Auditing Democracy in the European Union’s Member States:  
A Framework for Analysis

Introduction

The European integration process had its origins in the need to guarantee that another war would not be possible in Western Europe. As Robert Schuman argued in the public presentation of the plan that first set up the foundations of what would become the European Union, he was making a ‘proposal [that] represents the first concrete step towards a European federation, imperative for the preservation of peace’. But a peaceful federation, as Schuman proposed, can only exist, accordingly to Kant, if based on homogeneous political systems in all its constitutive members. The need for a political system, based in democracy, that ensures compatibility between the European Union Member States, was reaffirmed by G. Verheugen, member of the European Commission responsible for the enlargement process, when he argued that ‘[democracy] [i]s a central issue for the Union. It is so central that we will not even enter into membership negotiations unless a country meets this criterion. It sums up

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1 Robert Schuman, Declaração Schuman quoted in Paulo de Almeida Sande 50 Anos de Europa – os grandes textos da construção europeia, Gabinete em Portugal do Parlamento Europeu, Lisbon, 1997, pp. 16-17 (my translation)
well the values on which the Union is founded’. Democracy is, therefore, at the heart of the political system that has to exist in EU Member States, if the Union is to maintain the original objectives upon which it was founded.

The need for democratic political systems in the Member States of the European Union has been reaffirmed and implemented by the European Economic Communities and later by the European Union, not only in its relations with applicant countries, but also with third countries and even Member States. The first political position taken on the need of democratic political systems for being part of the European integration process by a European Institution can be traced to 1962, when the European Permanent Assembly approved the Birkelback Report that, reacting to a request by Spain for the establishment of a Free Trade Agreement, declared that ‘States whose Governments have not democratic legitimacy (…) cannot aspire to be admitted (…) [to] the European Communities’. By the beginning of the 1970s, the relationship between European integration and Democracy was well established, as shown by the 1972 Paris Summit. At this summit Member States decided to ‘(…) reaffirm their will of founding the development of their Community on democracy (…)’. In 1978, at the European Council at Copenhagen, in the face of the enlargement to Greece, Portugal and Spain, these countries all with histories of dictatorships in their immediate past, the Council stated that ‘the respect for and maintenance of representative democracy and human rights in each Member State are essential elements of membership of the European Communities’.

The Union has also used democratic conditionality, i.e. the imposition of conditions leading to a democratic, or more democratic system, when establishing relations with countries outside Europe, as the recent Cotonou Agreement shows. Here the EU

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4 The EPA became the European Parliament in 1979, with the first direct elections.

5 General Francisco Franco governed Spain, until 1974.


7 *Cimeira dos Nove em 1972* quoted in Paulo de Almeida Sande *50 Anos de Europa – os grandes textos da construção europeia*, opus cit., p. 81 (my translation)

8 *Idem*, p. 126.
introduced an element of democratic conditionality in the trade agreements with Africa, Caribbean and Pacific countries (ACP) when it reinforced the imposition of democracy as a pre-requisite for access to European markets by ACP’s industrial and/or agricultural products.9 The EU is, therefore, not only concerned with democracy in applicant countries, but is also in using its relations with third countries to foster democracy.

Although the imposition of democratic conditionality by the EU is not only confined to relations with prospective Member States or third countries10, the enlargement process reinforced the democratic conditionality used by the European Union when assessing the accession conditions for the enlargement of the European Union to Central and Easter European Countries (CEEC), Malta, Cyprus and Turkey. In fact, the conditions set by the European Union institutions highlight the importance of democracy in the accession process, by declaring that ‘stability of institutions guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities’11 has to exist, not only ‘in terms of legislation [but also in terms of what is] actually adopted and implemented’.12

While the democratic conditions imposed in 1993 by the European Council on applicant countries, are not new (for they were also imposed on Greece, Portugal and Spain) this is the first time that the European Commission has publicly and continually assessed the democratic situation of applicant countries, making the quality of democracy in European Union Member States a fundamental characteristic of the Union itself. In the cases of Greece, Portugal and Spain, the European institutions simply declared that they would have to have a democratic system, but did

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12 Ibid, p. 9
not assess if such a system was, in fact, present before they became members of the European Economic Community. In the cases of CEEC, Malta, Cyprus and Turkey, the European institutions set up criteria, procedures and institutions to guarantee that a certain level of democracy was present before those countries were allowed to join the Union. Although the basic obligation of democracy is the same, the attention and effort devoted to the assessment of its existence by the Union, both *de jure* and *de facto*, denotes a much greater concern with the political system than in the case of the enlargement to Greece, Portugal and Spain.

Although the European Union attaches paramount importance to democracy in this way, it is not known what understanding of democracy the EU uses. What level of democracy does the European Union is looking for in Member States and foster in applicant countries and other third countries? The answer, it is argued in this paper, can be found by looking at the democratic systems that exist in Member States of the European Union. Firstly, although the Union does apply democratic conditions for future membership, it does not publish a checklist, or the characteristics deemed necessary for accession negotiations to begin, thus making it impossible to evaluate directly the standards of democracy that it expects from applicant countries. Secondly, the Union does not explain, in its commercial relations based on the Cotonou Agreement, to what standards of democracy third countries should aspire, in order to benefit from the terms of the agreement, again making that assessment impossible. Finally, the Treaty of Amsterdam does not elaborate on the democratic obligations attached to Member States, only stating, in article 6, that ‘the Union is based on the principles of (…) democracy (…) that are common to the Member States’.¹³ It is, therefore, the democratic systems that exist in Member States that set the boundaries of what democracy is in the enlarged European Union. However, article 6 has practical implications, as the Treaty mentions in article 7, that it is the European Council that makes the final decision, by unanimity, on whether or not a Member State has infringed its democratic obligations. As the Heads of State and Government of the European Union’s Member States compose the European Council, it is *their* understanding of democracy that will be the basis for such a decision. It can be argued, consequently, that the democratic systems of Member States are, indeed, the

measure that will determine the understanding of democracy used by the Union when relating to applicant and third countries, as well as when assessing the violations of the democratic obligations of Member States.

This paper proposes to present a framework for the auditing of democratic situations in European Union’s Member States, thus trying to understand what definition of democracy the European Union uses. To do this, it will be divided into three parts: Firstly, it will offer an explanation of why it is important to audit national democracies in order to understand the European Union idea of democracy. Secondly it will debate a method for the audit of democracies. Finally, it will propose a model of western European democracy based on Ordo-Liberalism, which will be the basis for an evaluation of national democracies. The paper tries to offer, therefore, a framework to address the questions concerning different levels and understandings of democracy in European Union Member States by proposing a method and a model for the audit of European democratic systems.

**Methodology and Method**
David Beetham, in ‘The Democratic Auditing of the United Kingdom’¹⁴ (DAUK), sets out three principles that are fundamental in any process of auditing levels of democracy: the first states ‘that democracy is not an all-or-nothing affair, which a country either has or does not have. Rather it should be seen as a continuum, or a matter of degree (…)’¹⁵. Secondly, the DAUK uses several criteria or elements to assess democracy and ‘those principles needs to be broken down into a number of separate criteria, or indices, for the purpose of evaluation. A country that performs highly on one criterion may not necessarily do so on another’.¹⁶ Finally, ‘the performance of any given country is likely to vary in respect of the different indicators used. (…) [It does not] make sense to aggregate (…) different criteria into a single measure of democracy, since is important (…) to know (…) where (…) [a] country does well (…) and where it is open to improvement’.¹⁷ These principles aim at creating an ‘appropriate and realistic standard (…) against which a country’s

¹⁵ *Ibid*, p. 7
¹⁶ *Ibid*, p. 7
¹⁷ *Ibid*, p. 7
performance in each aspect can be assessed'. The author, however, recognises that ‘where to set the standard of attainment in each aspect cannot be an uncontroversial matter’.19

This paper is based, therefore, on an assessment of the five main elements (political rights; the rule of law; electoral rights; accountability; and economic and social democracy) and several sub-elements of democracy that are set out in the theoretical model of western European democracy. Following Beetham principles, the aggregation of different elements or characteristics of democracy may result in a less than complete understanding of the standards of democracy that exists in a given country at a given moment. The elements and sub-elements should, therefore, be assessed individually. However, a hierarchical relation between the elements of democracy exists20 and should be considered when assessing the standards of democracy of any political unity under study. The hierarchy used in this work is visible in the organisation of elements and sub-elements in the model and should be taken into consideration when assessing democratic standards. In fact, it should appear clear that the higher the elements appear in the chart, the more important they are in the assessment of democracy, because sub-elements are constitutive, or necessary parts, of the other characteristics that appear more prominently in the chart.

18 Ibid, pp. 7-8
19 Ibid, p. 8
20 See, inter alia, Gerardo Munck and Jay Verkuilen, ‘Conceptualising and Measuring Democracy – Evaluating Alternative Indices’ in Comparative Political Studies, 35/1:5-34, 2002
Each of the five main elements is composed of several sub-elements and each of the sub-elements is, also, composed of ‘third level’ elements that perform the same role as sub-elements in relation to the main elements. In order to assess the existence of the main elements of the model, the performance of the audited States in sub-elements is fundamental. ‘Third level’ elements are, naturally, less fundamental for the auditing of levels of democracy in Europe but they do perform a role in assessing levels of compliance with the sub-elements presented in the model that are fundamental for the auditing of the five main elements.

In order to evaluate properly the level of democracy in the EU Member States, it is, therefore, necessary to assess the existence of sub-elements, as these will indicate the existence of main elements that are the fundaments of the model. ‘Third level elements’ will only be used in cases where sub-elements do not, by themselves, allow for the audit of the main elements.

In order to audit the levels of democracy, this paper proposes a three-stage approach: (1) Analysis of primary and secondary legislation; (2) Analysis of implementation of legislation and (3) interviews. Stage one will focus on the legal framework that
regulates sub-elements in each of the case studies. Stage two will check the effective implementation of existing legislation. Finally, stage three will clarify the gaps at stages one and two.

**Stage 1 – Analysis of primary and secondary legislation**

In order to assess the existence of legal provisions for each of the sub-elements, a table is constructed listing the elements under analysis. Each element will be checked against the existing legal provisions for each case study, to assess if they are present in the legal framework and ticked in the respective country/element box of the table.

There are two foreseeable difficulties in this stage: The first concerns the language of the legal documents under analysis. Although Constitutions are published in more than one language (normally in original language and English), subsidiary legislation may not be available in a language that the researcher may be able to use. To overcome this difficulty, Internet translation websites may be used or other translation services.

The second difficulty relates to the availability of secondary legislation. All legislation is published and accessible, but it may prove difficult to find the right legal document in a given legal framework. To overcome this difficulty, legal databases available in the Internet, International Organisations (like the International Law Commission of the United Nations) and NGOs (such as International Commission of Jurists) that work in legal systems, as well as the diplomatic representations of the countries in question can be consulted.

**Stage 2 – Analysis of implementation of legislation**

After having assessing the existence of the sub-elements in the legal framework, it is important to assess their level of implementation. It is clear, therefore, that only those sub-elements that are present in the legal systems under analysis will be considered at this second stage of the research. The evaluation of the level of implementation of legislation will be based in the assessments made by International Organisations like UN, Council of Europe, OSCE or the Inter-Parliamentary Union and International NGOs, like Amnesty International, Freedom House, Transparency International, Minority Rights Risk Group International, Suffrage International, European Centre...
for Minority Issues, Human Rights Watch, Centre International pour les Droits et Democratie, among others.

There is one main difficulty in this stage of the research: It relates to the credibility of the assessments made by the NGOs that will be used. This issue can be addressed by using NGOs that are constantly referred as reliable sources in the literature on auditing democracy, namely, but not exclusively, in the International Institute for Democracy and Electoral Assistance\textsuperscript{21} assessments.

\textit{Stage 3 – Interviews}

Interviews should be used as supplementary source of information and/or explanation for the findings of stages 1 and 2 of the research. Having a residual role in the proposed methodology, the interviewees should be selected in accordance with the need to further explore or clarify issues that will undoubtedly emerge.

\textbf{A Model of European Democracy}

Although having in place a democratic system is a fundamental condition for accession and participation\textsuperscript{22} in the European Union, the word democracy is a contested concept and the characteristics that are key elements of a modern democratic system are not generally agreed on. All one has to do is to look at the different definitions, characterisations, explanations and theories that try to capture the concept of democracy to understand its fluidity\textsuperscript{23}. Moreover, the fundamental characteristics of a democratic system coexist, in Europe, in different degrees in different countries.


As stated earlier, this work aims to evaluate the democratic situation in the European Union Member States and in the applicant countries\(^\text{24}\). To be able to measure democracy, it is important to have a theoretical reference-point for what democracy should be in order to be able to measure the different standards of democratic systems that co-exist in the European continent.

To respond to this objective, it is necessary to define the characteristics of a democratic regime and the relations between the several elements that constitute it. This “checklist” of democracy will use the key elements of a model of European democracy that were mentioned before. Although this division is artificial, for a theoretical explanation of democratic will only be complete if makes use of all the characteristics of democracy, it is justified in order to make the chapter more understandable. In other words, a democracy should have all the elements that are part of its theoretical construction. However unnatural, the fact that each characteristic will be discussed separately is acceptable for the sake of methodological clarification.

**An European Theory of Democracy**

The idea of democracy has been the object of study and debate since classical Greece and has been evolving ever since. Naturally, the theoretical debate about what democracy should be changed throughout the centuries. In this paper I am not concerned with the history of political thought\(^\text{25}\) nor with the history of democracy\(^\text{26}\), but with the characteristics of contemporary European democracy.

The debate around the concept of democracy, not only in Europe but also elsewhere in the world, is generally confined to the objectives of a democratic system, *i.e.*, the theorists of democracy tend to start from a basic concept that will justifies the theoretical framework that follows\(^\text{27}\). Although this debate does not fit directly the objectives of the present text, it is important situate oneself in it, for a theoretical

\(^{24}\) The distinction is important for democracy does not have the same meaning in every part of the world. See Federico Mayor, *Princípios Democráticos e Governação*, in João Carlos Espada (ed.), *A Invenção Democrática*, Instituto de Ciências Sociais da Universidade de Lisboa, Lisbon, 2000, p. 70;


\(^{26}\) See footnote 6, above;

framework is fundamental for the definition of the characteristics of a European democratic system.

Palous argue that ‘the debate on the state of democracy in the contemporary world will remind us (...) what such a social contract is about: (...) one that flourish[es] (sic) only in freedom of the polis and openness of the public space; (...) where all functions are performed under the rule of law; in which the respect for the privacy and the individual rights of the citizens is upheld (...).28 And he adds that ‘without the proper institutional architecture, the life of a democratic society would most likely be emotionally loaded (...) in short, without individuals truly committed to the democratic values of freedom and equality, such a society (...) could not come into being’.29 This definition of modern democracy comprises three main elements, in which this research will embed: democracy should be based on freedom, equality and the rule of law. A question remains open in this definition: what degree of equality should democracy promote? If the answer lies only in political equality, then an argument can be made about the impossibility of true political equality without economic equality or as MacPherson argues, theories that are only concerned with political questions, do not give enough attention, if any, to economic issues, thus denying the concept of ‘economic democracy’.30 The rather different argument can be found in, inter alia, Nozick who argues that the State should, as much in political life as in economic life, abstain from excessive intervention, because an intense presence of the State will lead to the end of individual freedom.31

Whilst not denying that either freedom or equality will be completely attainable, it is also true that the European societies try to balance both principles32 as they are not mutually exclusive to each other. As Hassner argued: ‘European values, such as

29 Idem
30 C.B. MacPherson, The Rise and Fall of Economic Justice and Other Essays, opus cit., p.p. 35 – 43. See, for a more general critique to the liberal understanding of equality, inter alia, Maureene Ramsay, What’s Wrong With Liberalism? A Radical Critique of Liberal Political Philosophy, Leicester University Press, London and Washington, 1997, pp. 68-100
31 Robert Nozick, Anarchy, State and Utopia, Basil Blackwell, Oxford, 1974;
respect for (…) human rights [and] the social dimension (…) which the rest of world sometimes ignores, are part of [European] shared identity. (…) Another part of European identity is (…) being able to give the “underdogs” a hand, instead of just leaving them to their fate.’

A European model of democracy should, therefore, strive to incorporate freedom and equality, if it is to speak to European citizens.

Ordo-Liberalism

The apparent conflict between freedom and equality was addressed by the Fribourg School in what is known as Ordo-Liberal theory. This theory tries to reconcile the ‘(…) advantages of the efficiency of the market system [with the] freedom of the individual’. Very aware of the result to Germany and Europe that arose from the close relationship between National Socialism and the great economic powers of Germany, Ordo-Liberals add to the traditional liberal distrust of public economic power the role that private economic power can have on the limitation to personal freedom. As Peacock and Willgerodt argue: ‘(…) the object of economic policy is to maximise individual satisfaction where the individual is judge of his own satisfaction and also has the most complete knowledge of goods and services which will promote that satisfaction.’

And yet, Ordo-Liberalism does not have an economic perspective on society but is based on ‘humanist values (…) set out to create a tolerant and human society that

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35 Ordo derives from the Latin, meaning order;


37 Idem, p. 9;

38 Alan Peacock and Hans Willgerodt, ‘Overall View of the German Liberal Movement’ in Alan Peacock and Hans Willgerodt (ed.) German Neo-Liberals and the Social Market Economy, opus cit. P. 4;
would protect human dignity and personal freedom\textsuperscript{39}, inspired by the principles of the 1891 Encyclical \textit{Rerum Novarum}.\textsuperscript{40} It aims at three objectives: the existence of an economic and political order; the existence of a system of welfare state and the preservation of freedom and autonomy\textsuperscript{41}. To reach these objectives, Ordo-Liberalism applies to economic life the same principles of law as classic liberalism when it defends a system of rule of law that will limit state powers, accompanied by a system of redistribution of wealth that ‘[would] reduce particular hardship within society’\textsuperscript{42}.

Due to the importance of Ordo-Liberalism, not only as a theory of State organisation\textsuperscript{43}, but also as a framework for the European Union’s institutions and practice\textsuperscript{44}, it is necessary to explain briefly the proposals presented by the Fribourg School.

As mentioned earlier, Ordo-Liberalism, like the Classic Liberalism, is concerned with the preservation of individual freedom. However, due to the pre-war relations between the German government and economic powers, Ordo-liberals understand that it is not only from the political sphere that danger can come. Turning their attention to the negative impact that classic economic liberalism may have on individual freedom, Ordo-Liberalism responds to this question by extending to the economic field the traditional solutions that classic liberalism has proposed to the political sphere. Therefore, Ordo-liberalism defends the existence of an economic constitution that working together with a political constitution establishes a set of rules, which will regulate relations in society. In other words, Ordo-liberalism ‘(…) must be presented

\textsuperscript{39} David J. Gerber, ‘Constitutionalizing the Economy: German Neo-Liberalism, Competition Law and the “New” Europe’ in American Journal of Comparative Law, opus cit., p. 36;
\textsuperscript{40} Sylvain Breuer, The Social Market Economy: Birth of an Economic Style, opus cit., p. 9;
\textsuperscript{41} Norman P. Berry, ‘Political and Economic Thought of German Neo-Liberals’ in Alan Peacock and Hans Willgerodt (ed.) German Neo-Liberals and the Social Market Economy, opus cit., p. 109;
\textsuperscript{42} David J. Gerber, ‘Constitutionalizing the Economy: German Neo-Liberalism, Competition Law and the “New” Europe’ in American Journal of Comparative Law, opus cit., p. 38;
\textsuperscript{43} The Ordo-Liberalism is the theoretical basis for the “social economic market” that was the base for the “German miracle” after the World War II;
as a sophisticated relationship between economic, legal, social and ethical systems that co-exist in society. To reach these objectives, Ordo-liberals, contrary to classic liberals, defend the existence of a strong State that will be able to resist the influence of organised interests but seeks to avoid the State becoming too powerful, therefore, jeopardising individual freedom. In this system the independence of the judiciary plays a fundamental role.

Equally important for Ordo-liberalism are the social conditions that should be present in society. They argue that ‘the state intervention is not just ‘sometimes justified’ but is necessary if the ‘free’ market is to work for the good of society’, for the notion of human dignity is central to Ordo-liberalism. As David Gerber argues,

The social dimension [of Ordo-liberalism] attached new values to the wealth-production capacity of the market. Ordo-liberalism (…) demanded that the market be more than an autonomous mechanism supplying individuals with economic benefits according to their abilities or their social or political power. It was conceived as part of the process of social integration. Competition and the market were no longer to be viewed as enemies of the weaker members of society, but as their allies

Naturally, several criticisms are raised against Ordo-liberal theory. As it is not the objective of this work to debate all of them, I shall underline the most important of these that relates to the capacity of the judicial system to assume the role and functions that are committed to it under this system. This and other critiques do not diminish the main virtue of Ordo-liberal theory, i.e. to be able to make a synthesis of liberalism and socialism, presenting a theoretical solution that systematises the

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45 Norman P. Berry, ‘Political and Economic Thought of German Neo-Liberals’ in Alan Peacock and Hans Willgerodt (ed.) German Neo-Liberals and the Social Market Economy, opus cit., p. 113;
46 Jack Wiseman, ‘Social Policy and Social Market Economy’ in Alan Peacock and Hans Willgerodt (ed.) German Neo-Liberals and the Social Market Economy, opus cit., p. 163;
47 David J. Gerber, ‘Constitutionalizing the Economy: German Neo-Liberalism, Competition Law and the “New” Europe’ in American Journal of Comparative Law, opus cit., p.83 – 84;
48 For some critics to Ordo-liberalism see, inter alia, David J. Gerber, ‘Constitutionalizing the Economy: German Neo-Liberalism, Competition Law and the “New” Europe’ in American Journal of Comparative Law, opus cit., p.75 – 76;
heritage from Classical Greece, the Roman Republic and the Judaic-Christian traditions that lie at the heart to the European civilisation\textsuperscript{49}.

Summarising the arguments presented thus far, the basis of the European democratic system lies in the conjugation of the proposals of the classic liberalism with the social concerns of socialism. Ordo-liberalism presents a synthesis of the two positions, taking from classic Liberalism the defence of fundamental rights and from Socialism its social concerns and using the rule of law as mechanism that will ensure that both freedom and equality will exist in society.

As this paper is concerned with a framework for the auditing of standards of democracy in European Union’s Member States and applicant countries, it will use Ordo-liberalism as the theoretical basis of the model of western European democracy that will be discuss later. The model will, therefore, set the elements that need to be present for the existence of freedom and equality in the European Union’s Member States.

\textbf{Characteristics of a Modern European Democracy}

A theory of democracy will not be valid if is not operational, but neither should it be confined to describing what is possible to achieve. This is the principle defended by Sartori when he argues that ‘what democracy \textit{is} cannot be separated from what democracy \textit{should be}’\textsuperscript{50}. From the theoretical departure point presented earlier, I shall look at the characteristics that, combined, make up a European democracy. It is clear that the practical application of a theory of democracy will be less then what it should be or, in other words, what democracy \textit{is} will never be what democracy \textit{should be}.

Drawing on the theoretical section of this paper, a European democracy should be based on the concepts of freedom and equality. In this sense, a democratic system should have the institutions and systems needed to obtain and maintain those goals.

This section will look at the elements that constitute a modern European democracy. The presentation of the elements that are present in an ideal European modern democracy is purely for methodological purposes, for a democratic system should have all the elements that will be discussed. Following this method, and using the principles and precautions mentioned by David Beetham in his Democratic Audit of the United Kingdom, I shall discuss successively the questions of political rights, rule of law, electoral rights, accountability, economic rights and, finally, social rights.

An initial clarification is needed. This work is concerned with the democratic situation in the European Union’s Member States and in those European States that are applying to become Members. For this reason, the characteristics under consideration will be those that apply to a Western European democratic system. Although this is open to criticism, they do not apply to the European Union enlargement process, for the question under scrutiny is the participation on an organisation that has rules and procedures that emanate directly from its western European origins. In fact, joining the European Union is a free and sovereign decision taken by each applicant State, knowing that it will have to accept the principles, rules and regulations of the organisation, in what Christopher Preston defines as part of the ‘Classical Method of Enlargement’, thus justifying the use of a western approach to the democratic system in the evaluation of applicant States.

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51 See above, p.p. 11-12
52 Some elements of a democratic system are more developed, both in the literature and in the practice of States, then other. For this reason, more attention will be devoted to the elements that are less developed than to the ones that have known a more rapid acceptance on State politics. This option will dictated that a certain unbalance will be unavoidable between the several elements under discussion;
54 See Christopher Preston, *Enlargement and Integration in the European Union*, Routledge, London, 1997. However, the CEEC involvement in the negotiations leading to the Constitutional Treaty, namely the Polish opposition to the proposed voting system shows that the present enlargement does not follows Preston’s “classical method of enlargement”.
In order to characterise the European democratic system used in this work, I shall use as main sources of the Model, four international legal instruments, of which three are closed connected with Europe. The latter are the Charter of Fundamental Rights of the European Union⁵⁵ (EU), The Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe⁵⁶ of the Council of Europe (CoE) and the Charter of Paris for a New Europe⁵⁷ of the Organisation for Security and Co-operation in Europe (OSCE) and, not exclusively related to Europe, but with relevance to this work, the Universal Declaration of Human Rights⁵⁸ of the United Nations. This option is justified, not only by the relevance and importance of the organisations and international instruments but also by the fundamental role that rights and legislation assume in a democratic system that has a theoretical justification based on Ordo-Liberalism. I shall use, also, the relevant literature for the characterisation and evaluation of a European democratic system. All these sources will be combined for the definition of which elements are necessary to define and how they relate to each other, in order to have a model of western European democracy.

Political Rights

The existence and respect for political rights of citizens has been the basis of practically all democratic systems, although the content of those rights has been altered and enlarged, following the evolution of the idea of democracy itself and, consequently, of democratic governments. They are not, therefore, static values but commutative ones or, in other words, as the theory of democracy evolves, new political rights are added to the ones already existing and these adopted themselves, becoming, in general, more inclusive⁵⁹.

If one compares the elements of fundamental rights on the documents mentioned previously, one would note that the definition of basic fundamental rights varies accordingly to the organisation that defines them, although some aspects remain

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⁵⁵ Charter of Fundamental Rights of the European Union, Office of Official Publications of the European Communities, Luxembourg, 2001:
⁵⁸ Universal Declaration of Human Rights in http://www.un.org/Overview/rights.html:
common to all organisations. Among these are the freedoms of assembly, association, conscience, expression, movement, religion and thought as well as the prohibition of torture and inhuman or degrading punishment or treatment. Equally common to all the official documents is respect for linguistic and religious diversity. These common aspects do not, by themselves, guarantee the existence of political rights, for they lack several important key elements that are present in some of the documents but not in all of them. However, some constituents here present should be followed by other dispositions that would make the first ones possible. One clear example of this is the presence in all documents of a disposition proclaiming the freedom of expression but the lack in all but the Charter of Fundamental Rights of the European Union and the Charter of Paris for a New Europe, of the apparent obvious dispositions proclaiming the freedom of information and of the media, that is contemplated only by the European Union. In the same line, a general disposition forbidding any kind of censorship over the media is an integral part of the right of expression and information. Finally, and although not deserving the rank of basic political right, the dispersion of ownership of the media is, in fact, a necessity when protecting these two freedoms. In fact, if the media belong to the same entity, or to a very restricted group of entities, freedom of information becomes more difficult to be guarantee, if at all possible. The need for freedom of information has a very clear reason: It is impossible to make free decisions if one does not possess the tools to make them, and in democracy, one of the most important tools to a free decision, is the access to free information. As John Keane puts it ‘Only (…) a plurality of communication media, can openly and fairly select certain kinds of dangers for the public attention (…)’ 60.

When one does not search for consensus among all organisations, one finds oneself in the position of being able to add to the basic political rights an important number of elements that are central themselves. In fact, concepts as dignity, equality between men and women, no slavery, no discrimination, no forced work, no collective expulsion, respect for cultural diversity, right to integrity, liberty, life, private life, asylum, marry, found a family, have family life, including the equality between

59 See footnote 6., above;
spouses\textsuperscript{61}, and security appear as basic fundamental rights. It is an enormous advance in the characteristics that form the whole of basic rights. Nevertheless, some organisations are more advanced than others in the assumption of these rights are. Moreover, if one focused on one of the most important rights in a theory of democracy, the right not to be discriminated, one will find that although almost all organisations proclaim this right\textsuperscript{62}, but the reasons on that discrimination will not be tolerate varies among them. For if features such as sex, race, colour, ethnic and social origin, language, religion, property, birth and membership or association with a national minority are common to at least three of the four organisations under study, other aspects such as opinion\textsuperscript{63}, nationality are common to only two organisations\textsuperscript{64} and only the European Union expresses concern with discrimination on the basis of disability, age, and sexual orientation. The same situation can be described with the right to integrity, for only the European Union and the United Nations proclaim this right and the former organisation does not add to the concept, while the European Union does so by specifying four situations that it considers included in this right\textsuperscript{65}.

Finally, two situations deserve special attention. The first of these is the concern that the European Union shows about the possible misuse of the new technologies of information when it proclaims the right of the protection of personal data. The second situation relates to the death penalty. On the latter, the European Union and the Council of Europe both proclaim the prohibition of the death penalty but a difference can be found between the two institutions for if the Council of Europe concedes on the death penalty in cases of war, the European Union does not so and adds the prohibition of removal, expulsion or extradition when a serious risk of death penalty, torture or degrading or inhuman treatment can be expected.

The literature on measuring levels of democracy does not add any other characteristic to the ones that are mentioned by the international organisations, when analysed

\textsuperscript{61} Only the Council of Europe refers the equality between spouses. See table 1, \textit{under};
\textsuperscript{62} The OSCE does not mention non-discrimination except in the case of “membership or association with a national minority”. See table 1, \textit{under};
\textsuperscript{63} Both the Council of Europe and the OSCE do not mention this characteristic. See table 1, \textit{under};
\textsuperscript{64} Both the Council of Europe and the United Nations do not mention this characteristic. See table 1, \textit{under};
\textsuperscript{65} These are “free and informed consent on medical acts; prohibition of eugenic practices; prohibition of sale of human bodies or parts of human bodies and prohibition of cloning for human reproduction. See table 1, \textit{under};
together\textsuperscript{66} that confirms the level of inclusion that the international legal instruments have achieved.

Political rights and fundamental freedoms are central to any democratic system, whether European or not. Without the highest standards and the institutional mechanisms to protect them, one cannot say that one is in the presence of a democratic system of government, for, as Robert Dahl argues, ‘rights are among the essential building blocks of a democratic process of government’\textsuperscript{67}. For this reason, a democratic system is composed of all the elements mentioned in the text above, that are presented in table 1.

Table 1 - POLITICAL RIGHTS

<table>
<thead>
<tr>
<th></th>
<th>EU</th>
<th>UN</th>
<th>CoE</th>
<th>OSCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dignity</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equality between men and women</td>
<td>✓(1)</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Freedom of assembly</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Freedom of association</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Freedom of conscience</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Freedom of expression</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Freedom of information</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Freedom of the media</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Freedom of movement</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Freedom of religion</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Freedom of residence</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Freedom of thought</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>No collective expulsions</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>No Death Penalty</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
</tbody>
</table>


| **No removal, expulsion or extradition when in serious risk of death penalty, torture or degrading or inhuman treatment** | ✓ | ✓ | ✓ | ✓ |
| **No forced work** | ✓ | ✓ | ✓ | ✓ |
| **No inhuman or degrading punishment or treatment** | ✓ | ✓ | ✓ | ✓ |
| **No slavery** | ✓ | ✓ | ✓ | ✓ |
| **No torture** | ✓ | ✓ | ✓ | ✓ |
| **No trafficking of human beings** | ✓ | ✓ | ✓ | ✓ |
| **Non-discrimination on the basis of** | ✓ | ✓ | ✓ | ✓ |
| **Sex** | ✓ | ✓ | ✓ | ✓ |
| **Race** | ✓ | ✓ | ✓ | ✓ |
| **Colour** | ✓ | ✓ | ✓ | ✓ |
| **Ethnic origin** | ✓ | ✓ | ✓ | ✓ |
| **Social origin** | ✓ | ✓ | ✓ | ✓ |
| **Genetic features** | ✓ | ✓ | ✓ | ✓ |
| **Language** | ✓ | ✓ | ✓ | ✓ |
| **Religion** | ✓ | ✓ | ✓ | ✓ |
| **Belief** | ✓ | ✓ | ✓ | ✓ |
| **Opinion** | ✓ | ✓ | ✓ | ✓ |
| **Political opinion** | ✓ | ✓ | ✓ | ✓ |
| **Membership or association with a national minority** | ✓ | ✓ | ✓ | ✓ |
| **Property** | ✓ | ✓ | ✓ | ✓ |
| **Birth** | ✓ | ✓ | ✓ | ✓ |
| **Disability** | ✓ | ✓ | ✓ | ✓ |
| **Age** | ✓ | ✓ | ✓ | ✓ |
| **Sexual orientation** | ✓ | ✓ | ✓ | ✓ |
| **Nationality** | ✓ (3) | ✓ | ✓ | ✓ |
| **Protection of personal data** | ✓ | ✓ | ✓ | ✓ |
| **Respect for cultural diversity** | ✓ | ✓ | ✓ | ✓ |
| **Respect for linguistic diversity** | ✓ | ✓ | ✓ | ✓ |
| **Respect for religious diversity** | ✓ | ✓ | ✓ | ✓ |
| **Right to asylum** | ✓ | ✓ (4) | ✓ | ✓ |
| **Right to conscientious objection** | ✓ | ✓ | ✓ | ✓ |
Right to marry, found a family and family life

Equality of the Spouses

Right to Integrity including:
Free and informed consent on medicine
No eugenic
No sale of human body or parts
No human reproductive cloning

Right to liberty
Right to life
Right to private life
Right to security

(1) This disposition does not prevent measures design to ensure providing for specific advantages to under-represented sex.
(2) Applies within the scope of the European Treaties.
(3) Applies only to political persecution and other situations in agreement with the UN’s principles.

Rule of Law

As referred to previously, the rule of law, i.e. the equality of all before the law, is fundamental for the very existence of a democratic system that is based on the Ordo-Liberal theories. In fact, to have a democracy it is not enough to have laws, if those are not mandatory to everyone in the same way, with no exception. On the other hand, the existence of a legal system is not, in itself, guarantee of democracy, for a legal system may violate the basic principles of fundamental rights and freedoms that were mentioned early. It is, therefore, important to remember that the division of the characteristics of a democratic system presented here is used for methodological reasons only.

Common to the organisations under study, one can find the concepts that refer to the right to a fair and public trial and to effective remedy. These are three fundamental

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70 See table 2, *under*;
characteristics of the rule of law, but do not fulfil the concept. In fact, the EU, the UN and the CoE mention many other characteristics. The OSCE is the organisation that devotes less attention to this question. The CoE, on the other hand, is, among the four organisations, the one that more attention pays to the elements of the rule of law. I shall, for that reason, use the CoE’s approach to the rule of law as the main document to be considered over the discussion of the characteristics of the rule of law in a European democratic system. It is, however, important to underline that the EU presents all the elements referred to by the CoE, with the exception of “compensation for wrongful conviction” and the UN only does not mention the “right not to be prosecuted twice for the same offence”.

As mentioned before, all organisations have as a starting point what they consider to be the basic feature of rule of law: the fact that everyone is equal before the law. But just to state that is not enough to guarantee that indeed all have the right to equality before the law. In effect, many other aspects of a judicial system based on the equality before the law have to be present to ensure that equality. For example, for every member of a society to be considered equal before the law, effective access to justice has to be present and the law has to be administrated by impartial and independent courts. But even if all of the preceding elements are present, it is not clear that the rule of law will prevail. In fact, equality before the law demands that the defendant has the right to defence, to be advised and to be represented. These guarantees, which may be considered before a trial itself, are accompanied by guarantees that have to exist during the trial. Such guarantees are the right to the presumption of innocence and the right to proportionality of punishment. Adding to the characteristics already mentioned, one other appears common to the three organisations, this being the prohibition of retroactivity of the law, that means that one can only be accused of something that was considered unlawful at the time of the deed. Finally, the European Union and the Council of Europe add one more guarantee to the convicted person: in the case of a change in the law, the convicted is entitled to a lighter penalty either the one that he or she was convicted by or the new legal framework, depending on which will be most beneficiary.
In a democratic system that has in its base the Ordo-Liberal theory, the rule of law is one of the main elements needed for the existence and deepening of a European democratic system, for the rule of law as ‘(...) a set of rules, norms, and institutionalized processes which function to create a predictable, comprehensible rules that limit the discretion of state officials’\(^2\) allows, not only the coherent and peaceful organisation of the democratic system, but also control of the power, both of the state and the citizens to guarantee the individual freedom of all. As such, the elements of table 2. are fundamental for the existence of a system of rule of law.

Table 2 - Rule of Law

<table>
<thead>
<tr>
<th></th>
<th>EU</th>
<th>UN</th>
<th>CoE</th>
<th>OSCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation for wrongful conviction</td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Effective aid to access to justice</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Equality before the law</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Impartial and independent court</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>No imprisonment for debt</td>
<td></td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>No retroactivity of the law</td>
<td></td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Right to not be trial twice for the same offence</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Right to a fair and public trial</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Right to be advised</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Right to be represented</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Right to defence</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Right to effective remedy</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Right to proportionality of punishment</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Right to the lighter penalty in case of change in the law</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right to the presumption of innocence</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

Electoral Rights

Elections are the main tools used in a democratic system to allow for the effective control by citizens over government and, through that control, the exercise of one of the most distinctive characteristics of a democratic system: ‘(...) the change of

government without bloodshed\textsuperscript{73}. Moreover, in a democratic system it is through elections that the legislative body is selected which, in a European democracy based on Ordo-Liberalism and because of the fundamental role that law plays, the elements of electoral rights and procedures become even more relevant.

Although several authors have written extensively about the role of the electoral process in a democratic system\textsuperscript{74} it is not my intention to enter the debate on the most democratic electoral system, but to discuss the characteristics of the European democratic electoral system. As in the previous sections, I shall start by comparing and debating the elements of electoral rights present by the EU, CoE, UN and OSCE\textsuperscript{75}. As we will verify, those are very incomplete and do not guarantee the level of protection necessary in a western European system of democracy.

In common with the four organisations are only two very fundamental aspects of electoral rights: The very existence of elections and the fact that they should be fair and free. The European Union, United Nations and Council of Europe add to the latter the dispositions that elections should be also direct, universal and secret. The European Union, only relating to European elections and Local elections, guarantees the rights to vote and to stand for elected office to the citizens of the Union. It is a fundamental question and one understands the fact that the European Union can only guarantee the rights and freedoms of its citizens where the Union is competent. Nevertheless, in a democratic system, the right to vote and be elected in national elections is fundamental for the free choice of the elector. In other words: the right that the European Union recognises to its citizens where European and local elections are concerned, has to exist, and be fully recognised in the democratic organisation of States. It is arguable that the fact that elections have to be universal already covers the


\textsuperscript{75} See Table 3, \textit{below};
full inclusion of voting rights, but this disposition does not cover the other necessary right of full inclusion standing for elected office. On the other hand, none of the organisations declares that elections should be held periodically, or, in other words, the existence of a time limit for the exercise of political power has to be regulated and known. In fact, if this element is absent, nothing impedes a political party, after having been dully elected, from staying in power indefinitely, leading to the collapse of the whole democratic system. In conclusion, election rights should guarantee the existence of direct, periodical, universal, free, fair and secret elections with the full inclusion on the right to vote and the right to stand for elected office.

But this is not the only imperfection that one can encounter in the approach to election rights of the four organisations. One other fundamental characteristic that is absent relates to the existence and independence of the political party system. One may argue that this is included in the provision that guarantees the freedom of association, but given the importance of the political party system to any democratic election, a clear reference should be presented. Accordingly to Anthony King, political parties have a fundamental role in structuring the vote, integrating and mobilising mass publics, recruiting political leaders, organising governments, formulating public policy and aggregating interests, thus performing a different role from pressure groups. In fact, pressure groups do not, normally, want to be elected for office or have a global vision and solutions to the several different issues that a society faces. They, on the contrary, are focus in one set of issues, that, important as it may be, does not permit an integrated and coherent response to questions, as a political party should do. It is not my aim to reduce the importance of pressure groups in a democratic system. But the simple existence of a political party system is not a guarantee, in itself, of the existence of a democratic electoral system. A political party system has to have some characteristics that will allow one to speak of a democratic electoral process. The most important characteristic is the existence of at least more then one party that present different solutions for existing issues. Only with a competitive political party system, the citizen have the freedom to choose from a variety of solutions, the one

76 See above;
78 For the differences between pressure groups and political parties, see idem., p.p. 130-131;
that he or she thinks is the most appropriate. In fact, if a political party system presents only one party, then freedom of choice of the elector will not exist, or, even if there are several parties but they present the same solutions, the freedom of choice will be only theoretical. Finally, the political party system has to be independent from government. If the political parties are all dependent on the government, than there will be no freedom of modification in politics, for, empirically, it is possible to argue that none of the parties will present different solutions than the ones existing. One final point must be underlined: the majority must respect the rights of expression, to present legislation and to representation, among others, of minority parties.

Not undermining the fundamental importance of the political party system, one should not reduce the individual freedom in such a relevant aspect of democracy to it. It is, in fact, equally important that the independent candidates present their views and proposals to elections and, if freely chosen by the voters, be elected to take office. Consequently, electoral rights must allow for independent candidates to appear and fairly dispute the votes of the electors.

Equally important for the due course of electoral democratic system is the existence of freedom of information, freedom of the press and freedom of expression but as these three aspects have been dealt with in the section that deals with basic political rights, I shall refrain from repeating them here. Again, as said before, democracy cannot have its elements artificially separated and in doing so in this work, is due exclusively to methodological systematisation of the subject under study. On the same grounds, I shall not mention in this sub-section the ever-continuing debate on the limits of majority rule in an electoral democracy. The principles of the respect of the rights of minorities are, in themselves, a serious and effective limitation to the power of the majority. In other words, democracy is characterised by the rule of the majority, within the limits of the rights and freedom of the minority.

79 See above, session 3.1;
Also important for democracy is the question of the voting system for it determines the true outcome of the elector’s choice. Although many systems can be presented\(^1\), the main feature that should be present relates to the representation that any given electoral system allows. In fact, the electoral system should permit that different voices and opinions are represented in the legislative body, reflecting, as accurately as possible, the choices of the electors\(^2\).

Finally, one further aspect should be considered when looking at electoral rights. This relates to the need of those positions holding decision power to be subject to the electoral process. Saward argues that the level of democracy will be greater if all positions that have decision power are elected and, consequently, that level of democracy will diminish if some places that have decision power are filed throughout by nomination\(^3\). Although impossible to achieve in practice, this argument raises the question that will be addressed in the following section, of the need for the accountability of the holders of powers of decision.

As referred to before, electoral rights are a fundamental cornerstone of any system of democracy for they allow not only for the periodical control of power, that will be the object of discussion in the sub-section dedicated to accountability, but also for the peaceful change of government. It is of such paramount importance to the whole subject of democracy that one cannot accept the existence of a democracy that does not contemplate the effective presence of electoral rights. And yet, as referred to many times in the course of this paper, democracy is much more than “only” the holding of free, fair, periodical, universal and secret elections with full freedom of the media, information and expression, inclusion of the rights to vote and be elected, a fully functional political party system and the independent capacity of standing for elected office. Democracy is all this and each of the other characteristics that have been or will be discussed in this paper.

---


\(^3\) Michael Saward, *The Terms of Democracy, opus cit.*, p. 153;
### Table 3 - Election Rights

<table>
<thead>
<tr>
<th></th>
<th>EU</th>
<th>UN</th>
<th>CoE</th>
<th>OSCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elections</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Direct</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Universal</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Free</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Secret</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Right to vote</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Right to be elected</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

(1) Applies only to local and European Parliament elections.

### 3.4 Accountability

Accountability is one of the key characteristics of democracy for only an accountable government will be under permanent scrutiny. In fact, as discussed earlier, the very existence of a State organisation that diminishes the individual freedom of every person is a necessity that derives from the fact that people live in society. To the dismay of anarchists\(^84\), rules have to be imposed for the peaceful functioning of society. For this reason, governments and the State apparatus must remain accountable for their actions or inaction at every moment and not only at elections\(^85\), or, as John Stewart puts it: ‘Those who exercise public power in society should be answerable for the exercise of that power’\(^86\). On the other hand, in Joy Moncrieffe’s expression ‘Accountability is (…) considered instrumental in securing optimal performance from elected representatives and the public departments under their charge’\(^87\).

In order to guarantee the existence of the necessary control over governments and the State, several systems must be in place, some that have been mentioned earlier in this chapter, such the freedom of information, expression and media and election rights.

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\(^85\) John Dunn, ‘Situating Democratic Political Accountability’ in Adam Przeworsky, Susan Stokes and Bernard Manin (ed.), *Democracy, Accountability and Representation*, opus cit., p.p. 329-343;

Others will be discussed in this section. The existence of accountability and the degree that it is present in the State system can be divided into two main areas of organisation\textsuperscript{88} that should work together if one is to say that accountability is present. First, accountability within the State apparatus will allow for the control of the public institutions by other public institutions and second, accountability outside the State apparatus will allow for the control of institutions by the citizen.

**Accountability within the State Apparatus**

Within the State organisation, the first system that has to exist to guarantee accountability, apart from the already mentioned electoral system and the rights that accompanied it, is the separation of powers\textsuperscript{89} between the executive, the legislative and the judiciary. If this separation does not exist or does not function, the several levels of accountability within the State will be severely diminished. In fact, the separation of powers in a given organised society, could be expressed as M. J. C. Vile does:

> It is essential for the establishment and maintenance of political liberty that the government be divided into three branches or departments, the legislature, the executive and the judiciary. To each of these (...) there is a corresponding identifiable function of government. Each branch (...) must be confined to the exercise of its own functions and not allowed to encroach upon the functions of the other branches (...)\textsuperscript{90}.

This definition, although focusing on the ever-present question of freedom and liberty, captures the essence of the separation of powers for the question of the accountability of government. In fact, when a government is organised under this institutional system, and each of their branches is independent and performs different

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\textsuperscript{89} Montesquieu first raised the question of separation of powers in the XVII century. See David Held, *Models of Democracy*, op. cit. p.p. 55-60;

functions than other branches and within its own functions, a system of “checks and balances” will guarantee a reciprocal accountability within the State institutions.

Still in the systems of accountability within the State apparatus, I shall follow Beetham and Boyle’s methodology\(^{91}\) to discuss successively legal, financial and political accountability. The importance of a legal system of accountability in a democracy based on Ordo-Liberalism is reinforced by the main role that the legal system plays in the State organisation.

The first accountability is the legal one, mainly entrusted to a high or constitutional court that must guarantee that the legal conformity of laws approved both by the legislative and the executive branches of power is respected. Also under this category one should include the actions of both elected and non-elected office holders, thus guaranteeing that not only the law and legislation is in agreement with constitutional law, but also that actions of the public officials have the same characteristics. This form of accountability, that is based on the rule of law as much as is based in the necessity of accountability itself, is best served if a known and durable constitution exists. In fact, the possibility of public and institutional control over the legality of laws and actions of public officials will be greater if the basics are known and of easy access. This does not mean that a constitution must be looked upon as an unchangeable legal document, but it must be granted with longevity and must not be easy to alter\(^{92}\).

Also within the State apparatus, financial accountability follows very closely from what has been said above regarding legal accountability, i.e. the need for an independent court. The legal accountability of public expenditure relates to the State system of control of the legality of the use of public money. As with legal accountability, this must be entrusted to an independent court of auditors that must have access to all levels of public expenditure, including all levels and institutions of government. It goes without saying, as with the previous level of accountability, that the independence of the court is mandatory and the effectiveness of their role is

\(^{91}\) See footnote 135, *above*;

\(^{92}\)
dependent of on the legal empowerment that their decisions and rulings have, for if there is no independence, then the very existence of the court is questionable and, under the same logic, if their decisions and rulings are not obligatory in all their elements, the same conclusion may be reached.

The question of who will exercise accountability over judicial power is raised as, in a European democratic system, none of the State structures is free from democratic control and, naturally, the courts are no exception. To answer this question, it is necessary to bear in mind that, under the principles of the rule of law, the law is equal to all and the courts should apply it. In this light, democratic control is exercised by legislative power through its capacity to create and change legislation. One should not confuse this capacity with interference in the necessary independence of the judiciary power but, as mentioned before, no institution is beyond accountability.

The last form of accountability that Beetham and Boyle refer to is political accountability. In this sphere one must look at two different areas of accountability within the State system. The first relates to the separation of powers and the second to the question of bureaucracies and the military. In the first case, political accountability refers to the political control that different branches of power must maintain over each other or, in other words, the fact that the legislative must maintain a close political control over the executive, or, as Laver and Shepsle argue ‘The accountability of the government to parliament is not merely a normative desideratum of parliamentary democracy. It is also described by the manner in which holding the government or one of its ministers to account is institutionalised’93. It is a very grey area, for in representative democracies, as in those that are common in Europe, the party or parties that have the majority of the seats in the Parliament, normally comprise the executive, or government and, therefore, it is more common than it should be for the government to have control over the legislative. It is a dangerous fact that will undermine the level of political accountability within the State apparatus and where

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this fact occurs, a lesser degree of democracy will occur. To counter-balance this effect, one must look for the level and overall representation of oppositions in the legislative, thus to measure the level of political accountability present in a given democracy and also to the rules and regulations that preside over the work of the legislative, so to ensure that the rights of the opposition are present and are respected.

A second level of political accountability within the State apparatus relates to the independence of the State bureaucracy. For the purpose of this work, I shall consider bureaucracy or the public employees as the non-elected staff of the State apparatus that ‘[are there] to serve the government-of-the-day in a professional way, exercising at all times loyalty, not entering at any time into politics’. The concern is to try to identify the level of party/government political appointees in the bureaucracy; i.e. how many places in the State bureaucracy are appointed politically by the “government-of-the-day”. This question relates directly to the fact that the more places are directly appointed on political considerations, the more likely it is that the State bureaucracy will not be independent from the political party system. This question raises the opposite problem: if the bureaucracy is independent from the elected officials, how accountable is it? It is not an easy question, but a culture of independent public service, with professional bureaucracy will be fostered if independence from political nomination is a reality. In fact, accountability must lie in the elected official and the bureaucracy must be not only independent but also professional in the fact that it must recognise that political decisions are beyond their “job description”, in what Dennis Thompson calls the ‘professionalist model’ of bureaucracy. In this model, the question of accountability is restricted to the elected

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95 The connection between bureaucracy and public employees is made, for data gathering purposes, by Christopher Pollitt, ‘Democracy and Bureaucracy’ in David Held (ed.) New Forms of Democracy, op. cit. p. 173.
96 This definition, given by an Australian minister, is quoted by Delmer Dunn, ‘Mixing Elected and Nonelected Officials in Democratic Policy Making: Fundamentals of Accountability and Responsibility’, in Adam Przeworsky, Susan Stokes and Bernard Manin (ed.), Democracy, Accountability and Representation, op. cit., p. 302;
elements and these will be responsible for the non-elected elements of the bureaucracy that will not act without clear guidelines from the former.

David Beetham et al. raises a question that is central for a theory of democracy based on the Fribourg School and, namely, on the relations between the political power and the economic power: ‘How far is the elected government able to influence or control those matters that are important to the lives of its people (…)’ or, in other words, what is the real capacity of the elected political power therefore submitted to accountability, to control the de facto powers, namely the economic power? This question, for which there are no easy answers, is, in itself, fundamental for the evaluation of a democratic system once, by its very nature, de facto powers are not under direct democratic scrutiny. Once again, the answer lies in the rule of law, as, in fact, Ordo-Liberalism defends: the capacity for influencing political decisions will be legitimised if it stays in the boundaries of the law.

Finally, I shall address the problem of the relations between the elected political power and the military power and police forces. It has a very simple and direct answer: the military power and the police forces, in a democracy, have to be controlled by the elected political power for “the situation is particularly distressing from the viewpoint of democracy when (…) the armed forces [and police forces are] politically dominant” for the very logic of the structure of the armed forces is contrary to the logic of democratic, freedom, equality and accountability.

Accountability outside the State Apparatus

As mentioned at the beginning of this section, I shall now deal with accountability outside the State apparatus or, to be more precise, the accountability that is exercised by the people directly. One of the forms of this is the electoral system and all that it involves, but having dealt with it in a previous section, I shall not repeat what has been said before. One other form of direct decision-taking available to the people rests in referenda that, not deciding on the government directly, do give to the voter the last

99 David Beetham, Sara Bracking, Lain Kearton and Stuart Weir, International IDEA Handbook on Democracy Assessment, opus cit., p. 65;
101 Ibiden.
word on the course of action to be taken on a very precise subject. Having the form of a ballot, the referenda should have all the guarantees and characteristics of an election and the same rules should apply to both form of public consultation. The main difficulty in referenda is to set the rules that could regulate what decisions should be taken directly by the people and those that should be taken by the elected representatives. The answer to this dilemma lies in the nature of representative democracy. When a parliament is elected, the people are given a mandate to be represented by elected officials, on the basis of the proposals that they presented during the electoral campaign. Those proposals are, therefore, the key elements that should rule the holding of referenda. Thus, the rule that I shall use can be enunciated as following: “Every major decision that has not been part of the election manifesto and, therefore, for which the elected members of the legislative do not have the right of representation of the people, should be decided in referendum, that will follow all the guarantees, rules and regulations of an election”. This system will guarantee that the people will retain the full capacity of decision, either through their elected representatives, to whom a clear mandate is given, either through themselves, in the issues that a mandate has not been given. One last aspect must be addressed in this question. The use of referenda should be used on major decisions, thus avoiding the trivialization of the instrument. The problem lies in the definition of what is a major decision. It is impossible to give a precise answer to this problem, for what is important to one society may not be important to the next and what is important for a society today, may not be tomorrow. The decision on what is a major decision and what is not should remain in the feeling of each society at each given moment when confronted with each precise decision that has to be made. How to avoid, under this broad indefiniton of which issues should be submitted to referendum and which should not, that an argument saying that none of the issues that are not in the electoral manifesto are of fundamental importance? There are two answers to this question. One lies in the role and strength of oppositions, free media and public opinion. The second lies in the assumption that every policy that is not in the electoral manifesto of the government and has constitutional implications should be decided by referendum.

102 Butler and Ranney present arguments for and against referenda in representative democracies. See David Butler and Austin Ranney, “Theory” in David Butler and Austin Ranney (ed.) Referendums
One other question that must be addressed when one is concerned with accountability is the system that must be use in the definition of the secrecy of public documents. No one disputes the necessity for any State in keeping some vital information secret from friends and foes alike. This is even truer in the case of democracies, for, contrary to non-democratic systems, a democracy has to have, as discussed earlier, freedom of the media and, therefore, the easier disclosure of information. At the same time, freedom of information is fundamental for any democracy and the question must be answered on the limits and methodologies of the secrecy of documents. In other words, how to decide which documents should have public access and which documents should be declared secret, maintaining the necessary balance between accountability and security? The answer to this question lies, in one hand, in having a clear definition of what category of documents may be subject to secrecy. On the other hand, should be equally considered who is allowed to declare the secrecy of any document, for if this power is wildly spread among the elected officials and non-elected bureaucracy, then we may be in the presence of a form of censorship. And even if this power rests within the elected officials of the government, the same situation may occur. The power to declare any document as secret must rest, therefore, in the legislative, that should have a commission composed by one representative of each political party that, bound by secrecy of their decisions, should, by simple majority, be the only body able to declare that any given document should be or should not secret. Such a system could perform both functions for being a restricted body could guarantee the necessary secrecy of both decisions and documents and being a representative body of all political tendencies that have been entrusted by the elector with the legislative power, would have, in itself, the necessary system of cheques and balances that would impede that the necessity of secrecy be misused.

One other form of accountability, referred by, *inter alias*, Saward\textsuperscript{103} and Cohen\textsuperscript{104}, is the capacity of the people to set the political agenda. This can be attained through the existence of the right of petition to the legislative body, by which a predetermined number of citizens can ask the parliament to rule over some question. The possibility

\textsuperscript{103} Michael Saward, \textit{Terms of Democracy}, op. cit. p.p. 57 – 58;
of petition is, in fact, the main form for the control of the political agenda by the
elector, thus imposing on the elected representatives, the discussion of issues that
could be of no apparent interest to the legislative body of a given country. The
number of signatures needed to initiate a petition is relevant to the assessment of the
capacity of setting the political agenda, because the lower this number is, the greater
the capacity is. One other relevant issue concerning this instrument is the length of
time that the petition will take between being delivered at the legislative body and its
final decision, for if one State has a petition system that demands a very low number
of signatures but does not deals with the substance of the petition within a fair
calendar, than the institute of petition itself may be deemed as non-existent.

Contrary to the preceding sections, I have started this one not with a critique of the
official documents but by looking at the elements of accountability that are referred to
in the literature of democracy. The reason for this lies in the fact that, of all the
documents of the organisations under study in this section, only the European Union
presents any elements concerning accountability\(^{105}\) and, the only point focussed on is
good governance. Apart from the right of access to documents, the right to petition
and the right to diplomatic and consular protection, the European Union bases it
whole defence of good governance on relations between the citizen and the public
administration. In this area, the European Union imposes extremely important
elements of good behaviour on the public administration in its relations with the
citizens, such as impartiality, fairness, good timing in the taking of decisions, the right
of the citizen to be heard, to have access to one’s file and to know the reason behind
any decision\(^{106}\). Although the importance of these elements cannot be denied, they are
but a small part of accountability and, even taking into consideration the fact that
other elements of accountability have been referred to by the European Union and the
other institutions in different moments, the approach to this question by the Union is
very incomplete.

Accountability, in all its elements, represents the permanent capacity of democratic
control by citizens over political power. In fact, without accountability, the

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\(^{104}\) Cohen speaks of initiatives. See Carl Cohen, Democracy, op. cit. p.p. 76 – 97;
\(^{105}\) See Table 4, below;
\(^{106}\) Ibid.
democratic system would be reduced to the holding of elections that, fundamental as they are, do not guarantee, by themselves, the existence of a democracy.

Table 4 - Accountability

<table>
<thead>
<tr>
<th></th>
<th>EU</th>
<th>UN</th>
<th>CoE</th>
<th>OSCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right to a good administration</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Impartial</td>
<td>●</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fair</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Decision within reasonable time</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Be heard</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Access to one’s file</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Know reasons for decisions</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right to access to documents</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right to petition</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right to diplomatic and consular protection</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Economic and Social Democracy

The literature on theory of liberal democracy rarely refers to the economic and social conditions of a democratic system\textsuperscript{107}, but as Beetham et all. argue\textsuperscript{108}, without a minimum of economic and social standards, a democratic system cannot exist, for it is not possible to exercise the rights and duties that are part of a democratic system. On the other hand, as referred to in the section dealing with Ordo-Liberalism, economic and social conditions are fundamental factors for the regularity of a democratic society. The question is not, therefore, about the necessity of economic and social democracy, but what elements it must have, in such a way that will not jeopardise the very foundations of a democratic system. Adding to these more generalist arguments, it must be mentioned that this work deals with the democratic systems of Europe, where the principles of social solidarity are well established.

Economic Democracy

The elements of a European democratic system, that have been referred to in this chapter, oblige the economic model to allow for personal, political and electoral

\textsuperscript{107} One can find important exceptions in, inter alias, Axel Hadenious, Democracy and Development, opus cit. or Tatu Vanhanen, Prospects of Democracy – A Study of 172 Countries, Routledge, London-New York, 1997;

\textsuperscript{108} David Beetham, Sarah Bracking, Lain Kearton and Stuart Weir, International IDEA Handbook on Democracy Assessment, opus cit., p.p. 15-16;
freedom. For this reason, the market economy is the model that best guarantees those freedoms, or, as Robert Dahl argues:

> It is not the inefficiencies of a centrally planned economy (…) that are most injurious to democracy (…). It is the economy’s social and political consequences. A centrally planned economy puts the resources of the entire economy at the disposal of government leaders. (…) A centrally planned economy issues an outright invitation to government leaders (…) *You are free to use all these economic resources to consolidate and maintain your power.*

But there are more than just negative reasons why the market economy is the best economic model for a European democratic system. In fact, positive reasons, or reasons that leads one to argue that a market economy model have elements that help the promotion of democracy, must also be considered, for ‘economic freedom generally reflects rights provide by a free (competitive) environment’.

Although the market economy is the best economic model to promote the democratic principles, it can become, if left to itself, harmful to that same democracy. In fact, ‘a market economy is not, and cannot be completely self-regulating’, for issues as, *inter alia*, monopolies and consumer protection, if not regulated by the State will harm the democratic system itself. This matter can be easily understood with three different situations: the first one, already mentioned, is the German experience between the two World Wars; secondly, and very briefly touched on before, is the connection between a non-regulated market economy and the reduction of personal freedom; finally, a market system will, necessarily create inequality between the citizens.

This last point deserves special attention because it not only impacts on the European democratic system, but also will be bases for social democracy that will be discussed.

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109 Robert Dahl, *On Democracy*, *opus cit.*, p. 169 (italics on the original);
111 This is the main argument of the Ordo-Liberal school;
later in the chapter. In fact, one of the outcomes of economic freedom is the economic inequality between members of one given society and that inequality cannot be of such an extent that would make that society un governable, for if the difference between the “haves” and the “have nots” is too great or if the number of the latter increases dramatically, the capacity of many member of society to act in the democratic system will be greatly diminished, if that capacity exists at all. As Seymour Martin Lipset argues ‘a society divided between a large impoverished mass and a small favoured elite results either in oligarchy (dictatorial rule of the small upper stratum) or in tyranny (popular-based dictatorship)’\textsuperscript{113}. As such, the existence of a numeric representative middle class is an important element of a European democratic system that does not permit situations of extreme social and economic inequality. But the existence of a representative middle class is not only an indicator of a less unfair distribution of wealth because the middle class plays a fundamental role in the preservation of the democratic system as ‘a large middle class tempers conflict by rewarding moderate and democratic parties and penalising extremist groups’\textsuperscript{114}.

The international organisations under review show some concern with economic democracy, without entering into the fundamental aspects of it\textsuperscript{115}. In fact, from the seven characteristics mentioned by all four organisations, each one mentions only the right to property, whereas the right to choose an occupation is mentioned by the EU, UN and OSCE. Although the right to work only appears in the documents from the EU and the CoE, the right to conduct business is absent only from the UN and both the EU and OSCE shows concern with the right to environmental protection. The EU is, of the four organisations, the one that presents a more complete catalogue of economic democracy, for it adds to the characteristics just mentioned the right of access to services of economic interest and the rights of the consumer. If one looks, under a gentle disposition, to all of the proposals presented by the four organisations, one may

\textsuperscript{112} Robert Dahl, \textit{On Democracy}, opus cit., p.174;  
\textsuperscript{114} Seymour Martin Lipset, \textit{Political Man – The Social Bases of Politics} (expanded version), opus cit., p. 51. For a historical, political and sociological perspective of the role of the middle class in the United Kingdom see, \textit{inter alias}, John Garrard, David Jarry, Michael Golsmith and Adrian Oldfield (ed.), \textit{The Middle Class in Politics}, Saxon House, Hants, 1978;  
\textsuperscript{115} See table 5, \textit{below};
conclude that, through few dispositions, they cover much of what are the characteristics of an economic European democracy.

One should underline that, as we shall see in the next section, the fundamental question of wealth distribution is not mentioned by any of the organisations, in either economic or social democracy. One could argue that such a disposition is included in the right to dignity, referred to under political rights, but being as important as it is for a European democracy, it is odd that such notion is not echoed by any of the organisation.

<table>
<thead>
<tr>
<th>Table 5 – Economic Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EU</strong></td>
</tr>
<tr>
<td>Freedom to choose an occupation</td>
</tr>
<tr>
<td>Freedom to conduct business</td>
</tr>
<tr>
<td>Right to access to services of general economic interest</td>
</tr>
<tr>
<td>Right to consumer protection</td>
</tr>
<tr>
<td>Right to engage in work</td>
</tr>
<tr>
<td>Right to environmental protection</td>
</tr>
<tr>
<td>Right to property</td>
</tr>
</tbody>
</table>

Social Democracy

The main issue that divides the Right from and the Left is, as referred to in part one of this chapter, the role and the inclusiveness of the State in the social area. Is this balance, between too much and to little State intervention as agent of limitation of social differences that Ordo-liberalism tries to achieve\(^{116}\). And yet, the considerations presented in the section dealing with economic democracy, namely the role of the middle class in a democratic system justify in themselves, the existence of social democracy. This section will discuss the main issue of division in a European democratic system, both theoretically and in application.

The international organisations used in this work pay little attention, with the exception of the EU, to the social conditions of democracy. The UN defends the right to health services, social security in cases of disease, working accidents and unemployment. It refers also, as does the CoE, the need for fair working conditions and the right to family life. The OSCE only refer to the right to social security. As mentioned, the EU pays more attention to this question than the other three organisations, for it mentions all the characteristics above and adds other issues like the prohibition of child labour, support for the elderly and disabled, the rights of workers and social inclusion through social housing and social assistance.

Although the rights just mentioned are designed to prevent and assist in cases of negative events that may happen, the international organisations, with the exception of the OSCE, through the dispositions concerning cultural and intellectual rights, introduce a fundamental concept to any model of social democracy: the right to education. Once again, the EU goes further than the other organisations for it adds the right to free compulsory education. In fact, to avoid social democracy being reduced to create conditions to face negative events that may happen or support workers in their hour of need, a very important aspect of social democracy, the right to education allows for the creation of conditions needed for personal autonomy. Adding to this, it must be underlined that an educated population is in a better condition to make choices freely, thus responding to the challenges of a democratic system. As Saward argues:

> In both technical skills and a larger capacity to understand the contours of the system and the nature of the issues being considered within it – including knowledge of the nature and scope of the basic political rights of citizens – the right to an adequate education is fully and properly a democratic right. Basic liberty rights can mean little without literacy.

The importance of social rights in a European democracy and its role is always followed by the debate about the limits of the role of the State. Not being the objective

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117 See table 6, below;
118 See table 7, below;
119 Michael Saward, The Terms of Democracy, opus cit., p. 98;
of this chapter to debate the maximum limit of that role, I shall refer only to minimum
of social democracy that the State should provide in a European model of democracy.
The objectives of the social democracy system are to avoid extreme social conditions
from occurring inside a society so that all citizens have the full capacity to take part
actively in the democratic life and to give each one the tools that will allow a better
quality of life. Without denying the importance of the rights referred to by the
international organisations, it is possible to establish three elements\textsuperscript{120} of social
solidarity without which a European democratic system will not exist.

Having mentioned education, I shall now deal with the questions of health and
minimum income. Both of these are intended to guarantee a minimum of standard of
living to every member of a society. The arguments that support the need for the
existence of these elements are easy to understand: without health or a minimum of
economic capacity, it is impossible to fully take part in the democratic process that is
based on the active participation of the citizens. In fact, a democratic system will cease
to exist, no matter how perfect it is, if the citizens do not fully and actively take part in
it and where situations of disease or extreme poverty do not allow that participation.

As mentioned at the beginnings of this section, the questions surrounding social
democracy are those that have created more arguments without having been possible
to reach any conclusion. It is, nevertheless, necessary to reaffirm the need for social
democracy, for without it, it will be impossible to talk about a European democratic
system. As John Rawls argues: ‘(…) below a certain level of material and social well-
being and of training and education, people simply cannot take part in society as
citizens, much less equal citizens’\textsuperscript{121}

Table 6 - Social Rights

<table>
<thead>
<tr>
<th></th>
<th>EU</th>
<th>UN</th>
<th>CoE</th>
<th>OSCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>No child labour</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rights of the child as necessary to their well-being</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rights of the Elderly</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rights of the person with disabilities</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{120} Michael Saward refers these elements. See Michael Saward, The Terms of Democracy, opus cit., p.p. 95-101;

<table>
<thead>
<tr>
<th>Right to health care</th>
<th>✓</th>
<th>✓</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right to medicine treatment</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Protection of young people at work</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Protection of maternity</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Social inclusion by</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Social housing</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Social assistance</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Social Security including</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Maternity</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Illness</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Industrial accident</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Dependency</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Old age</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Lost of job</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Workers right in the event of unjustified dismissal</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Workers right to access to placement services</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Workers right to annual paid leave</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Workers right to collective action</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Workers right to collective bargaining</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Workers right to daily rest</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Workers right to fair and just working conditions</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Workers right to limitation of maximum of working hours</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Workers right to weekly rest</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Workers rights to be informed</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Workers right to family life</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

Table 7 – **Intellectual and Cultural Rights**

<table>
<thead>
<tr>
<th></th>
<th>EU</th>
<th>UN</th>
<th>CoE</th>
<th>OSCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Academic freedom</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cultural freedom</td>
<td></td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Freedom of arts</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Freedom of scientific research</td>
<td>✓</td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Right to education including:</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Free compulsory education</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Access to vocational training</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------------------------</td>
<td>---</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right of parents to choose the education of their children</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Protection of intellectual property</td>
<td>✓</td>
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**Conclusion**

This paper presented an overall view of the characteristics that a western European democratic system, based on the approach proposed by the Ordo-liberal school, for the auditing of democracy in Europe. It is, therefore, based on the presence of rights and duties that are established by law and mandatory in all its elements to the whole of society. Although these rights and duties are applicable to both the State and citizens, the fact that the conditions for citizens’ participation to be possible, have to be established by rule of law, makes the role of the State crucial. In fact, democracy needs two events to take place in order to work: the capacity to take part in the decision taking and the willingness to do so. Only when the tools, mechanisms and rules that will allow for the public participation are put in place it is possible for the willing citizen to actively participate in the democratic system. This is one of the reasons for the focus given in this work to the conditions of democratic participation that depends on the State’s action. The other reason is based on the Ordo-liberal approach to democracy and the role that law plays as guarantor of the “rules of the game”. Given that the main role and the fact that it is prerogative of the State to adopt the laws, the main burden of creating the conditions for the active participation of the citizens will fall in the legislative branch of the State. As to the second event, i.e. the willingness to take an active role in the decisions taking processes, it will depend on the individual capacity, desire and on the conditions that will or will not permit such participation.

A European democratic system is, when looked upon as a whole, with all the characteristics that have been discussed in this paper, an extremely demanding system, built on several different layers of rights that, when combined, creates a complex set of guarantees, rights, checks and balances that are designed to ensure that life in society is both ordered and free and that all citizens are equal before the law, the State and each other. This paper it is not what democracy is. Its represents what
democracy should be in Europe, based on the systems that exist and proposes a methodology and a method to be able to audit it.
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