

Copyright (c) 1999 University of Miami Law Review

University of Miami

July, 1999

**LENGTH:** 10822 words

**SUBSTANTIVE SELF-DETERMINATION: DEMOCRACY, COMMUNICATIVE POWER AND INTER/NATIONAL LABOR RIGHTS Suppressing the Beast \***

\* Copyright, Irwin P. Stotzky, 1999.

Irwin P. Stotzky \*\*

**BIO:**

\*\* Professor of Law and Director, Center for the Study of Human Rights, University of Miami School of Law.

**SUMMARY:** ... It even touched the historically troubled Carib bean nation of Haiti. ... In my discussion, I concentrate my analysis on corporatism, and I use Haiti as the primary example. ... In other nations, such as Haiti, where there has never been a democratic system of governance until very recently, these corporative power relationships have developed for a variety of historical and cultural reasons. ... Haiti is a particularly striking example of the devastation created by corporatism. ... In Haiti, it has attempted to boycott many measures designed to achieve progressive levels of taxation. ... In Haiti, the armed forces have literally been dissolved. ... In Haiti, the question has a rather unusual twist to it. ... Meet the basic needs and fully mobilize the human potential of the people of Haiti; ... The scope and content of government activity is to be altered by moving away from "tedious micro-management toward a more strategic approach." ... Recently, they have put together an unprecedented \$ 1.2 billion aid-and-loan package for Haiti. ...

**[\*883]**

The closing decades of the twentieth century can rightly be characterized as the era of democracy. Indeed, in the past three decades, a tsunami of democratization spread through most of Latin America and parts of Eastern Europe. It even touched the historically troubled Carib bean nation of Haiti. During the late 1970s, several southern European nations abandoned longstanding dictatorships and adopted democratic regimes. During the early 1980s, most Latin American nations repudiated their aged military dictatorships and instituted democracies. In the 1990s, another wave of democratization swept Eastern Europe and the Soviet Union, destroying the "Communist Empire."

The process is often described as the transition to democracy. This terminology, however, conceals a serious ambiguity because it often refers to two or more distinct situations. The first is a process of adjustments of norms or institutions toward the strictures of the democratic rule of law. There are, of course, varying stages of conformity. These stages include different levels of competition between an ideologically broad spectrum of political parties and differences in the development of an independent, non-corrupt judiciary that is able to enforce a bill of rights. The second describes a situation where liberal democratic institutions exist in full force, but their stability is not yet completely secured. In this second situation, political, social, economic, and cultural actions and other measures are being taken to achieve a necessary degree of consensus and social adhesion to those institutions.

Latin American countries are generally in transit to democracy<sup>n1</sup> in the latter sense. For example, in countries like Argentina, full liberal and democratic institutions are in place. The idea that social tensions and conflicts may coercively interfere with those mechanisms, however, is a distinct possibility. There are also countries, such as Haiti, where democratic institutions have yet to develop, even though serious attempts are being made to create, secure, and strengthen them.

Whatever stage of development a nation may be in, however, the [\*884] transition to democracy remains a difficult journey. In nations undergoing this transformation, economic, political and social stability has not yet been fully achieved. The corporatist political and social structures have not yet been transformed to allow the vast, underprivileged majority access to the basic necessities that ensure a dignified life. Institutional structures of public life, such as a representative legislative branch, a competent judiciary, and an executive branch that adheres to its constitutionally imposed boundaries must be developed and stabilized. The rule of law - and thus the fundamental guarantees of due process - have to become an accepted, basic requirement of public life and private social interaction. All of this is necessary not only to protect human rights and the democratic process, but also to reach a satisfactory level of economic and social development.

These problems and possible solutions cannot be successfully addressed, however, without a justificatory theory of democracy. Such a democratic vision requires a continuous order of mutually assured and encouraged autonomy in which political decisions are manifestly based on the judgments of members of that order who are free and equal persons. Moreover, the expression of self-governing capacities must operate both within the formal institutions of politics and in the affairs of daily life. The democratic order must satisfy the conditions of equal freedom and autonomy that give it definition.

In this essay, I analyze some of the difficulties nations face in the transition process, and offer some possible solutions to them. In my discussion, I concentrate my analysis on corporatism, and I use Haiti as the primary example. Indeed, I discuss and critique the rather flexible plan that the Aristide and Preval governments have attempted to implement in creating the conditions for democracy to grow in Haiti. I then suggest macro and micro changes, such as a new vision of a political economy and the breaking down of cultural barriers, that may lead to a more democratic society.

#### I. A Major Transitional Problem: Corporatism

There are a number of significant features of the consolidation of democracies that have taken place in Latin America and Haiti. These features include the fact that the process of democratization has taken place during the worst economic, social, and political crises in the history of these various nations. In general, these crises include the commission of massive human rights violations (murder, torture, rape), enormous external debts, hyperinflation, epidemics, the collapse of entire systems of social welfare, and extremely high rates of unemployment.

[\*885] Another prominent feature of the consolidation process is the failure to fulfill the requirements of the rule of law in both the formal and informal aspects of public and private life. This failure manifests itself in the concentration of power solely in the executive branch of government, leading to massive human rights abuses, and a total disregard for the functions of the other branches of government, corruption in public and private economic activities, non-observance of efficient economic norms, and non-compliance with the most basic rules of social life, such as elementary traffic regulations. The failure to follow the rule of law also leads to the stunting of economic and social development. These features adversely affect the opportunities for democratic changes.

I have elsewhere discussed in depth these features of the transition process.<sup>n2</sup> Here, I concentrate on one of the other main obstacles nations face in the transition process when attempting to create, solidify, and consolidate democratic institutions - corporatism. Indeed, for the transition process to succeed, the people

must dissolve the network of de facto power relationships which, in some nations, corporations create and jealously protect by taking advantage of the power vacuum left by representatives of popular sovereignty. In other nations, such as Haiti, where there has never been a democratic system of governance until very recently, these corporative power relationships have developed for a variety of historical and cultural reasons. Under the umbrella of authoritarian rule, a number of social groups representing particular interests sculpt a place for themselves after a bargaining process which includes their support for the present regime. Such groups include the military, religious organizations, coalitions of entrepreneurs, trade unions, and sometimes even the so-called independent press. Once democratic rule is established, of course, these groups stubbornly resist relinquishing their power to the representatives of the people.

The concept of corporatism has been the source of much confusion and specious theoretical differences.<sup>n3</sup> The problem arises from two distinct meanings attributed to the word, one more traditional and the other more technical. In the more traditional sense, corporatism refers to the control exercised by the state over organizations and interest groups. A [\*886] prime example is the control that prevailed in Hitler's Germany. The more technical meaning, and the one commonly used in the political arena, attempts to describe the supposedly opposite phenomenon: where these same organizations and interest groups acquire considerable influence over and exert persistent pressure against government decision makers. While defining the concept explicitly in this way tends to lead to more emphasis on one meaning to the exclusion of the other, the term actually encompasses both meanings when applied to most nations undergoing the transition process, particularly those in Latin America.

This is not the whole of the matter. Latin American and Haitian corporatism does not rise to the level of the fascist institutional structure of legally sanctioned exclusive organizations or interest groups. But neither does it reduce itself to the pressures that interest groups apply on political entities in every pluralistic society; for example, when these groups lobby for or against legislative acts that may affect them. The Latin American and Haitian reality is considerably more complex. It includes, among others, both features mentioned above: there is some control by the State over interest groups and organizations, and there are a variety of official and unofficial mechanisms that are used to alter their operation. Simultaneously, however, those organizations exert enormous pressures upon government actors and agencies. This pressure allows the corporative forces to obtain favored treatment of various kinds. Some of these privileges even amount to a legal monopoly of the interests represented in a way that approaches the fascist scheme. In many circumstances, however, the monopoly power of the corporative interests is unaccompanied by any significant influence of the State over these interest groups and organizations. In other situations, alternative legal or even constitutional privileges short of monopoly may be granted that shield the organization from the raw competitive forces of popular expression, such as a "free market." In addition, there are informal ways that governments may grant favors that in some cases amount to illegal, indeed corrupt actions.

Corporatism is, unfortunately, very difficult to overcome. It is an insidious and powerful force. When the transition process is successful, and the authoritarian regimes are weakened or completely abolished and are replaced by liberal democracies, the corporative groups whose interests have been favored struggle to retain as much of their privileges as possible. These entities ferociously compete with the popular sector of society, which has recently entered or reentered public life. In many instances, while the people's entry or reentry overcomes their prior illegitimate exclusion, these very same corporative organizations reclaim their privileges and deny the people their rightful claims.

[\*887] Haiti is a particularly striking example of the devastation created by corporatism. <sup>n4</sup> During the most recent military dictatorship, between 1991 and 1994, the armed forces and their paramilitary civilian front - the *attaches* - assumed total power and influence in, and completely violated and destroyed any semblance of, democratic practices and institutions. Indeed, the military forces consolidated their rule by intentionally and ruthlessly suppressing Haiti's once diverse and vibrant civil society - a society that brought the promise of direct participatory democracy to a near reality. Until the 1991 coup, Haiti boasted a

huge assortment of peasant associations, grass-roots development projects, trade unions, student organizations, church groups, and independent radio stations. In the rural areas, local groups, generally known as "popular organizations", formed literacy programs, rural development projects, and farming cooperatives, often with international support. The military and para-military forces assassinated approximately 5,000 people, brutalized and tortured thousands of others, and forced almost 500,000 people to go underground. The military systematically repressed virtually all forms of independent association in an attempt to deny the Haitian people any organized base for opposition to the brutal dictatorship. Their apparent goal was to push Haiti back into an atomized and fearful society reminiscent of the Duvalier era. The strategy seemed to be that even if the international community successfully returned Aristide to power, he would find it almost impossible to transform his popularity into the kind of organized support necessary to exert civilian control over the army and to create a democratic institutional structure that would aid in that endeavor. The cost to the Haitian people has been astronomical. The very civil society that Haiti needs to confront its desperate economic and social problems has nearly been destroyed.

Recently, the democratically elected government has attempted to restore the armed forces to their proper constitutional role. One way of achieving this goal is, for example, to prosecute military officials who were involved in human rights violations. <sup>n5</sup> But security is an absolute necessity to pursue this strategy. Thus, these military types must be disarmed. With approximately 250,000 automatic weapons cached around the country and at the disposal of these former military officials, however, the goal of diffusing military power will be extremely difficult to achieve.

**[\*888]** The Catholic Church has played both positive and negative roles in the lives of these nations. The Catholic Church hierarchy in Haiti, for example, has for years been siding with the military and the economic elite. During the military rule, the Church hierarchy exerted great influence over the regulation of matters of private life and the purity of social customs. For example, while the vast majority of Haitians are Roman Catholic Christians, almost all Haitians privately practice Vodoun, the major Haitian folk religion. Publicly, however, the elites associate Vodoun with evil. Indeed, successive Haitian authoritarian governments persecuted many individuals who openly practiced the religion. The persecution has been encouraged and even generated by the hierarchy of the Catholic Church.

Moreover, the Vatican is the only nation to have recognized the political legitimacy of the military coup, and the Church hierarchy has consistently opposed Aristide. Local churches, however, have long helped the people of Haiti by nurturing the populist groups in the rural areas. For example, the Catholic Church has long sponsored literacy programs for the peasants.

The entrepreneurial sector constitutes another corporative source directed at the democratically elected government. It seeks to obtain a variety of privileges or protective measures and preserve those previously secured. In Haiti, it has attempted to boycott many measures designed to achieve progressive levels of taxation. <sup>n6</sup> This elite class has ruled Haiti since its independence, using the state resources as its personal bank account and keeping the vast majority of Haitians in a state of extreme poverty, even slavery. <sup>n7</sup>

**[\*889]** Fortunately, positive changes in the corporativist structures of these nations have taken place. Presently, the armed forces have lost power and influence in some countries in Latin America and have generally been more accepting of democratic practices and institutions. In Haiti, the armed forces have literally been dissolved. The Haitian army is now a fifty-person marching band. Nevertheless, former military officials have continued to create havoc. Since the return of the democratically elected government in 1994, they have formed criminal gangs, mounted military attacks against the National Police Headquarters, Parliament, and the Presidential Palace, assassinated several newly elected Senators and approximately eighteen newly trained members of the National Police Force. <sup>n8</sup>

In several nations, the Catholic Church is reluctantly ceding its claim that the state enforce its vision of private, personal life. In many of these nations, the trade unions have been enormously affected by

unemployment and by the reduction - sometimes adversely affecting parties normally allied with the government - of the welfare state.

The great enigma, which is directly related to the controversy surrounding the first feature of the consolidation - the economic and social crisis - is whether the previous dominant economic groups remain all-powerful, or have even increased their power, by having changed their positions as privileged contractors of the state to positions as owners and thus monopolistic providers of the recently privatized public services.

In Haiti, the question has a rather unusual twist to it. It is whether the previous dominant entrepreneurial groups remain powerful or have been reduced to puppets of the military during the dictatorship, and, if so, whether they will reassert their power or yield some of it to the people. During most of Haiti's history, the military did the bidding of the elite classes by protecting their economic monopolies and brutally suppressing the vast majority of the poor. In turn, the rich paid off the dictators. During the 1991-1994 coup period, things changed. The military took over the country's ports and landing strips, thus enabling its high-ranking officers to prosper in the illicit drug trade. Even more significant, the military increasingly prospered through its control of state monopolies. It was alarm over these incursions into the economy that led the economic elite to support, however tentatively, the return of Aristide to office. The question remains, however, what will the economic elite do now that the military dictatorship is over and two successive democratic governments have come to power?

It is clear from this brief discussion of corporatism that one of the main obstacles that a nation undergoing the transition to democracy must overcome is the interpenetration of corporative power relations, which are remnants of previous populist and authoritarian stages. The corporations try to preserve their power relations and privileges through the transition, generating different types of crises, such as a military or economic threat, which exert tremendous pressure upon the fragile democratic system.

## II. Deliberative Democracy

The best means for countering this corporative power is to create a polity governed by universal and impersonal principles where individual citizens, who are not identified with any particular interests but preserve the capacity of adopting different ones, make choices in a process of public justification and dialogue. In practical terms, this requires broad popular participation in governmental decision making and its consequent actions led by strong participative and ideologically committed political parties and parliamentary bodies. These parties and parliaments must themselves, of course, be internally democratic, open, and disciplined.

These conclusions are based on a particular vision of democracy and upon the utmost respect for the autonomy of each individual. In this view, autonomy consists of the exercise of self-governing capacities, such as the capacities of understanding, imagining, reasoning, valuing, and desiring. Free persons have, and are recognized as having such capacities. In a political order dedicated to serving the conditions of free deliberation for its members, those members can legitimately expect of that order that it not only permit, but also encourage the exercise of such capacities - that it permit and encourage autonomy. Indeed, one of the hallmarks of liberal democracy is the notion of the citizen, who is not identified with any interest, but is free to choose and has an equal voice in expressing his choice.

[\*891] This ideal of the autonomous individual as a paradigm for democracy is based on a theory that rejects the view that democracy is simply a conglomeration of interested individuals and groups working similarly to the economy or a mechanism for replacing elites. In<sup>9</sup> and many others<sup>10</sup> have elsewhere attempted to explain democracy as a regimented mode of the practice of moral discourse by which we try to solve conflicts in the light of universal, general, and public principles that would be accepted in ideal conditions of impartiality, rationality, and knowledge. This, the argument goes, makes democracy morally

superior to other systems of government. Democracy substitutes simple majoritarian decision for the requirement of a unanimous consensus in the common and non-regimented practice of moral discourse. But this is not completely sufficient. This substitution weakens the force of the prescription that the result of the procedure is morally valid because it would be accepted under ideal conditions (given the functional equivalence between unanimity and impartiality). Nevertheless, democracy preserves some epistemological value because the need to justify one's decision to others and to get as much support as possible for one's position generates a tendency toward impartiality which makes it more reliable than other decision processes, such as individual reflection.

This epistemic view of democracy presupposes that individuals, who are the basic moral persons, are its natural agents and that the freedom and equality of their intervention in the democratic process should be preserved and expanded. This is, of course, not the case when corporations control the polity and assume the role of intermediaries. Moreover, this conception of democracy as a substitute for moral discourse presupposes that the primary objects of decision in the democratic process are not crude interests, but principles that legitimize a certain balance of interests from an impartial point of view. While it is possible that discourse may have its genesis in crude interests, for those interests to garner majority agreement, advocates must win support and justify their positions. Thus, the dialogue requires participants to reach for principles beyond their crude interests - they must reach for principles from an impartial point of view. In addition, dialogue respects and fosters autonomy. It follows, therefore, that corporations that agglutinate people around common interests and not around moral views about how to deal with common interests cannot be the protagonists of the democratic process.

[\*892] Corporative entities in transitional societies maintain and even increase their power whenever democracy departs substantially from the strictures of the original practice of moral discourse. When this occurs, public debate becomes restricted and debased, the power of participants actually to influence people becomes too unequal, and participation of interested people becomes narrower and weaker. Thus, in order to strengthen the democratic power of common citizens against that of corporations, it is crucial to broaden and deepen popular participation in discussion and decision making.

Furthermore, the mechanisms of representation, necessary in large and complex societies, are prone to be subverted by corporative power. This subversion can be caused by several factors. There is the possibility of corruption of the representatives, their indifference or even antipathy toward the people they represent when opposed by corporations, and the apathy of the people represented. For these reasons, it is essential to broaden the avenues of direct participation by the people whose interests are at issue. This is, of course, a difficult task. Nevertheless, it is possible to do this through general procedures like referenda or popular consultations or through decentralized decisions that allow the concerned people to participate directly.

Moreover, the vision of democracy as a dialogic process concerned with moral principles to regulate conflicts allows us to qualify the liberal rejection of any intermediary between the individual and the State. Indeed, in a large, complex society, some institutions must protect the individual against the awesome power of corporatism. The most likely candidates are political parties, but only when they are the standard or represent the basis of fundamental principles of political morality. They are indispensable in a modern and large society, not only because they nurture those principles in professional politicians, who purport to put them into practice if duly elected, but also because they exempt individuals from justifying their votes before each other on the basis of principles. In this view, it is sufficient to vote for a party which organizes its programs on the basis of public, general, and impartial principles.

The deterioration of the role of political parties in favor of corporations occurs when the significance of Parliament, the national arena for these parties, is severally eroded. Unfortunately, the integrity of Parliament is often diminished by corporative forces in the transition process. Corporations prefer to exert pressures and achieve agreements in the private offices of government rather than in the contentious,

pluralistic, and more public parliamentary corridors. In addition, there is the tendency of administrations to preserve some of the practices inherited from previous authoritarian governments.

[\*893] Strengthening political parties and the parliamentary institutions in order to protect the democratic system against corporative power, however, will work only to the extent that these institutions do not become transformed into corporations themselves. Unfortunately, this often occurs, particularly when parties weaken their ideological commitment, do not promote debates on essential questions of public morality, block channels of participation, operate through methods of patronage and clientelism, or resort to personalism and caudillism. If this happens, these parties and parliaments tend to develop elites with distinctive interests who are likely to become aligned with members of traditional corporative groups in a manner inimical to democratic principles. This also causes other dangerous distortions. When parties become corporations, Parliament becomes weakened by the lack of representatives, by a discourse that is both ideologically vacuous and detached from the experiences and interests of the people represented, and by a general appearance of opacity and self-service.

To alleviate or even avoid this danger, political parties and Parliament must be substantially strengthened. This can be achieved by opening the parties to broad popular participation, promoting permanent political debates within them, perfecting internal democratic mechanisms for selecting party leaders and candidates, and giving a public accounting of the reasons for significant actions, such as how funds are to be managed. It is also important that the electoral system combine the need for promoting party cohesion and ideological identity with the need for the voter to identify with individual representatives, rather than voting for the party slate. A mixed electoral system incorporating proportional representation with individual candidate selection may satisfy both needs. This concept can be extended to parliamentary procedures, which should combine party discipline with a degree of autonomy for individual representatives.

### III. The Aristide Government's Proposal: Strategy of Social and Economic Reconstruction

Haiti provides an excellent illustration of the problems that corporative power poses to nations attempting to move from authoritarianism to democracy. It is clear that there is a long, hard distance still to be traveled by the Haitian people in order to fulfill the underlying conditions of the epistemic value of democracy and to overcome corporatism. Under the dictatorship, the levels of material satisfaction were so low, the opportunities for informed debate so debased, the institutional structure so dysfunctional to democratic values, human rights violations so ubiquitous, and the problems of the consolidation of democracy so [\*894] intense, that any hope of creating the conditions for a deliberative democracy appeared to be impossible. Stated otherwise, the distance between the ideal model and the reality of Haitian life seemed to suggest that democracy could never become a reality in Haiti. Indeed, looking at Haiti directly after the coup regime had been forced out and Aristide had been reinstated to office, one had to ask what could possibly be done to change this bleak landscape. Fortunately, President Aristide was not without a plan, and the Haitian people were not without hope.

The 1990 election of Aristide, the first democratically elected president in the nearly 200-year history of Haiti, was not only a rejection of Duvalierism, but a landslide for popular representation. For the first time in the history of the nation, a majority of Haitians entered into politics. This was an incredibly important step toward democracy for the Haitian population. Furthermore, the people who took part in the democratic explosion at the grass-roots level used the Aristide candidacy to give formal expression to their lives.

The most important popular expectation to emerge from that election is that the repressive role of the state and its corporative forces would be terminated. But merely removing the weapons of the army and paramilitary forces is not enough to fulfill that expectation. What is needed is what I would call a new structure of social relationships, which will have to go beyond political pluralism. It will require the use of state power by several successive governments to achieve at least two major goals. First, the government needs to change the Haitian elite's perspective and restrict their historic capacity for social repression. They

must begin to realize that the vast majority of Haitians, who have traditionally been excluded from any decision making role, are human beings, who should be treated with dignity and respect. They must be allowed to become productive members of society who, as equal citizens, have an equal voice in the operations of the government. The elites must realize that their fate is dependent upon improving the lives of all the Haitian people. Thus, the corporative entities controlled by the elites must be dismantled. Second, the government needs to make sure that the anger and resentment of the poor is contained and channeled in a positive way to improve their living conditions and create hope for their future.

The Aristide government's plan for social and economic reconstruction (which I will refer to here as the Aristide Plan),<sup>11</sup> which the Preval government has fully embraced, attempts to achieve these goals in a variety of ways. The objective of the government is "to substantially transform the nature of the Haitian State as the prerequisite for a sustainable development anchored on social justice and the implementation of an irreversible democratic order."<sup>12</sup> The Aristide Plan calls for shifting the social balance of power away from the executive branch of government to civil society and local government. To do this, the government means to empower several components of civil society, such as political parties, labor unions, grass-roots organizations, cooperatives, and community groups.<sup>13</sup> The government also intends to create a vibrant private sector with an open foreign-investment policy.<sup>14</sup> It conceives of a sound macroeconomic policy that creates the proper environment for the private sector as one that eschews "foreign exchange controls, price controls, and other policy induced distortions."<sup>15</sup> The Aristide Plan holds that the strategy implemented to realize these goals must:

- . Meet the basic needs and fully mobilize the human potential of the people of Haiti;
- . Demilitarize public life and establish the supremacy of legitimate civilian control over the military;
- . Establish an independent Judiciary;
- . Strengthen the institutional capabilities of Parliament, other autonomous institutions, and local governments to enable them to play a constructive and informed role in policy debates and implementation;
- . Limit the scope of state activity, and concentrate it on the mission of defining the enabling milieu for private initiative and productive investments;
- . Reduce the involvement of the central government in the commercial production of goods and services;
- . Redefine the relationship and the distribution of political authority between the central government and local authorities; and
- . Improve the quality of public administration.<sup>16</sup>

To create a democracy, the Aristide and Preval governments have taken, and further intend to take, a number of concrete steps. Many of these actions are intended to reduce or even eliminate the power of the corporative forces. According to the Aristide Plan, the first priority is the professionalization of the armed forces. Originally, the government planned to, and did in fact, reduce the then current army from approximately seventy-five hundred officers and men to around fifteen hundred. Remarkably, it has gone even further - the army has been totally disbanded, except for the approximately fifty-person marching band. Law enforcement is to be carried out by a newly created National Police Force. This plan is still in its early stages of development, however. Problems originally occurred because some of those selected for the police force were former members of the armed forces who had committed human rights abuses. The government has successfully purged the force of human rights violators, but the police continue to be plagued by poor training, lack of equipment, and general distrust of the citizenry.<sup>17</sup>



The second priority is the establishment of an independent judiciary that is able "to fairly arbitrate conflicts among the members of society, and provide adequate protection for private sector activity, property rights and fundamental human rights." n18 Furthermore, under the Aristide Plan, the Haitian government needs to strengthen the Superior Court of Accounts "to improve the level and the quality of public debates in the country, to monitor executive performance and to provide institutional counterweight." n19 Parliament has a crucial role to play in the modernization of the economy and society, but, of course, it was severely weakened during the military dictatorship, and although most of the economic reforms have to be enacted through laws, the Parliament was still not equipped to deal effectively with these issues right up until the end of Aristide's term. Parliament's power, therefore, had to be strengthened substantially. Presently, Parliament has become more independent than in the past, but it has also become entangled in a bitter partisan battle over elections and the plan to privatize all government-owned enterprises.

In addition to these several key areas of reform, the Aristide Plan calls for the modernization of the state sector. It requires a reduction in the civil service to approximately half of the then current 45,000 civil servants. This is to be achieved through voluntary departure encouraged by generous severance packages. The plan also requires an improvement in the level of professional competence. n20 The scope and content of government activity is to be altered by moving away from "tedious micro-management toward a more strategic approach." n21 The smaller civil service will concentrate on a more limited number of objectives. "It should refrain from excessive regulation and focus on broad policy questions." n22

In the first year of Aristide's reinstated term, his Administration [\*897] was quite successful in implementing some of these seemingly impossible reforms. Aristide dismissed most of the army's high command and reduced the number of troops. Later in his term, he abolished the army. He achieved this by appointing new officers, who then dismissed the troops involved in past human rights abuses. A new civilian police force, operating under the authority of the Ministry of Justice, is in the process of being trained and is partly in operation. Work has begun also on reforming the judicial system. Furthermore, Aristide created the National Truth and Justice Commission to investigate and write a report on human rights violations. The Commission finished its investigations and submitted its report on February 5, 1996, only two days before the end of Aristide's term as President. The 1500-page report, which was not made public for some time, includes sixty-three pages of recommendations addressing punitive measures, compensation to victims, and necessary judicial reforms. A separate, confidential report names 900 perpetrators of human rights violations, 300 of whom the commission recommends should be prosecuted. Moreover, parliamentary elections took place in July 1995, and presidential elections took place in December 1995. The election led to the second democratically elected president in the nation's nearly 200 year history. This represents a key step in creating stability for the growth of a real democracy.

Perhaps even more significant, Aristide called on the international community for expertise. He appointed an international team of prominent lawyers to assist the Ministry of Justice in the investigations and prosecutions of some of the most notorious human rights cases. Preval has continued these investigations and prosecutions.

Initially, the team concentrated on representative, symbolic cases. It focused on seeking justice for the murders of Antoine Izmerly, a successful businessman, political activist, and financial supporter of Aristide; Guy Malary, a former Minister of Justice who sought to prosecute military officials who committed political assassinations; Jean-Claude Museau, a student who protested against the military abuses and in favor of Aristide; and Jean-Marie Vincent, a priest who organized peasants to demand that their human rights be enforced. All of these men were murdered because of their outspoken opposition to the coup.

The attorneys started their work by compiling all of the public information regarding these murders and then turned these files over to the Minister of Justice. The team members interviewed witnesses, collected documents, and pieced together other relevant information. They helped create investigative teams of international and national police, and they worked with prosecutors and judges in the development of cases

for prosecution. Several ordonnances (indictments) have been [\*898] issued, many people have been arrested, and, in the Museau case, several defendants have been convicted in absentia and sentenced to long jail terms. In the Izmyer case, not only have several defendants been convicted in absentia and sentenced to long jail terms, but one defendant, Gerard Gustov ("Zimbabwe"), a ranking member of the paramilitary group, Front for the Advancement and Progress in Haiti (FRAPH), has been tried, convicted, and sentenced to life imprisonment at hard labor. This is the first time in the history of the Haitian nation that someone allied with the dictatorship has been fairly tried and convicted for a human rights violation; in this case, a political assassination. This conviction has had a profound impact on the nation's psyche. People are now beginning to believe, to some degree, that justice can be achieved and that the rule of law is an important aspect of a democracy. The corporative para-military forces have thus been substantially weakened.

Moreover, five special investigative teams have been organized to investigate political crimes committed by the former authoritarian regime. These teams have started investigating approximately seventy-six cases. Each team originally consisted of a member of the U.N. Civilian Police (CIVPOL) and two members of the newly trained and newly created Haitian National Police. The investigative teams reported to the Director of CIVPOL and to the Director of the National Police. The latter was the liaison between the commissaires, judges, and Minister of Justice. Presently, the teams work directly with the Minister of Justice, and CIVPOL is no longer involved in the investigations.

In addition, victims' committees have been organized in every criminal jurisdiction of the country. These groups are soliciting victims to come forward and detail the atrocities committed against them and to name the perpetrators of these crimes. Lawyers hired by the government are filing lawsuits in these cases. These committees not only gather information, but also create pressure on the actors in the system to do their jobs - to do justice.

Originally, the international team of legal advisers directed these operations and conducted parallel investigations into some of the major cases. Under President Aristide's rule, the team reported directly to him. Under President Preval's rule, they reported first to the Minister of Justice. In this way, different kinds of pressures are put on the Haitian officials who are responsible for enforcing the law.

These impressive advances on the political front, however, have not been accompanied by progress toward a better material life for the vast poor majority. For them, grinding poverty and the daily struggle to survive continue uninterrupted. This is the point at which the Aristide Plan has serious deficiencies.

[\*899] The macro-economic aspects of the Plan are clearly intended to attract large amounts of capital from the World Bank, the International Monetary Fund, and the United States Agency for International Development. So, for example, the Aristide Plan calls for removing quantitative restrictions to imports, and removing the tariffs, except for those on rice, corn, beans, and sorghum. As the Aristide Plan makes clear, "for a very limited number of sensitive products a transitory adjustment period not exceeding seven (7) years might be provided. For these products, the tariff level will be cut in half immediately." n23 The Aristide Plan claims that this tariff policy will have significant benefits. The authors of the Aristide Plan claim that it will eliminate contraband and its associated corruption, reduce the cost of living, enhance the competitiveness of exports, establish a competitive playing field for all economic agents, and curb the powers of domestic monopolists. n24

The Aristide Plan, however, recognizes that the tariff plan will require adjustment assistance to the productive sectors, such as agriculture (basic grains and rice-producing areas). It also recognizes that the trade regime distortions are not sufficient to allow for resumption of export performance. Thus, Haiti is "requesting" that its North American trade partners provide "maximum favorable treatment with respect to quantitative restrictions and tariffs (including those on the value added by the assembly sector) for the next ten years." n25 In conjunction with its request, the Aristide Plan recognizes the need to improve domestic tax collection "for both social equity and medium term economic stability." n26

Finally, the economic aspect of the Aristide Plan calls for the divestiture of publicly owned companies. This is seen as necessary because of mismanagement and because of the associated opportunities for corruption. The Aristide Plan also suggests that the divestiture must include implementation of an appropriate regulatory framework and anti-trust legislation. To limit the possibility of having the divestiture increase the concentration of wealth within Haiti, the government "will seek out foreign investors, domestic savers from the professional categories and the members of the Haitian Diaspora." n27 Part of the ownership will be transferred to traditionally excluded members of society, particularly to the families of those murdered, tortured, or otherwise harmed by the military coup. n28

[\*900] The required reforms of the retirement and social security system "will expand the opportunity to widen the ranks of financial asset owners." n29 Half of the proceeds from the divestiture will be put into infrastructure investments "in the poorest areas and low cost urban and rural housing." n30 In addition, the other half of the proceeds "will be invested in a permanent trust fund whose annual proceeds will be used to subsidize education and health for the rural poor." n31

Criticisms of the economic aspects of the Aristide Plan are powerful. To begin with, the democratic process of a new social contract implies that the State will create a level playing field - a fair chance of access to power - not only in politics, but also in economic and social life. In Haiti, such a fair chance of access to power, given Haiti's past and current situation, cannot simply mean a non-interventionist economic policy, an extreme version of laissez-faire economics.

But the Aristide Plan seems to go even beyond the free market expectations of the International Monetary Fund and the World Bank. For example, as stated above, it asks for the removal of all import tariffs, except on a few cereals. The economic program is thus clearly tilted in favor of the traditional elites - the entrepreneurial corporate sector - who will dominate the trade in imported products. It is surely not believable that they would suddenly learn to behave as fair competitors once the State removes itself from regulating economic life. Even more disturbing, the Aristide Plan seems to neglect the capacities and interests of thousands of small urban entrepreneurs and artisans, as well as millions of peasants. More specifically, for example, removing tariffs on handcrafted products may quickly put out of business a large number of the artisans who have supported Aristide. In addition, the unrestricted importation of food may further diminish peasant revenues and encourage both rural and urban unrest.

The divestiture or privatization plans may cause long-term problems. n32 In theory, removing the State from vital enterprises will significantly reduce corporatist influences and help reduce inflation. On the other hand, the political pressures that consumers may have been able to exert on the government to keep down the prices of State-provided services will not exist under the divestiture aspect of the Aristide Plan. At the same time, the monopoly status of the new private companies [\*901] will prevent the activation of free market forces to keep prices competitive. Absent the unlikely dissolution of these monopolies, the privatization aspect of the Aristide Plan may prove to be a disaster for Haiti's economy.

This is not, of course, the whole of the problem. The international community is not helping to alleviate these problems. Instead, it is exacerbating them. In order to foster real stability and stem the flow of refugees to United States shores, the real concern of the Clinton Administration, the root causes of poverty in Haiti must be addressed. Unfortunately, the Clinton Administration is supporting the imposition of a sort of boilerplate World Bank/International Monetary Fund "structural adjustment" program in Haiti. It restricts wages, favors the export-oriented private sector at the expense of small-scale food producers, and forces resource-stripped local producers to compete with subsidized, highly capitalized foreign companies. n33

The United States Agency for International Development, the World Bank, and other donors claim that one of their primary goals is to alleviate poverty. Recently, they have put together an unprecedented \$ 1.2 billion aid-and-loan package for Haiti. But past support of export-led development, with anti-poverty programs added on, has met with little success.

In January 1995, the Inter-American Development Bank issued a joint donor report on the proposed economic recovery program in Haiti. n34 It suggested three major shortcomings of past assistance programs: no national ownership, little measurable impact on basic economic and social indicators, and no sustainability. Given this stunning admission of failure from the agencies that put more than two billion dollars into Haiti during the 1980's, it is certainly appropriate to ask why they are not following a different strategy.

In point of fact, until quite recently, Haiti's poor majority has been excluded from any decision making role regarding the economy. The same is not true for the elites. The Haitian government-sponsored, United States AID-funded Presidential Commission on Modernization and Growth, dominated by Haiti's business elites, has an official policy advisory role. This allows the elites to travel to the United States to seek increased support from the Administration, Congress, and potential investors.

[\*902] There is, however, a serious problem with this access. It is one-sided only. No parallel programs or efforts exist to draw expertise, priorities, or advice from the more than ninety percent of Haiti's population that makes its living from small-scale agriculture, artisan production, and other small enterprises.

The Clinton Administration's support of macro-economic policies, and the Aristide and Preval governments' agreement with these policies, will create as great a threat to democracy as the armed right-wing paramilitary forces that continue to haunt the Haitian nation. Without a basic change in economic development policy, the stranglehold of poverty on the Haitian people will remain unbroken, and their hard-won progress toward democracy will quickly erode. Corporativism will prevail.

The Aristide government's, and now the Preval government's, most difficult challenge in creating a democracy has not only been that of encouraging political pluralism in the formal sense, which is certainly a very difficult but indispensable task. Even more important, these successive democratically elected governments must decide whether the economic plans that have become one of the central fixtures of their democratic program - and that have brought the Aristide and Preval governments international support - will simply be imposed on the Haitian people, or whether the Haitian State will finally begin to listen to the voices of the people.

To be completely fair, there has been a real attempt by the economists who drafted the economic program, Leslie Delatorre and Leslie Voltaire, to ask for critical views of many Haitians who are not part of Aristide's faction. This openness, of course, signals an extraordinary change in Haitian politics. But those who have criticized the plan are not necessarily the peasants who will be most adversely affected by it. Thus, the debate must include not only international agencies, Haitian expatriates, old-line political parties, and the elites, but the voices of the very people whose future is most at stake - the vast poor majority.

There are signs of hope. As the December 1995 presidential election grew near, this debate became central to the campaign. At that time, President Aristide refused to accede to the demands made by the international community for total privatization of the nine major government-owned enterprises. He not only disagreed with total privatization on substantively solid grounds, but also listened to the public uproar against such a policy. As a result, the international community withheld the promised funds, claiming that the Haitian government's refusal to privatize totally these government enterprises violated the terms of their agreement.

[\*903] The debate continues into President Preval's term. Preval, unlike Aristide, seems to favor the plan of total privatization, at least publicly. Others in his party, and many of the masses, disagree. While disruptive, the national debate, which continues through 1999, is also a positive step in the transition to democracy. It is a step in the development of a public dialogue. n35

#### IV. Suggested Reforms

While Haiti, Eastern European, and Latin American nations strive toward democracy, it is clear that experimentation is in order, particularly in the political and economic spheres. The overriding characteristic of the political and economic life in developing nations is the desire to avoid either a national-populist or a neo-liberal project. In today's global economy, neither approach seems promising.

The import-substituting, protectionist style of industrialization and the pseudo-Keynesian public finance of a nationalist-populist approach seem unable to deal effectively with the huge problems facing these nations. Neoliberalism (neoliberalismo), Latin American's single-minded pursuit of foreign investment and the accompanying austerity and inequality, is unable to service the real conditions of sustained economic growth.

Neoliberalism's rise to the status of religious doctrine is in part due to the influence of the United States. The Reagan Administration pushed the Latin Americans into pro-business austerity programs and set the tone for a world-wide reduction of government's role. The policy's acceptance in Latin America is also due to the wealth of its corporative backers in a region where money matters above all else in politics.

But neoliberalism is also a response to the failure of a national-populist approach. Indeed, the continent still faces the problems of hyperinflation and stagnation created by irrational, closed economies and massive public spending.

What is needed now, however, is to fix neoliberalism's major flaw - chiefly that it does not help the poor, vast majority live a dignified life. Instead, corporative power creates wealth for a small minority, while almost enslaving the majority. Indeed, if government does not spread the benefits of globalization, countries will remain divided between a very small group of ultra-rich businessmen and a large group of marginalized people.

Unlike neoliberalism's claim that government should play a minor **[\*904]** role in the economy, real democratic change requires government to play an important role. At a minimum, these nations must pursue locally designed policies to draw the poor into the global economy. To do this, these governments must pursue a rather different vision of a political economy than the one traditionally accepted.

To begin with, these nations must be serious about macro-economic stabilization. They must impose taxes upon the privileged classes to allow for public investment in people and infrastructure. One possibility would be to impose a direct, consumption-based tax, taxing the difference between income and savings, as a way to finance the state and promote capital formation and productive investment.

There must be a major push to train the poor majority in a variety of skills needed in the global economy. Education is central to reform. This approach would also suggest attempting joint public-private ownership of enterprises and encouraging decentralized capital allocation and management. If the break down of corporative control of the economy is to succeed, however, the strict requirements of capitalism must be imposed on these so-called free-market capitalists. Thus, the private sector must actually be privatized, allowing for real competition. This requires laws opening the market so that everyone can compete on a level playing field. In addition, it is necessary to develop public companies and impose upon them the requirements of competition and independent financial responsibility. Parliament has to pass laws which encourage such activity.

On the political front, there must be an ability to counter the threat of oligarchic control of political power. There must be a facility for the rapid resolution of major political impasses through granting priority to programmatic legislation, liberal resort to plebiscites and referenda, and perhaps the vesting of power in the executive and legislative branches to call new elections in the face of serious disagreements over the direction the country should take.

This is not all. Measures must be taken to broaden the scope and heighten the level of political mobilization in society. As discussed above, this requires strengthening the role of political parties, public financing of campaigns, increased free access to radio and television, and the breakup of the broadcasting cartel. Political organizing, at all levels, must be encouraged through specific government programs. Direct democracy must be systematically organized and planned.

#### V. Conclusion

Almost all nations undergoing the transition from dictatorship to democracy face the power of corporations. The actors are not necessarily always the same; for example, the Catholic Church does not have the same role in Haiti as it does in Argentina, and trade unions hold different positions in Haiti than in Brazil. But the script is nevertheless repeated in each country because the formal creation or reestablishment of democratic rule is not sufficient to destroy the corporative power relationships built up during the dictatorship periods. Indeed, these citadels of power are insidious.

In this essay, I have argued that the best way to strengthen the workings of democracy against corporative power is to somehow include the formerly excluded majority into the decision making process and implementation of government action. Stated otherwise, direct popular participation is a necessary aspect of creating a true democracy. This follows from the epistemic vision of democracy I have described. Moreover, the best method for achieving this goal is to perfect mechanisms of representation and strengthen political parties, which must themselves be internally democratic and open, disciplined, and ideologically defined.

In addition, creative attempts at economic and social reform must work hand-in-hand with the requisite political reform. Direct popular participation must reach all aspects of public and private life. Experimentation is called for because old methods have not transformed these societies to allow the individual citizen the freedom and dignity each human being is due.

#### FOOTNOTE-1:

n1. For a discussion of the different characterizations of the process of transition, see *Transitions From Authoritarian Rule: Latin America* (Guillermo O'Donnell, et al., eds., 1986); Juan J. Linz, *The Breakdown of Democratic Regimes* (1978).

n2. See Irwin P. Stotzky, *Silencing the Guns in Haiti: The Promise of Deliberative Democracy* (1997)[hereinafter *Silencing the Guns in Haiti*]; Irwin P. Stotzky, *Establishing Deliberative Democracy: Moving from Misery to Poverty With Dignity*, [21 U. Ark. Little Rock L. J. 79 \(1998\)](#) (the 1998 Ben J. Alzheimer Lecture); Irwin P. Stotzky, *Creating the Conditions for Democracy*, in *Deliberative Democracy and Human Rights* (Harold Hongju Koh & Ronald C. Slye eds., forthcoming 1999).

n3. For an interesting discussion of the concept of corporatism and its relationship to state and society in Latin America, see generally *Authoritarianism and Corporatism in Latin America* (James M. Malloy ed., 1977).

n4. For a thorough discussion of Haitian history and culture that analyzes many of the problems of the transition process, including corporatism, see *Silencing the Guns in Haiti*, supra note 2.

n5. For a discussion of the moral, legal, and political problems associated with prosecuting human rights violators in these circumstances, see *Silencing the Guns in Haiti*, supra note 2.

n6. Indeed, when President Aristide first took office in 1990, he met with representatives of the elite families, almost all of whom can be classified as members of the entrepreneurial sector, to discuss the payment of taxes. He told them that one of the most serious problems in Haiti was the failure of those who earned their fortunes in Haiti to pay taxes. In point of fact, throughout the history of Haiti, the elites simply refused to pay taxes. Aristide then stated that his government would not attempt to collect taxes owed in the past, but from this date forward, he expected those people to pay taxes. The representatives of the elite families essentially told Aristide that he would not be in office long enough to collect taxes. Approximately three weeks after that meeting, Aristide was overthrown by a military coup. Continuing Interview with President Jean- Aristide, in Port-au-Prince, Haiti, (November 8, 1993 to December 1997). Under the Preval government, taxes on the elites and the middle class are slowly beginning to be collected. For example, those who import automobiles are now sometimes required to pay the import tariffs. Nevertheless, tax collection remains sporadic and inconsistent. Corruption of public officials is a continuing problem.

n7. Ironically, Haiti is the product of a revolution against slavery and colonialism. It emerged as a nation in 1804, after a thirteen-year struggle against France that resulted in the destruction of the French colony of Saint Dominique. Almost immediately after independence, the Haitian elites attempted to recreate the plantation economy, treating the rural masses in much the same way as the French colonial oppressors had treated them. The former slaves, however, simply refused to return to a state of slavery. Instead, they settled as small peasants on land bought or reconquered from the State, or abandoned by large landowners. The urban elites then devised a dual strategy to counter this problem.

The first part of the plan was economic. The elites used the fiscal and marketing systems of the country to create wealth-producing mechanisms for themselves. They became traders, politicians, and state employees. They prospered by living off the peasants' labor. Taxes collected by the import-export bourgeoisie at the urban markets and customhouses - paid solely by the peasants - provided the entire source of government revenues. The elites then took over the state and used the state revenues as their personal bank accounts.

The second part of the plan was political. The strategy was to isolate the peasants on small mountain plots and keep them away from politics. It was a brilliant but corrupt strategy. The peasants, who unknowingly subsidized the elites, had no say whatsoever in how the state was to be run. For analysis of these points, see *Silencing the Guns in Haiti*, supra note 2; see generally Michel-Rolph Trouillot, *Haiti, State Against Nation: The Origins and Legacy of Duvalierism* (1990).

n8. See *Silencing the Guns in Haiti*, supra note 2.

n9. See *Silencing the Guns in Haiti*, supra note 2; Stotzky, *Establishing Deliberative Democracy: Moving from Misery to Poverty With Dignity*, supra note 2; Stotzky, *Creating the Conditions for Democracy*, supra note 2.

n10. See, e.g., Carlos S. Nino, *Etica y Derechos Humanos* (1984).

n11. See *Strategy of Social and Economic Reconstruction* (1994) (unpublished manuscript, on file with author) [hereinafter *Aristide Plan*].

n12. *Id.* at 1.

n13. *Id.*

n14. *Id.*

n15. Id.

n16. Id.

n17. See *Silencing the Guns in Haiti*, supra note 2.

n18. *Aristide Plan*, supra note 11, at 2.

n19. Id. at 3.

n20. Id.

n21. Id.

n22. Id.

n23. Id. at 4.

n24. Id.

n25. Id. at 5.

n26. Id.

n27. Id.

n28. See *id.*

n29. Id.

n30. Id. at 6.

n31. Id.

n32. Disagreement over privatization plans led to the resignation of Prime Minister Smark Michel, a strong advocate for total privatization. As Aristide's term in office ended, he refused to totally privatize the State-owned enterprises. Under President Preval, a lively debate on this question is currently taking place in Haiti.

n33. This appears to be the same model that led Mexico into financial collapse by undermining the production of small farmers, building export industries on exploited labor, and concentrating wealth and resources in the hands of the very few.

n34. Emergency Economic Recovery Program, Inter-American Development Bank, Report of the Joint Mission (Nov. 7-20, 1994), Annex I (Jan. 3, 1995).

n35. For a more thorough discussion of the privatization issue, and economic policy in general, see *Silencing the Guns in Haiti*, supra note 2.