. 14, 1984. *See also* Law 23.042, promulgated Jan. 19, 1984 (civilian writ of habeas corpus from sentences of military tribunal).

10. Defense of Democracy Law, *presented* by the Executive to Congress on Dec. 13, 1983, *approved* in 1984.

11. Diario de Sesiones de la Honorable Cámara de Diputades de la Nación [hereinafter Diario de Sesiones] 3676 (Sept. 12-13, 1984).

12. *See* Diario de Sesiones, *supra* note 11, at 6739 (Mar. 20, 1985) (bill proposed to Congress).

13. *See, e.g.*, Law 23.052, promulgated Mar. 9, 1984 (film exhibition).

International agreements and conventions to protect human rights have been ratified. A few months after our inauguration we ratified the American Convention on Human Rights[14] and recognized the international jurisdiction of its two agencies: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights of the Organization of American States.[15] We also ratified the Covenants on Civil and Political Rights[16] and on Economic, Social, and Cultural Rights of the United Nations.[17] Inspired by our purpose of welcoming to our country those who have suffered persecution in other lands because of their beliefs, we lifted the geographic reservation that limited the 1951 Geneva Convention Relating to the Status of Refugees.[18] We also ratified the International Convention on the Suppression and Punishment of the Crime of *Apartheid*,[19] and broke off diplomatic relations with South Africa.[20] In addition, Argentina is a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[21]

We do not accept the view that human rights are completely protected once the norms prohibiting interference with the autonomy of persons are respected. We believe that human rights are also violated when persons are not given the means to exercise that autonomy effectively. The value of freedom is not independent of the way in which it is distributed, just as equality is not a value independent of that which is equally distributed. That is why there must be an equal distribution of freedom. This notion implies that the government must direct its policies toward improving the situation of those less favored. This policy constitutes a broad conception of public morality and human rights. Such a concep-

14. American Convention on Human Rights (Pact of San José) Nov. 22, 1969, O.A.S.T.S. (No. 36) 1 (*entered into force* July 18, 1978) (ratified by Law 23.054, promulgated Mar. 19, 1984).

15. American Convention on Human Rights, arts. 34-69, O.A.S.T.S. (No. 36).

16. International Covenant on Civil and Political Rights, 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966).

17. International Covenant on Economic, Social, and Cultural Rights, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3 (*entered into force* Jan. 3, 1976).

18. Convention Relating to the Status of Refugees, *opened for signature* July 28, 1951, 189 U.N.T.S. 137 (1951).

19. International Convention on the Suppression and Punishment of the Crime of *Apartheid*, G.A. Res. 3068, 28 U.N. GAOR Supp. (No. 30) at 196, U.N. Doc. A/9030 (1974).

20. Relations with South Africa were broken on May 22, 1986. *See* N.Y. Times, May 23, 1986, § 1, at 3, col. 6.

21. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *opened for signature* Dec. 10, 1984, G.A. Res. 46, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), *signed* by Argentina on Feb. 4, 1985, *Status of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Report of The Secretary-General,* U.N. Doc. A/40/604 (1985).

tion brings about what we have called "the ethics of solidarity." It has been the inspiration for many novel social programs undertaken by the government that seek the participation of those who benefit from them. Among these programs, it is worth mentioning a plan that proposes permanently to meet the nutritional needs of five million persons out of a population of thirty million.[22]

Nonetheless, as I noted at the beginning, in Latin America it is not enough to establish ordinary institutions and to take steps within their framework to consolidate a common public morality, a democratic system of government, and the rule of law. We also need to bring about deep structural changes. When democracy reemerged in Argentina, attitudes of withdrawal lessened while forms of social interaction began to reconstitute themselves. At that point, critical debate revealed an insufficient adaptation to the needs of the people in the institutional system, the state administration, the economic structure of the state, and other areas. This healthy encounter with reality brought about some disillusionment. There is a need for substantial transformation to consolidate, once and for all, the basic values of the West. Argentina belongs, together with the rest of Latin America, to the social, political, and cultural universe of the West. This connection is not the result of geographical circumstance or the inertia of an inherited situation passively accepted. Western civilization cannot be considered merely as a geographical entity. Rather, it is an historical configuration, a certain way of thinking and of organizing society both socially and politically. We do not just belong to this civilization; we have *chosen* to adopt its central values: respect for humanity, tolerance of diversity, freedom of opinions and beliefs, and equality of access to civil and social rights. Within this framework, we have also incorporated for ourselves Western civilization's greatest contribution to humanity—the embodiment of individual and collective autonomy in democracy as a system of organization, choice, and government at the political level, and as a form of relations among people at the social level.

We are all acquainted with the historical process in which democracy was born and consolidated in Western Europe and in the ancient colonies of North America, which were populated in a process tightly linked to the struggle for the ideals of social and political change in the metropolis. These same ideals encouraged the epic emancipation of the Latin American peoples when they emerged from their colonial past as independent nations. Despite the turbulent politics that mark our history, in most of our countries an explicit rejection of these ideals has never succeeded.

22. Law 23.056, promulgated Mar. 22, 1984.

Recently, these ideals have taken on a new force. They are embodied in the concepts of freedom, rationality, and a disposition towards social and political change in a progressive direction. In many nations of the region, they guide the processes of transition to and consolidation of democracy. The idea of change is one of the most distinctive concepts of Western civilization. The adherence of this civilization to the ideals of liberty and rationality permits us to evaluate reality critically from a distance. From this evaluation arises the need to transform that reality, to adapt it to principles and objectives that do not derive from it. This differentiates us from other civilizations that conceived or conceive of reality as sacrosanct and immutable because their norms and goals are predetermined by inherited traditions and customs.

The great values of the West fuse with the imperative of transforming and reconstructing our societies. It is possible that in the prosperous Northern countries of the West, where democracy is already securely in place, the transforming dimension of our shared culture has a lesser importance. But for our people it is a central component, a unifying and justifying premise of the other essential values of the West.

It can even be said that, to a great extent, our will to change is precisely a consequence of our adherence to Western values, and, if our will is not to be self-defeating, it must direct itself to the realization of these values. The changes we are looking for are necessary to bring about and consolidate among ourselves what, as we noted before, is the fundamental historical result of those values, the democratic system. Our resolve to change is aimed precisely at overcoming the intolerable swings between democracy and authoritarianism. In clear contrast to what occurs in other areas of the so-called periphery, the people of Latin America have since independence experienced a desire for democracy. That aspiration has been ephemeral and restricted, frequently interrupted by dictatorial onslaughts; yet its constant presence among us as an ideal has forced even authoritarian regimes to invoke democracy for the sake of legitimacy. We desire that democracy not be for us a discontinuous series of fleeting experiences, invariably strangled by direct action and violence.

One fundamental change that we seek is the expansion of democracy, so that it does not encompass merely the sporadic exercise of electing representatives. It must include concrete, permanent, daily practices that involve everyone. This is often called "participatory democracy." We want to avoid the phenomenon of the alienation of power—a factor that has undoubtedly favored coups d'état in our region—which occurs when the government is conceived of as something separate and apart

from society, rather than as an activity in which all citizens participate to a greater or lesser degree.

Participatory democracy must not oppose representative democracy, but rather complement it. The need to govern through representatives is unavoidable in a complex society, but, since democracy is normally defined in terms of its direct mode, and since the representative mode is only justified as an indispensable recourse in a complex society, those who are directly affected by decisions and norms should be encouraged to participate in their creation as much as possible.

We should try to extend and multiply the instances in which citizens are asked to decide on matters that concern them. These instances may take the form of consultations, plebiscites, or referenda. They may also occur in relation to more specific spheres, such as direct participation in the governing and control of universities, schools, hospitals, and public utilities.

A special aspect of participatory democracy which requires rigorous analysis is the degree of citizen participation in economic activity. Citizens such as consumers, producers, workers, businessmen, and technicians cannot remain indifferent to the decisions that affect the quality of their lives. Their participation must be understood as a broadening of the democratic system and its rules, not as a limitation of the basic rights of the individual, including the right to property. On the contrary, it is this participation which will preserve fundamental rights.

The intensification of democracy, spreading to all spheres of social life, constitutes the only valid way of facing what some theoreticians have called the "crisis, or the ungovernability, inherent in democracy." This crisis is provoked, according to these theorists, by an overload of unsatisfied demands pressuring the government. Their solution is to lighten that load by limiting participation even more. This would serve to increase the political apathy of the great masses, and thus restrict democracy to a competition between elites. If this way of saving democracy is accepted, however, we run the risk of saving something which is no longer worthwhile.

If, on the other hand, instead of narrowing participation, we widen it and oppose political apathy, it is likely that the overload of social demands will diminish. People will develop a greater sense of responsibility when they become aware of the reality that resources are scarce and that decisions must be made as to how to distribute them. Citizens become "ungovernable" when they feel that they are passive instruments of decisions made by others, when they view political, economic, and labor leadership as a closed and autonomous elite opposed to their interests, or

when they are transformed into a "mass." A complete democracy must destroy this unsustainable opposition between "elites" and "masses."

To produce this broadening of participation, as well as for its own intrinsic value, a thorough process of deconcentration of power must take place. Throughout the history of Argentina a centripetal concentration of power has taken place, from municipalities to provinces, from the provincial governments to the national government, and even within the national government—from the legislative and judicial branches to the executive branch. This process has been exacerbated by coups d'état which concentrated all power in a dictator, or in a junta, who illegally controlled the executive branch. At the same time, concentration of power in the executive has itself facilitated the coups. As long as all power is concentrated in the hands of the constitutional President, the system is extremely vulnerable; it is enough to attack just one center of decision-making.

We have decided to reverse this process by strengthening the autonomy of municipalities and provinces and by giving greater importance to the other branches of the federal government. The project of transferring the federal capital from Buenos Aires to a location in Patagonia, aside from achieving other objectives (such as a thorough reform of the state apparatus), is designed to contribute to the centrifugal process by separating the center of political power from the center of economic power and demographic concentration on the Río de la Plata. This move will prevent these centers from continuing to strengthen one another. A proposal for constitutional reform also seeks to promote political participation and decentralization. At our request, this proposal has been prepared by an advisory council—the Council for the Consolidation of Democracy—formed by persons from different political parties who have distinguished themselves in careers in various social spheres.[23] Aside from proposals to create mechanisms of semi-direct democracy, federalism, and municipal autonomy, this project suggests incorporating into our traditional presidential system, inspired by the United States system, some aspects of parliamentary regimes. Specifically, the proposal suggests introducing the role of a prime minister, who will countersign the acts of the President and exercise parliamentary responsibility by means of motions of censure. This is the way we hope to distribute executive functions: we plan to distinguish between the establishment of general political strategies and the everyday functioning of the government, thus creating a less rigid system better suited to dealing with crises, possessing

23. The Council for the Consolidation of Democracy, established on Dec. 24, 1985.

a "fuse" to protect the system, and promoting the idea that when a majority in the legislature belongs to a party different from that of the President, it can carry forward its own program instead of obstructing the President's policies. We also hope to increase the importance of the legislature by both tightening its links with the executive and broadening its power to check the executive. We are also considering other structural reforms, for example in the areas of public administration, the administration of justice, health services, social security, and the educational system.

Certainly this modernization must also take place in the work force and in production. We are facing up to that fact. The changes experienced in the developing countries with respect to the organization of labor and the application of technology should serve as guides for us.

To overcome our backwardness we must not lag behind those changes; we must anticipate and predict them. We must adjust our behavior to the demands of a future which we cannot escape and which is already the present for many peoples. There is certainly a direct relationship between new methods of production and the democratic system. With the modern transformation of productive technologies and the organization of the economy along lines that are more radical and profound than ever before—a change which we could call a "civilizing mutation"—the theme of democracy is given renewed vigor. This democratic framework is essential for fostering a capacity for the initiative and creativity required within a society for promoting intelligence—intelligence being not only the fundamental component of the work force, but also the raw material of the productive process.

But democracy cannot be built within a country without considering the conditioning factors which arise from its international position. We are all aware that the projection of the East-West conflict by the North into the South has had devastating consequences for the building of democracy in that part of the world.

We all know of the nefarious effects in our region of the so-called doctrine of national security, which gives such a high priority to the concept of security that it sacrifices the basic rights and liberties of the individual and all the principles considered essential to democratic life. This attitude pays little respect to the universal character of values. In the defense of democracy and liberty in certain privileged parts of the Western world, there is no hesitation to sacrifice this democracy or that liberty, or the conditions under which they could flourish, in other less fortunate regions. This projection of the East-West conflict has had the following consequence: the will to change, which in the South's experience is the

only road to democratic stability, is seen and condemned from the perspective of the North as an attempt to subvert the values of democracy.

There is a scandalous incongruity between the principles that many democracies in the West consider valid to regulate their internal lives and the principles they apply to guide their international conduct. Of course this is also true in the East. Thus both East and West appear to share a doctrine of national security in international affairs which supersedes their original ideological antagonism. While for the East this might not be inconsistent with the values that regulate its domestic life, for the West it constitutes a heartrending contradiction.

Given that this shared attitude is becoming a norm of international conduct for the two blocs, we have decided not to align ourselves with either. We consider our non-alignment to be an expression of loyalty to Western values, which are universal in scope. We belong to Western civilization, but not to the Western alliance.

There is another way in which the building of democracy in a country like Argentina is conditioned by the facts and behaviors of the international sphere. For some time, theoreticians have discussed whether democracy has economic prerequisites. Our own experience and common sense reveal a circular relationship between the two. We all know that democracy encounters enormous difficulties in a social and economic milieu characterized by backwardness, underdevelopment, hunger, sickness, and illiteracy; but we also know that the best way to overcome these ills is through democracy itself—despite the promises, almost always unfulfilled, of messianic authoritarianism. The only possibility of breaking this vicious circle is to take advantage of those rare periods in which the yearning for democracy, unleashed by a set of precipitating events, emerges in a society. As a result, profound economic development whose fruits are equitably distributed can then be fostered; this development will consolidate adherence to the democratic system.

Yet the effort to achieve such development is seriously hampered by external conditions. With increasingly limited international markets, with protectionist policies becoming the norm in industrialized countries, with our exports losing their market value as the terms of exchange continue to deteriorate, with an external debt of unprecedented magnitude, Latin America can only confront the building of democracy as an epic whose success is permanently threatened by the consequences of the desperation of its peoples. Our relations with the North are based on terms that are becoming increasingly unfavorable to us. Here we find the same incongruity mentioned with respect to the East-West conflict. While we make bold efforts to preserve Western values in our country,

we find that the industrial center of the West endangers these values by accentuating our economic crisis through closed markets, the devaluation of our products, the pressure for payment of our foreign debt, which increases every day, and the diversion of capital, which is attracted to the financial markets of the North.

Faced with these problems, we have chosen an accelerated process of regional integration in Latin America, not only to complement our economy, but also to achieve a framework of regional unity. Such unity will permit us to exercise effective pressures for substantial changes in the world economic order. For us, economic integration, such as we have begun with Brazil, constitutes a way of creating an infrastructure which will give support to the process of building democracy.

Even though building democracy in our country is basically our own responsibility, those who, by omission or commission, make decisions affecting that outcome cannot feel totally free of responsibility for our fate. Furthermore, it is not certain that their future is unconnected with ours. The developed nations cannot expect that the existing inequality in the international arena—with its resulting social and political convulsions leading to tensions and external conflicts which affect the balance of power between the two blocs—can be prolonged without creating problems for the security and development of the North. The North must understand that if freedom and social justice do not flourish in the South, the world will not be secure for anyone.

Given this fortunate coincidence of prudence and morality, we must work together to obtain favorable conditions to consolidate a democracy that embodies and assures the permanence of Western values.

In May 1816, shortly before they proclaimed the independence of Argentina, the authorities in Buenos Aires sent a mission to the government of the United States "with the aim of working united by common principles and a coordinated policy, to consolidate the absolute emancipation of the New World, its prosperity and greatness."[24] Today, 170 years later, we must consider those great objectives in the same spirit. These comments are inspired by this spirit, and I am absolutely certain that my words—the expression of a people that has chosen democracy as an unrelinquishable ideal—will elicit an appropriate response.

24. Martin Jacabo Thompson, Diputado Confederacion de Provincias Unidas, May 3, 1816. E. GONZALEZ, MARTIN JACABO THOMPSON: ENSAYO PARA LA BIBLOGRAFIA DE UN MARINO CRILLO 203 (1969) (Jan. 16, 1816 letter of introduction from Ignacio Alvarez); *see also* 1 A. PALOMEQUE, ORIGINES DE LA DIPLOMACIA ARGENTINA 27-28 & 27 n.3 (1905); N. PIÑERO, LA POLITICA INTERNACIONAL ARGENTINA 48 (1924).