

# Democracy and Limited Government:

## *The Unbreakable Partnership*

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Thank you for the kind invitation to address this distinguished audience on a topic of such significance.

This is my first visit to India, so I won't even pretend to try to inform you, who are much better informed on the matter than I, about the health or the sickness of democratic institutions, procedures, and outcomes in the world's largest democratic nation.

What I do hope to do is to stimulate some thought and discussion – and perhaps even some action – about certain structural features of democratic governance in general, to be followed – I hope – by a discussion of how those issues play out in India.

Let's start with a few clarifications, since democracy, like freedom and justice, is one of those “essentially contested concepts” of which the philosopher W. B. Gallie informed us. Indeed Gallie considered democracy to be “*the* appraisive political concept par excellence.” That is, the concept is wielded by different parties, schools, ideologies with quite different meanings. Alternatively, we could follow Ronald Dworkin's take on such debates by distinguishing between the “concept” of democracy and competing “conceptions” of democracy. Few people openly oppose democracy these days; but they do argue vociferously over its meaning.

The term is used in such confusing ways in much contemporary discourse that the contending parties simply talk past one another. Here are two significant ways in which the term is used:

1. The majority of the population (usually limited in some way by age or citizenship) make decisions about all those issues on which they wish to make decisions;

2. The substantive freedoms enjoyed by free and equal citizens, notably freedom of speech and assembly, but sometimes also including freedom of religion, freedom of exit, procedural rights to due process of law, and so on;

It is worth noting that the two are not obviously compatible. If a majority says that the minority has to shut up, or worship as the majority chooses, is that democratic? Many self-styled advocates of “democracy” insist that the majority can stop the speech of the minority. Indeed, the Chavez government of Venezuela has closed down opposition-oriented broadcasting stations in the name of democracy, for allegedly organizing a “gradual coup d’etat” by airing criticism of the government. Such criticism could eventually lead to a change of government, and, as such qualifies as a gradual coup and – in the name of democracy – must be suppressed.

On the other hand, insisting on various inviolable rights, such as freedom of speech, religion, and assembly, entails limits on the power of majorities, as well as of minorities to exercise collective choice.

Clearly a state needs both elements to qualify as a democracy. A system of individual rights with no body to protect them is a mere fantasy. Some system to determine *how* the rights will be protected is needed, and John Locke gave us arguments in his *Second Treatise of Government* as to why majorities are a good means to determine such policies. But a system of majoritarian democracy without free speech, for example, cannot determine what the majority opinion is and lapses into one or another form of oligarchical or personal dictatorship.

One way to integrate those two conceptions into democratic thought is to focus on the concept of sustainable democracy. A political system that does not degenerate into dictatorship requires that there be democratic, or popular, input into governmental processes, and at the least that many officials of the government be replaceable by means of election. It also requires that the range of choices available to collective choice be limited, that is, that many issues be taken “off the table.” We call those issues that are taken off the table “rights.”

Sustainable democracies are those that are limited and that incorporate institutions that protect rights – both individual rights and rights of local autonomy, from being overridden by collective choice. That is, sustainable democracy is liberal democracy.

I believe, and I think you should, too, that democracy without limited government is unsustainable. It is possible to have illiberal democracy, to be sure. But it is not a sustainable project.

The dangers of democratic government, of rule by the *demos*, have long been known. Democratic – or popular – government, without a suitable constitutional framework limiting power and hemming it in with a variety of checks and balances, undermines itself. Students of Roman history should be aware of the dangers of Marian-style democratic movements, which tend to focus power on one man or one party as the carrier of the will of the people, as the Roman popular politician Gaius Marius considered himself.

Unlimited democracies run the risk of “one man, one vote, one time,” which is one of the worst legacies of some modern democratic thinking.

In 1819, Benjamin Constant, the great theorist of liberal constitutionalism, in a public address contrasted the exercise of “ancient liberty” with the exercise of “modern liberty.” The latter, he said,

“consisted in exercising collectively, but directly, several parts of the complete sovereignty; in deliberating, in the public square, over war and peace; in forming alliances with foreign governments; in voting laws, in pronouncing judgments; in examining the accounts, the acts, the stewardship of the magistrates; in calling them to appear in front of the assembled people, in accusing, condemning or absolving them. But if this is what the ancients called liberty, they admitted as compatible with this collective freedom the complete subjection of the individual to the authority of the community. You find among them almost none of the enjoyments which we have seen form part of the liberty of the moderns.”

Constant warned that the Terror in France, and later the rise of the Napoleonic dictatorship and the Empire, originated in confusion regarding the nature of liberty of choice – collective or individual.

J.L. Talmon in his study of the French Revolutions, *The Origins of Totalitarian Democracy*, concluded that democracy is not an inherently liberal concept. Fareed Zakaria’s fine book, *The Future of Freedom: Illiberal Democracy at Home and Abroad*, focused recent discussion on the dangers

of illiberal democracy. Iran, which just yesterday held its presidential elections, is a fairly good example of such. Plausibly, you can change power through elections, although there are limits imposed on who can stand for office. The elections – for now, at least – even seem relatively clean. Iran is not a single party totalitarian state, but it is hardly a liberal society, hardly an example of modern liberty.

The dangers of unlimited democracy should be obvious to all who will but consult history. A desirable democracy—a democracy that is stable, that can persist—requires limited government. Let me spell out a few reasons why:

First, a central element of a sustainable democracy is the existence of a loyal opposition. When one party replaces the other in control of parliament or congress, the party or group formerly in charge of government shifts to become the loyal opposition. They don't take to the streets or blow up train stations because they lost the election. But such loyalty is impossible, or at least extremely unlikely, if the losers who form the opposition fear that by losing an election, they risk losing everything: their goods, their property, their rights, perhaps even their lives. You cannot have a loyal opposition without limitations on the power of the party that has won to punish those who lost. And without a loyal opposition, you cannot have a democracy. In the absence of limits on state power, no government can afford to relinquish power. That, by the way, is one of the problems facing the authentically popular government of Vladimir Putin in Russia; he knows that, having resurrected a police state, he can never afford to relinquish the levers of power, which means that he will never lose a free election, meaning, in turn that we should expect no free elections in Russia anytime soon.

Second, even reliable elections require independent authoritative bodies, not themselves subject to popular control, to determine the outcome of those elections. That includes independent electoral commissions and – to supervise them – some kind of independent judiciary, that is, a judiciary not easily subject to punishment or removal by the elected branches.

The literature on the necessity of the rule of law for sustainable economic development is quite well developed, but those insights are no less applicable to the sustainability of democracy.

Mancur Olson, the late political economist, very neatly pointed out:

“[T]he conditions that are needed to have the individual rights needed for maximum economic development are exactly the same conditions that are needed to have a *lasting* democracy. Obviously, a democracy is not viable if individuals, including the leading rivals of the administration in power, lack the rights to free speech and to security for their property and contracts or if the rule of law is not followed even when it calls for the current administration to leave office. Thus the *same* court system, independent judiciary, and respect for law and individual rights that are needed for a lasting democracy, are also are required for security of property and contract rights.”

That leads us to the third reason, which is that democratic governments, like all governments, face the problem of time-inconsistency in decision-making, that is, having made a commitment at one point, they find it difficult to fulfill it later, when – having already secured the advantages of making the commitment, they no longer find it in their interests to fulfill that commitment. It’s easy to promise at time A to do something at time B, but when time B comes around, having already gotten the benefit from the promise at time A, one may feel less inclined to fulfill the commitment. I promise to respect you in the morning is easy to say in the evening, in the throes of passion, but may be less easily carried out in the morning.

Institutional economists, such as Douglass North and Barry Weingast, have argued that solutions to those problems were key to long-term economic growth, by making it easier for them to make commitments that were advantageous to the rulers, as well as to the ruled, and then to stick to those commitments.

Limited government provides a vehicle for solving – or at least ameliorating – the problem of time-inconsistency.

Let me address two issues that are deeply implicated in the nature of sustainable democracy, resting on limited government, and then conclude with some thoughts on the strengths of democracy in India, and its roots in ancient Athens.

### **Weak government, or limited government?**

What does limited government – or a limited state – mean? Does it mean weak government, or a weak state? Should the goal of advocates of liberty and democracy seek to weaken the

authority of the state? Not at all. Limited government should not be confused with weak government. Our friend Benjamin Constant, who meditated long on such matters, distinguished between weak authority and circumscribed, or limited, authority. In his *Principles of Politics Applicable to All Governments* (385), he noted that

“The circumscription of political authority, within its precise limits, does not tend to weaken that necessary authority. On the contrary, it gives it the only real strength it can have. The jurisdiction of authority must be scrupulously limited; but once that jurisdiction is fixed, it must be so organized as always to be capable of attain swiftly and completely all the purposes within its remit. Freedom gains everything from the government’s being severely confined within the bounds of its legitimacy; but it gains nothing from government’s being feeble within those bounds.”

The opposite of overbearing government is not weak government or no government; it is limited government. Not all weak governments are friendly to liberty or even democracy; if they cannot protect life, liberty, and estate from violence, they are not protecting freedom or democracy. And for those who prefer anarchism, I remind them that not all anarchies are attractive; southern Somalia is without an effective state, as was Lebanon during much of its recent history. The worst situation may be to live in powerful and unlimited states, which crush individual freedom, local autonomy, and democracy. But weak, unlimited government— a situation in which the authority of the state knows no bounds, but within which it is unable to enforce the rules consistently or to provide a basic reliable framework for social cooperation – is also unacceptable. What is needed is not weak government, but limited government with the authority to provide a limited range of services, such as protection of life, liberty, and legitimate legal claims of property, legal adjudication, and the perhaps a limited range of other collective goods.

### **Collective goods and collective choice**

That means a well defined range of goods subject to collective choice, to wit, authentically collective goods. The trend for much of history has been to define collective goods as those goods provided through some form of collective choice, which means, for many choices, those imposed by some on others. Economists define collective goods, or public goods, as those characterized by two polar characteristics:

1. Non-rivalrous consumption, meaning that if one person or a group of persons consumes the good, it does not diminish the amount available for others to consume. When I eat a bite from an apple, there is less for others, but when I enjoy freedom of thought, it does not mean that others have less. (I should mention a subclass that will be shown to be relevant in a moment: club goods, which are those goods such that the enjoyment by one person does not diminish the ability of others to enjoy it, up to some limit, such as watching a movie in a theater. If I open my eyes to watch it, it does not become dim for you, but if more than a certain number crowd into the theater, the ability to enjoy the show goes down for all.) The second characteristic is that
2. It is difficult, or perhaps at an extreme impossible, to exclude non-payers from the enjoyment of the good. If you enjoy the good of clean fresh air, it is hard to exclude others from enjoying that good. In many cases we do spend scarce resources to exclude others from enjoying the good, such as in the case of movie theaters, which have walls around them and ticket booths to exclude non-purchasers from enjoying the non-rivalrous spectacle.

Advocates of sustainable democracy should reject the single-minded focus on popular sovereignty that constitutes so much of the discourse of modern democracy and instead favor constitutional liberalism, which crucially includes a democratic component. To be successful as a democracy there must be clear limitations on the domain of public choice. It must be limited, or it will not be stable.

A constitutional framework for sustainable democracy must put certain questions and issues off the table. Decisions subject to collective choice must be those that are actually collective goods. The alternative approach, to define as collective goods all those subject to collective choice, is a recipe for conflict, for when those on whom such choices are imposed see them – not as collective goods, but as collective bads – they will rebel against them. Religion is an obvious example of that. Making religion subject to collective choice imposes on those who disagree with the majority what they see – not as merely under or over-provision of a collective good, but as a collective bad. And they are likely to respond to such imposed choice by resistance to the authority of the state, a process known in its more extreme phases as civil war or even genocide.

## Social foundations of sustainable democracy

Finally, I'd like to address the strength, if you will, of sustainable democracy. What social forces restrain power, thus preventing the conversion of democratic governance into undemocratic tyranny? One cannot rely simply on written provisions of a constitution, what James Madison referred to as "parchment barriers," if they do not have behind them existing social force to give them power.

Mere separation of powers isn't enough, especially when those powers are artificially delineated or subject to periodic revision by the center. For example, in California the two houses of the legislature – the Assembly and the Senate – are both based on apportionment by population, meaning that the same population is represented in both houses on the basis of the same principle, such that neither really checks the other. In contrast, the US Senate has limited the power of the House and the presidency, precisely because it represents the states, which are unchanging political entities with distinct interests. As the French political scientist Bertrand de Jouvenel concluded in his book *On Power* (p. 331-3),

“Power cannot, therefore, be limited by the mere dismemberment of the *imperium* into constituent parts each with its distinct organ. For limitation of this kind to succeed, there must be in existence sectional interests in a sufficiently advanced state, conscious of their identity, and armed with strength to stop the encroachments of Power on their own spheres, together with a system of law which is independent enough to arbitrate their clashes and escape from being the instrument of the central command.”

I was reminded of those principles when I read Pratap Bhanu Mehta's delightful and insightful book on Indian democracy, *The Burden of Democracy*. In it, he notes that

“India has worked not because of 'unity in diversity,' the presence of a locus of identity beneath differences, as the state is fond of telling us. We have flourished rather because we are 'diverse in our unities,' each able to imagine the connection with others in his/her own way.”

Mehta argues that “one of the reasons for the relative success of its [India's] democracy, and its

hanging together as a nation, has been the profoundly cross-cutting character of cleavages within Indian society that has made collective action on a large scale, to overthrow the state, quite difficult to mount.” I would add that the federal nature of the Indian political system, like the federal nature of the American political system, has been a great source of its durability, precisely because it establishes real sources of countervailing power, backed up by sectional interest, which can provide the power necessary to overcome majoritarian overstepping of constitutional limits.

I will conclude with some lessons from the first regime to be called “democratic,” that of Athens following the reform of the constitution in 508/507 BCE by Cleisthenes, who orchestrated the overthrow of the tyranny of Hippias. The term he evidently used was not democracy, although that is the term used by Aristotle and others to describe his accomplishments, but *isonomia*, or equality before the law. The voting system was deliberately recast to make it harder to create monolithic ruling blocks and to check the power of the leading clans. The clans were themselves re-created to draw their sources from the various *demes*, which were in turn each drawn from a city region, a coastal region, and an inland region, to avoid the dominance of any one sectional interest in the management of the polity. But not only was power divided in such fashion, and put on a foundation of real interest, but a rule was established, the rule of *isegoria*, or equal freedom of speech, that deliberation on matters of collective choice required that people be able to speak frankly and that no one be punished for expressing his own opinion in a public debate.

So to return to the roots of democracy in Athens, we find not mere unlimited rule by the demos, or the multitude, but a complex system of checks and balances, based on cross-cutting and sectional loyalties and a strong limit on the power of the majority to dictate to minorities in the form of freedom of the right to freedom of speech.

In conclusion, sustainable democracy requires that the powers of the state be limited. Without limited powers, you cannot sustain a loyal opposition, or reliable peaceful transfers of power. Without limited powers and rights to freedom of speech and assembly, you cannot determine effectively in what ways majority preferences may be changing. Without limited powers, you cannot determine just who has won the election. Without limited powers, you cannot solve the problem of time-inconsistency. Without limited powers you risk turning choice of collective goods into imposition of collective bads on large numbers, resulting in internal strife. And without existing sectional and various cross-cutting interests that can effectively assert themselves, mere parchment barriers are ineffective at restraining tyranny or sustaining

democracy. The experience of Indian democracy testifies to the importance of all of those principles. The remarkable durability of democracy in India is testament, not only to the strength of Indian culture, but to the institutional foundations of that democracy, foremost among them its relatively limited character.

The roots of sustainable democracy were understood over 2,500 years ago. They have been demonstrated to today's public in this, the world's largest democracy. Why do so few people understand that to be sustainable, democratic politics must be limited?