

## Reconsidering Constitutional Principles for a Globalization Period

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### Introduction:

The question of power and the recognition of human rights have been two of the most important challenges that mankind faced since centuries. To seize and control power as well as the acceptance of certain inalienable rights for all the people without distinction have been important goals for societies. Since earlier times certain groups or persons had the tendency to monopolized power without being controlled at all, to achieve and perpetuate such aim different theories have been created such as the one connected with power's divine origin, or other related to arms' *imperium*. Similarly, different types of governments were reluctant to share the power with the people, i.e., theocracies, monarchies, and dictators are just but a few examples of how a few ones ruled for all the people. In order to rule and refrained people from arguing other theories and principles were enacted; such theories divided societies in different groups, each one of them enjoyed diverse rights or attributes. Now doubt that, in the beginning, many people accepted such principles and concepts that restricted their rights and possibilities, but as time passed by people become aware of their privileges as human beings and fought for them. Thus, the legal instrument accepted to set the basis of authorities and the people was called constitution. During the so-called Classic Constitutionalism period to the Social Constitutionalism one, people's most important conflicts evolved from the questions of representation and distribution of power to social and labor needs. But such evolution was primarily connected with European and American countries, mainly its South, Central and North regions. Far Eastern and African societies adopted constitutions lately due to their particular history and culture. In the case of Far Eastern societies Emperors' rule over centralized kingdoms allowed the existence of a bureaucracy or even landowners who also enjoyed power over the rest of the people. On the other side African societies evolved in different ways, but in most of them tribal customs prevailed. Human needs and societies' requirements to preserve or expand its influence change from time to time, but in any case to establish clear norm to govern turn to be a common pattern. No matter whether such norms were altered, their sole presence meant that something is changing, and that some past tradition or custom are not accepted any more.

From Seventeenth Century to almost Nineteenth Century the question of governmental representation and division of power, or in other words the organization of the governments was essential. Later on to solve social conflicts turned to be very important. Labor's rights and people's welfare were considered the centre of political turmoil for decades. More recently, environmental problems attracted the attention of a significant part of societies, governments, as well as non-governmental organizations local or international. At present, religious and ethnic conflicts reappeared in an extreme bloody way. Summarizing, power and human beings can be deemed the focus of ever-lasting tensions and controversies that make harmony not totally possible, and more than once impossible. But it is noteworthy to realize that mankind tries to solve its problems one step at a time, or at least lessening conflicts. But to solve problems it is important to realize which the most important issues to be understood are.

Considering that constitutions are recognized as the most important and unique way to organize present societies and countries present paper will be focus on them. During the last century new challenges emerged, thus new constitutional solutions were intended mainly in connection with human rights, environment, and globalization. Though not all countries and societies are alike, all of them recognized the importance of the aforementioned issues. At the same time there are societies like Taiwanese whose struggle for recognition presents many problems for many countries, though others already accepted its status as an independent State. But Mainland China's reluctance to accept its status can be deemed an important challenge not only for more than twenty three million of people but to the whole world. Moreover, the Republic of China, in Taiwan, was recognized by the United Nations for years till 1970's when Mainland China took its place in that international organization, since then people living in Taiwan have been under constant pressure. Non-recognition of societies proved at present times to be root of conflictive situations that more than once lead to genocide. From that point of view the question of Taiwan can be regarded as an important test for mankind to try to achieve more consensus and democratization among countries, societies, and people.

The object of this paper is to reconsider Constitutional principles for present era, as well as to analyze and to pose possible solutions for the question of the Republic of China in Taiwan. The approach to both issues will be done, mainly, considering Peter Häberle's theory of Cultural Constitutional patterns having in mind the importance of diverse cultures and groups and the need to uphold democratic principles. The importance of cultural backgrounds proved to be the cornerstone of disagreements and discord, but also the start point for changes, finding new solutions.

Regarding the different theories and methods to analyze constitutions two main processes since last century have been the most important ones. The literal one, in which only the analysis of the constitutional text was indicated,<sup>1</sup> and the other that one follows the Second World War tendency, which was considered by the United Nations, back in 1948, in order to establish the so-called Type List regarding Political Science divisions.<sup>2</sup> Those divisions were Political Theory, Political Institutions, Political Parties, Groups and Public Opinion, and lastly International Relations, while Constitution was included within political institutions.<sup>3</sup> Thus, the last one is the one used for this paper, to consider present facts and conflicts according to the aforementioned United Nations so-called Type List Karl Loewenstein ontological classification of constitutions<sup>4</sup> Normative Constitutions principles. Normative Constitutions are all those in which norms and reality are closely connected. The people adopt, accept, and implement it, because social, economic and political conditions are adequate to do so. In other words it can be explained by Peter Häberle's expression "law in public action" (2003:80). Because it is important to know the theory and its practice, otherwise only the image will be known. Both in theory and practice principles of equality, fundamental rights' connotations and guarantees, social transformation and constitutional order, must be taken into account along with a specific cultural background, otherwise it would be rejected by those who are supposed to be protected by. And. According to Gardner (1992:815-816) "The content of a constitution can thus reflect some of the most essential and intimate aspects of the character of the people who adopted it, a feature that courts occasionally can exploit in order to assist them in construing the constitution in difficult cases."

The expression culture has no single and unique definition, for its meaning not only depends on its origin, different country, or particular social or religious background. Thus, for present paper "culture" will be consider a particular way in which human subjectivity objectified its particular way in perceiving the world, transcending individual, mainly in connection with conflict's solving process. Similarly, democracy will be also analyzed in connection with internationalization of constitutions and the increasing importance of globalization patterns. Not all societies and countries have similar definitions for 'democracy,' i.e., the intended Singaporean theory of democracy. In any case it is important to establish an adequate definition for basic terminology otherwise not adequate understanding can be achieved. At the same time, international conventions and agreements include a vast range of topics, but not all their principles and rules are successfully fulfilled by all societies, i.e.,

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<sup>1</sup> Jellinek (1914:25).

<sup>2</sup> Marcel Prelot, *La Ciencia Política* (1988:59-60).

<sup>3</sup> *Ibidem*.

<sup>4</sup> Such classification divided constitutions into three groups: normative, nominal and semantic. Nominal Constitutions are all those whose norms, though valid from a legal point of view, cannot be put into effect, not only because of the political process, but also because of the existence of social and economic conditions, such as a low educational level of the people which could prevent making it effective at a certain period or moment it t. In Semantic Constitutions its ontological reality

certain African countries though accepted Human Rights Conventions put them aside whenever ethnic questions and traditional disputes reappeared.

## Culture

The expression “culture” can be defined in different ways depending on the idea or tendency of the ones who analyzed it. In the beginning it was connected with “civilization,” but later on evolved according to different emphasis. A.L. Kroeber and Clyde Kluckhohn<sup>5</sup> in their well-known research *Culture, A critical review of concepts and definitions*, cataloged six principal types of definitions considering its basic emphasis: First, “with emphasis on enumeration of content”<sup>6</sup> as a comprehensive totality. Second, “emphasis on social heritage or tradition,”<sup>7</sup> Third, the normative, emphasizes the rule or way.<sup>8</sup> Fourth, emphasizing “adjustment on culture as a problem-solving device.”<sup>9</sup> Fifth, the structural emphasized “the patterning or organization of culture.”<sup>10</sup> Sixth, focuses upon culture as a product or an artifact, and is regarded a genetic. Summarizing all those different types of definitions A.L. Kroeber and Clyde Kluckhohn concluded that “Culture consists of patterns explicit and implicit, of and for behavior acquired and transmitted by symbols, constituting the distinctive achievements of human groups, including their embodiments in artifacts; the essential core of culture consists of traditional (i.e., historically derived and selected) ideas and specially their attached values; culture systems may, on the one hand, be considered as products of action, on the other as conditioning elements of further action.”<sup>11</sup>

As the concept of culture is closely linked to the issue of values, ideology and power, cultural politics turned out to be an important topic within academic study to analyze in order to criticize or defend a considered dominant culture. This way, Jordan and Weedon believed that “social inequality is legitimated through culture,”<sup>12</sup> to fulfill the interest of the dominant group. Dominant cultures impose their ways to all members of the society, and they also influence other societies through war, political pressures, and also presenting a successful model to be imitated. That is why at present certain particularities of most developed societies can be found in others, but also all those societies whose political or social system is regarded as adequate to overcome difficulties or respect individualities.

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is to formalize the political power just to benefit certain groups of people, limiting human rights limitations, so everything would have evolved as if there was no constitution at all. (Karl Loewenstein, 1970: 218-222)

5 A.L. Kroeber and Clyde Kluckhohn (1952)..

6 *Ib.*, page 43.

7 *Ibidem*, page 47.

8 *Ibidem*, page 50..

9 *Ibidem*, page 55.

10 *Ibidem*, page 61.

11 A.L. Kroeber and Clyde Kluckhohn, *ob. cit.*, page 181.

12 Glenn Jordan and Chris Weedon (1995:5).

An example of the first case can be mentioned United States of America, while in the other case Cuba, for many Latin American and African countries turned to be an influential model. In the case of the United States of America not only its economic development attracts the attention but also the possibility of achieving higher and better living standards. But in the case of Cuba, it was its political system, which, at first sight, was considered as one that really puts into practice the principle of equity. It does not matter whether such a thing is totally true or not; the case is that it was perceived in such a way by most of the people.

Each society or group of people has its own culture, mainly in present times because individuals tend to find their own answers to challenges. But there are societies that for long periods suffered the imposition of a dominant culture; and when such imposition diminished or disappeared it is not easy for the people to decide which the right answers to their conflicts are. Taiwanese society suffered for centuries the imposition of dominant cultures, so it is understandable that at present it has doubt about their own ethos. Similarly, all those countries that were under the U.R.S.S. rule for decades have difficulties to generate a new culture with adequate responses as many people is accustomed to what they were imposed, mainly all those who were educated during that period.

### **Democracy**

Like “culture,” the expression “democracy” is usually defined in different ways. Originally, it comes from the Greek and means ‘*demos*’ people, and ‘*cratos*’ power, so it can be understood as the power is in the people. So for many people, mainly politicians, it is reduced for people to vote from time to time without having the opportunity to take part in the political decision. For others ‘democracy’ not only includes political topics but also social and economic, because unless people can enjoy a standard of living having the possibility of improving their lives they cannot be totally free to decide without much pressure or manipulation from the part of the political parties. Thus, the definition of ‘democracy’ also includes the possibility of improving their everyday life, as well as being the base of a state.

At present the expression “democracy” though difficult to be defined in a clear and unique way has a recognized prestige all over the world that seduces politicians and lawmakers. From a political approach the use of words regarded as positive is essential for making its discourse available and acceptable to the listeners. That is why more than once “democracy” is mixed with certain cultural and local patterns, consequently the result is something, which some people can accept but others, reject. It is the case of the People’s Action Party, PAP, and actual ruling party of Singapore. That political party decided to delineate a new democratic theory based on Confucian principles about politics, power, and the different roles to be assumed in a political process. Confucian principles

about politics include several principles like piety, intending to reestablish the political and social order in his time. As he considered human nature neither good nor bad, therefore perfectible, as long as all person possesses the initial means for it which is the essence of the virtue, for their behavior could be rectified and educated. This way:

*"The perfect virtue is the natural kindness that each man necessarily possesses. But the blind men for their passions cannot look for it. They follow the slope of the bad habit, and they are persuaded that the virtue is far from them"<sup>13</sup> (Confucio, 1971:93)*

Confucius settled two main principles: to) to follow Chou, in connection to rites and ceremonies, b) the rectification of the names, which allows the readjustment of the powers and of the functions, inside a strict social order of more hierarchy to smaller. It can be easily understand in the following paragraph:

*"The old ones, to make shine the natural virtues in the heart of all the men were applied, before to govern well, each one their principality. To govern their principalities well, they before put in order their families. To put good order in their families, they made before an effort in the perfection of themselves. To be perfected themselves, they regulated the feelings of their heart before. To regulate the feelings of their heart before, they made their perfect will (they trained in loving with sincerity and in making the well, in to hate and to avoid the wrong). To make the perfect will, they developed their knowledge the most possible; they developed the knowledge investigating the nature of the things."<sup>14</sup> (Confucio, 1971:93)*

No ruler can be a good one unless he puts into practice such rules. To achieve such aim their perfect virtue or benevolence should be projected to all object or person. This last concept is conformed by two essential techniques to govern:

<sup>13</sup> The author of this paper made the translation. Spanish text: *"La virtud perfecta es la bondad natural que cada hombre posee necesariamente. Pero los hombres ciegos por sus pasiones, no pueden buscarla. Siguen la pendiente del vicio, y se persuaden de que la virtud está lejos de ellos"* Confucio, 1971, Chang-Lun, 1st. Part., Book 4th, Chap. I, p. 93. In case of divergence the original prevails.

<sup>14</sup> Spanish: *"Los antiguos, para hacer brillar las virtudes naturales en el corazón de todos los hombres se aplicaban, antes a gobernar bien, cada uno su principado. Para gobernar bien sus principados, ponían antes en orden sus familias. Para poner buen orden en sus familias, se esforzaban antes en la perfección de ellos mismos. Para perfeccionarse ellos mismos, regulaban antes los sentimientos de su corazón. Para regular antes los sentimientos de su corazón, hacían su voluntad perfecta (se adiestraban en amar con sinceridad y en hacer el bien, en odiar y evitar el mal). Para hacer la voluntad perfecta, desarrollaban sus conocimientos los más posible, Desarrollaban los conocimientos investigando la naturaleza de las cosas."* (Confucio, 1971, Ta-Hio, 1st. Part, p. 8.

1. - To feed and to teach: without enough food people cannot be really prepared to be educated as their basic needs have not been satisfied, of there that the first one is the appropriate basement for the second;

2. - Two main instruments: the politics and the punishments.

However, Confucius didn't stress punishments too much, as he regarded it as a last recourse. But, sometimes what is written has a different version whenever it is being put into practice. Therefore, the role of the ruler or leader is emphasized up to the extent that his decisions only matter and must be accomplished by the people without being argue. So it can be concluded that Confucian elements do not matched the basic concept of democracy, as they have a different starting point. Confucian principles' relied on the ruler, whereas democracy considered the people as the ones who have to decide.

As Stephanie Lawson (2000-79), commenting the case of Singapore, concluded, "they reinterpretation seemed to be according to the party needs and not people's right." As an example she mentioned that harmony and consensus can be the reason to ban criticism and opposition As Yao Wu The (1979: 57-58) said that CONSENCRACY, which the name given to what they think, is achieved through a close debate that do not allows opposition. That expression refers to consensus for the people but without the people, only ruler's decisions counts. This model resembles certain older form like Illustrated Despotism that was very important within some European countries more than three centuries ago. Certain kings or queens tried to improved people's living conditions according to their sole decision, and the people had no other choice but to accept their decisions and policies. It was, i.e., the case of Charles III in Spain during the XVIII Century or Catalina of Russia, during similar period.

The aforementioned theory of democracy is just an example of how difficult is to achieve consensus regarding the definition of "democracy." At first sight it could seem something easy to define an expression, but in fact it must be considered not only is meaning but also the particular culture and customs of each society or group of people. But, if democracy is connected with freedom of expression, it is absurd and unfair to limit it to the decision of the leaders, even though certain societies that do not have the opportunity to experiment freedoms are used to be ordered and be manipulated. Manipulation is another important concept that refrain many societies from exercising their rights, because all those who enjoy a lot of power usually find it very difficult to limit it in connection with them. Behind all these issues there is an evident lack of correct information and

education regarding the origin and explanation of what democracy is, but at the same time there are different cultures, which tried to insert a well-considered system into their own ways.

According to Kim and Tallian (1995:45) during democratic transition period, mainly in the case of South Korea, certain institutional options are excluded “because they were used by an authoritarian regime and were hence thoroughly discredited.” And other options are chosen just because they proved to be successful in other societies. They also emphasize the importance of “self-interest” in the political actors. Another interesting lesson from the Korean case can help us to explain more clearly the aforementioned Singaporean’s CONSENCRACY model. Tong Whan Park (1995:183) in Confucian societies, which intend a democratic transition it, is accepted “that politics is viewed as a management of the relationship between the rulers and the ruled.” As the rulers are considered ‘virtuous’ and legitimate “their policies were to be followed by the ruled without any serious challenges.” But such principle does not match the original idea of “democracy,” and moreover it goes against the original conception as the people’s decision is being set aside. Things changed during a democratic era as “the constituent sector are voicing their interest and making demands that the policies made by the government reflect their sectoral preferences” (Park, 1995:183). To reflect the interest of different groups such as the military, and the businessmen obliges the government to consider their needs and interests. This lead to the question of ‘national interest,’ because more than once there is a collision between it and politicians and sectarian groups.

National interest is closely related to each society past, traditions, and culture, thus to define such interest can be deemed as a priority for the society or the country. But to achieve such goal is not easy, as usually people do not have accurate information of what is going on, or they lack of knowledge about all the possibilities, that is why they usually pay more attention to their local and national interests considering foreign models or patterns. But not all foreign patterns can be adapted or properly put into effect in any society. On the other hand evolution of societies determine that they previous accepted answers may not be adequate any more, consequently their past concepts changed or are being modified due to their new experiences. What rulers think may not be the right answer for present ruled, but if people cannot express openly their opinions the situation turn out to be tense and in the midst of further conflict. For many rulers conflicts can be overcome with the use of force or the army, but sooner or later people’s discontent will be the root of everlasting problems, as it is the case in many countries like Indonesia and many African societies. On the other hand, present day ethnic and religious issues generate conflicts within the international society, which makes even harder to solve local troubles.

**Peter Häberle’s theory of Cultural Constitutional patterns:**



Analyzing constitutions Peter Häberle (2003: 1-2) concluded that they have certain real and ideal elements, some of which are human dignity, popular sovereignty, constitution as a contract, division of powers in its strict sense, the principle of State Culture, “Kulturstaat” or “Civilized State,” and so on. All of them place in the pluralistic idea of society, evolved along with multiple interactions and contacts between the nation and the Constitutional State. Constitutions mean order and clear rules for societies being their fundamental juridical and social base, making stability and permanence possible. But as people change and evolve so constitutions have also improve their principles and concept. That is why the principle of tolerance, connected with human rights, turns out to be highly important.

Peter Häberle creates the theory of Cultural Constitutional patterns having in mind that though constitutional texts seem to share similar concepts and techniques, not all of them can be put into effect in other societies. The importance of people’s needs and ways of thinking and living must be present in their agreements with their representatives. In such a way human dignity must be considered, thus the constitutional question must be based in an “anthropologic-cultural premise,” as it was stated by Peter Häberle (2003:14). Therefore among the elements of a State must be included people, power, territory and also culture, (2003:21), the combination of all these elements will give birth to a constitution with certain particular characteristics that are expression of the needs, desires, aspirations of all its members.

So, for Peter Häberle “constitutional law in the books” as well as “law in public action,” (2003:80) is key elements to understand and compare constitutions; because it is important to know the theory and its practice, otherwise only the image will be known. Being intended by the people and for the people among constitutional basic foundational principles are human basic rights, and also the rule of law, Both in theory and practice principles of equality, fundamental rights’ connotations and guarantees, social transformation and constitutional order, all of them taking into account an specific cultural background, otherwise it would be rejected by all those one who are supposed to be protected by. Constitutions are done not only for scholars but also for all the citizens (Peter Häberle, 2000:79). As he pointed out,

*Constitution is not merely a text or a normative set of rules, but also an expression of its cultural state of development, a means of cultural expression by the people, a mirror of cultural heritage and the foundation of its expectations (Peter Häberle, 2000:79)*

Reconsidering Constitutional Principles for a Globalization Period

At present one of the most important desires for mankind is its possibility of development, which can be considered as a right.<sup>15</sup> Häberle (2000:81) also included the separation of powers as another basic constitutional principle, which is necessary for present days. “Openness toward larger regions” is considered by this scholar as another typical basic of the constitutional states’ constitutions. That is why according to Häberle (2000:82) their inhabitants are placed in the world community, recognizing “universal human rights and/or certain development aid another forms of cooperation.” Thus, he concluded that “cooperative constitutional states’ moves into the place of the introverted nation-state” and the ‘image of the human being is linked to ‘humanity’ in the universal sense (2000:82). Then, he enumerates some possible reform requirements applied to the model of the constitutional states, i.e., regarding unemployment, pension system, environmental issues, ‘reduction of debt,’ ‘fight against organized crime,’ ‘challenges of the new technologies,’ ‘crisis of party democracy,’ challenges of certain religions, corruption; and migrations’ problems.

Globalization period is an expression that has no unique definition. Globalisation is defined by Roland Robertson as “a spatial set of connections among societies, individuals, the international system and the human condition” (Laädi, 1998:109). Robertson, who is deemed as the founder of the idea of Globalisation, considers the world as totality going beyond distinctions between what is global and local, and between universal and particular. Other scholars who also consider that globalization has no accurate definition are Held, McGrew, Goldblatt, and Perraton, 1999:1). But Held, McGrew, Goldblatt, and Perraton (p.1) sustain that in everyday use it reflects increased inter-connectedness in political, economic and cultural issues across the world in such a way that it creates a “shared social space” (p. 1). Held and McGrew (2001:15) define “political globalisation” as the “shifting reach of political power, authority and forms of rule” based on new organizational interests that are “trans-national” and “multi-layered.” Though their theory can be regarded as incomplete as there is no reference to different types of interest or accurate definitions it is worthwhile to define the “constitutional globalisation” as the changing and reform of previous constitutional principles considering people and societies’ present social and political interest that are the result of increased interconnection in social, cultural, political, and economic issues.

Some new ideas regarding constitutions delineated by Peter Häberle are based on the European present experience, but they can also be applied worldwide. But he also pointed out some reforms for other constitutional states, remembering that not all of them are “open societies” (Peter Häberle, 2000:86), as it is the case of North Korea, China and Cuba, which are being considered by him as

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<sup>15</sup> Peter Häberle (2000:81) mentioned the right to development as basic right of third generation, “in order to ensure social basic rights and cultural freedoms are safeguarded, together with all the details of multiple ‘dimensions,’ then we have a

socialist, so their regime is different from the rest. Islamic states, according to him are moving towards the “constitutional state model.” So for “global and Humanity reforms themes” he mentions (2000:86),

1. - “Above all, economic globalization is only bearable via a cultural regionalization, through the promotion of a firm connection to the ‘homeland.’”
2. - “protection of cultural possessions.”
3. -The principles of subsidization and “cooperative constitutional states”
4. -Environmental issues mainly all those linked to water and air.
5. -The problems of poverty, development, illiteracy and “modern manifestation of ‘human slavery’”
6. -Cultural consciences including all types of academic exchanges.
7. -An International Court of Justice.
8. -To put into effect universal human rights.

To implement such reforms it is important to remember the importance of time and History, in connection with constitutional culture and the three indispensable that are: “possibility, necessity and reality approaches.” Even though Häberle (2000:87) thinks that a “quantum of utopia” is needed it must be a “concrete utopia.” That is a utopia linked to possibilities and people’s needs, and culture. The aforementioned three elements can lead to different ways whenever they act together, but not doubt all of them must be present when a reform is intended. Because, as the constitution is for the people, it must be accepted and understood by them, and at the same time it must also be effective. Similarly, democracy and human dignity are other important and essential principles to be applied.

During present Globalization period, there are important common patterns in political regime’s as it is the case of “democracy,” and separation of powers, though these two features not always are as clear, transparent, and effective as they should be. The importance of being clear, transparent and effective can be judged as key characteristics of any constitution, and act of everyday life though it could sound as utopia, mainly regarding the last issue. But the goal for any constitution is to be clear, transparent and effective so it can be understood and accepted by the people. But in present times when communications make possible to have more information about different subject, it is imperative that the juridical base of a society set rules that can be adapted to that society’s needs and desires. As stated by Häberle (2000:86-87) there are many themes essentially connected with human rights, culture, economy and justice that must be emphasizes and revised to achieve the three already mentioned characteristics: clear, transparent, and effective.

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constitutional state ‘culture of basic rights,’ that can be implemented in different countries in different ways.” And as an

But there still are other topics, related to politics, which must also be reconsidered, as it is political manipulation of the society. For example, during election periods or just to create a base of power for politicians or political parties, there is a tendency to control society or at least part of it to compel them to behave in a require way. To control society is different from influencing society as the last one sometimes cannot be easily perceived and it is usually the result of other connected policies or attitudes. But to control is a deliberate, usually unlawful way of bending people's real intentions, needs or desires, as it was the case during to first government of Juan Domingo Peron,<sup>16</sup> in Argentina, all those who wanted to be selected and appointed to a governmental job should be members of his political party, no other people were allowed to be chosen. Even at present to give money to the people instead of encouragement citizens to find a job probed to be a common policy for many governments all over the world. But there are also other specific government attributes that lack of adequate accountability, as it is the possibility to enforce necessity or urgent decrees. Such function was intended for certain very specific situations like states of war, calamities and unexpected economic or social crisis, but more than once they have been extended to common situation like the re-distribution of international assistance for disasters. No doubt that many societies have traditions and customs that more than once can be labeled as corruption in other ones, as it is the case of certain types of social assistance instead of developing working opportunities or ensuring people better and higher standard of education.

Regarding the case of Taiwan, or the Republic of China in Taiwan, there are some issues that must be analyzed. First, it internal or local structure, as well as its social and political state of affairs; Second, it international situation. Concerning home issues, Taiwan has a constitution according to the classic definition of constitution established in the 1789 Human Rights Declaration,<sup>17</sup> including separation of powers and human rights. This constitution has been amended several times<sup>18</sup> adjusting its norms to changing situations and evolution. The constitution was enacted in 1947 in Mainland China according to the historical situation of that time, but it evolved and reforms were needed to adjust it at new state of affairs, mainly in connection with democratization and human rights. Besides most people felt that the constitution must take into account their needs and necessities, which no doubt were, and still are very different from past days. Since the end of last century Taiwanese society can freely vote and elect their authorities, enjoying freedom of speech and press, even though from time to time

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example he mentioned the case of France and "German liberty."

<sup>16</sup> Juan Domingo Peron was elected several times as President of Argentina, 1946-1952, 1952-1955, and 1974. He was a populist president who was also considered a "caudillo," a political leader loved and followed by the people without arguing about his decisions.

<sup>17</sup> Article 16, of 1789 Human Rights Declaration states that "Any society in which rights are not guaranteed, or in which the separation of powers is not defined, has no constitution. "Declarations, <http://www.derechos.net/doc/tratados/eng/79.html>

<sup>18</sup> The Constitution has been amended several times including the Temporary Provisions Effective during the Period of the Communist Rebellion (1948), and the 1991, 1992, 1994, 1997, 1999 (declared null by the Council of Grand Justices), 2000 and 2005 reforms, for more details See Susana Vittadini Andres, 2005-200:240.

there is political unrest due to its logic accommodation to new patterns. Lower courts and Council of Grand Justices, which follows the European system of constitutional revisions, but adapted to Taiwanese culture, form the Judiciary. There are several political parties and political dissension is not banned.

The international situation can be analyzed from three different aspects considering its international relations. First, with the countries that recognized it as a State; Second with Mainland China; and the last one, with the countries that do not recognized it as a State. Among the last ones, there are countries, which accept informal international relations and others with no foreign relation at all. At present there are less than thirty countries, which have formal foreign relations with Taiwan, considering it a State. Most of them from time to time stress their intention to continue their international relations without change.

The situation in connection with Mainland China is very different. Mainland China regarded Taiwan as part of its territory while Taiwan does not consider itself part of it. Such debate is over its independence or dependence that is mainly focus over its constitution and the possibility of a constitutional reform in the Republic of China, in Taiwan. The question is like the “combat” between David and Goliath, the smaller against the bigger, democracy against authoritarian decisions, freedom against submission. During past days, more than once Mainland China tried un-successfully to invade Taiwan; but at present the conflict resembles a “negotiation table,” in which democracy is the main issue. But in fact the main question is about a democratic regime or a non-democratic one, because within a democracy it is possible to discuss and express opinions while in a non-democratic one such freedoms are limited up to the extent that they find it difficult to be exercised when the leaders want to impose their ideas.

The concept of “negotiation table” (Runder Tisch) has been used by Peter Habërle (2003:14-15) to explain the transition from a totalitarian system to an open society within a constitutional State. Such theory can be perfectly applied to international relations as, in the case of Taiwan its development is being challenged by Mainland China. If Taiwan is under Mainland China ruled it would be a part of its non-democratic regime, but if it persists in its way it could continue as a democratic society enjoying present freedom and rights. The concept of “negotiation table” can be traced back to the “Solidarnosc”<sup>19</sup> created by Lech Walesa in Poland when that country was trying to find its way to

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<sup>19</sup> “The Independent and Self-Governing Trade Union Solidarność, referred to hereafter as the Union, founded as a result of worker protests and established on the basis of the Gdańsk Accords signed on 31st August 1980 by the Inter-enterprise Strike Committee and the Government Commission, basing its activity on Christian ethics and Catholic social teachings, conducts activity to protect workers' interests and fulfils their material, social and cultural aspirations” (Independent and Self-Governing Trade Union, without date). An in its 15th National Congress of Delegates' Program it aims to: “Poland's integration with the European Union is a source of both hopes and fears. Among the latter, the most important are

democracy. As Habërle pointed out such type of negotiation was present in the case of “Codesa”<sup>20</sup> in South Africa, and with some variations in many societies. It can be classified as another path towards the fulfillment of social contract, including Kant’s idea of “the touch of reason” and Rawls’ concept of “ignorance veil.” Such ideas are starting point of a Constitution, thus they can also be considered part of it. Habërle considers the English pilgrims’ pact of “Mayflower” and the oath of “Rütli”<sup>21</sup> in Switzerland and subsequent prorogations of pact as fictitious parts of Constitutional concepts connected with ‘agreements and tolerance. Therefore, the ‘negotiations tables’ are deemed as present days variations of such fictions. All these different types of agreements or accords can be classified as new versions of Rousseau’s social contract concept, though there are important differences but they have similar aims as they tend to build up a new society, or make a peaceful transition towards a democratic and fully recognized society. In fact such type of consensus is part of each group particular perception of solving conflicts and challenges. Now matter whether the conflicts are from the within or outside the society, the important fact is that there still is something that refrains them from achieving their aim.

Habërle (2003:15-16) emphasizes the importance of societies during that ‘pact of generations’ period’ as an element of the State as people is already organized and united because of its identity and plural cultural relations. It does not matter how long it will take to reach the final agreement the fact is that such society already has a political and juridical organization within its own cultural patterns.

The ‘negotiation table’ concept can be applied to all those societies whose evolution is being challenged by outside countries or societies, or by the same members of its community who cannot accept certain constitutional patterns. Therefore, the ‘negotiation table’ is the fourth element of the State (Habërle, 2003:16). The other three elements of the State are the territory, the power and the people (Habërle, 2003:21). No doubt Taiwan is a State as it fulfills all the elements that are inherent to a State. But the special situation with Mainland China added another one, which is the “negotiation table” concept, which also emphasizes its present problem with “Goliath.”

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problems of national sovereignty and identity; also the question of meeting the socio-economic standards determined by EU directives and the European Social Charter.”

20 The ANC is the African National Congress, and CODESA was a negotiating forum established by the end of 1991, aimed at producing a new constitutional dispensation for a post-apartheid South Africa. As Mandela pointed out “The ANC initiated the search for peace in our country. Since 1987 the ANC has intensively campaigned for a negotiated transfer of power. This campaign reached new heights in 1989 when the OAU, the Non-Aligned Movement and the UN General Assemble all adopted declarations supporting the position. All three declarations stated: “...that where colonial, racial and apartheid domination exists, there can be neither peace nor justice.” In keeping with this spirit, CODESA must therefore lay the basis for the elimination of racial and apartheid domination. It is only by decisive action in this regard that South Africa will be granted entry to the community of nations as a full member”

21 When the first German Habsburg Emperor, died in 1291, people from Uri, Schwyz and Unterwalden were afraid that the counts of *Habsburg* “would try to regain influence in their territories. So they swore to help each other against anyone attempting to subject them. This is the historical background of the legend of the Oath on Rütli” (History of Switzerland, 2004).

Finally, there are countries that do not recognize it as a State. Among them, there are countries, which accept informal international relations, and others with no foreign relation at all. The majority of these countries do not want to collide with Mainland China and just wait for the end of the debate. While others, like the United States of America though does not have formal diplomatic relations with Taiwan, concluded several treaties and more than once were an obstacle for Mainland China to invade the island. But there are also many countries that recognized Taiwan's right to be independent. Then, it must be concluded that Taiwan being a society that enjoys a juridical organization, is a State, though it could change its present status if all its inhabitants freely decide to do it. The case of Taiwan is similar to all those societies, which are being pressed to be under a different rule, due to religious, political or economic reasons, though up to now; there is no open presence of terrorism.

## **Conclusions**

The question of power, people's political representation and people's social and economic needs have been the main reason for the evolution of constitutions for centuries. During Classic Constitutionalism to Social Constitutionalism periods societies proved to be the most important factor for constitutional reforms. It does not mean that all over the world constitutions are really effective, but the tendency is to put into effect all its principles though many governments and political or religious factions are reluctant to change their past habits or customs.

Defining culture as the adequate and accepted response to deal or overcome conflicts and problems, its substance is in constant modification and evolution. Each society tries to find the most suitable ways to improve their livings, and this can be recognized as one of the most important present challenges and desire for societies.

Human rights and freedom are inseparable parts of Democracy and no definition could be valid without considering them. To define "democracy" as the possibility to vote from time to time is not correct unless adequate, effective and possible controls over institutions and public functionaries are implemented.

Peter Habërle's themes for global and humanity reforms can be deemed as highly important, though other must be included considering cultural regionalization. To implement such reforms it is important to remember the importance of time and History, in connection with constitutional

culture and the three indispensable that are: “possibility, necessity and reality approaches,” along with “concrete utopia.”

The Republic of China in Taiwan is a society with a juridical organization whose international status as a country ought to be accepted worldwide and prevail over the question of Mainland China. But in the end it will be Taiwanese people the ones who must decide about their “negotiation table.” Similarly, to adapt and amend its constitution considering the aforementioned themes and elements will enhance its society to strength its position from a local and international point of view.

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