

# 11

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## Is there a Human Right to Democracy?

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Is there a human right to democracy? My answer, in brief, is ‘no’. Five interconnected claims will play a role in my argument for this conclusion:

1. Justice requires democracy.
2. Human rights are a proper subset of the rights founded on justice: so a society that fully protects human rights is not *ipso facto* just.
3. A conception of human rights is part of an ideal of global public reason: a shared basis for political argument that expresses a *common reason* that adherents of conflicting religious, philosophical, and ethical traditions can reasonably be expected to share.
4. That conception includes an account of membership, and human rights are entitlements that serve to ensure the bases of membership.
5. The democracy that justice requires is associated with a demanding conception of equality, more demanding than the idea of membership associated with human rights.

An underlying thought that runs through the argument is that democracy is a demanding political ideal. The thesis that there is a human right to democracy—while it may seem to elevate democracy—threatens to strip away its demanding substance.

### THE QUESTION

I will start with some comments aimed at clarifying my question about whether democracy is a matter of human right. A variety of things are commonly said on behalf of democracy:

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*Is there a Human Right to Democracy?*

227

- Democracy is good for peace, at least to the extent that countries with democratic political regimes do not fight each other.<sup>1</sup>
- Democracy, joined with a free press, prevents famines (Sen 1999: ch. 7).
- Democracy helps to protect such basic personal liberties as liberty of conscience and speech.

These claims each have some plausibility, and each, if true, would be reason enough for welcoming democracy's wider reach.<sup>2</sup> But none of these arguments for democracy on grounds of their very desirable consequences depend on the premise that—or imply the conclusion that—democracy is the object of a human right.

It is sometimes also said that democracy is a demand of justice: that justice comprises a right to democracy—more particularly, an equal right of individuals to political participation, including equal rights of suffrage, office-holding, association, assembly, and expression. But the thesis that democracy is an aspect of justice does not settle the human rights issue, except on the view—not widely shared—that all rights required by justice are also human rights.

Consider—as an illustration of the distinction between a right founded on justice and a human right—John Rawls's account of justice as fairness

thank Alyssa Bernstein, Annabelle Lever, Frank Michelman, and Christine Sypnowich for comments. Although Jerry Cohen has not read this chapter, and I have not discussed its contents with him, I wish to express my gratitude for his intellectual presence in everything I write.

<sup>1</sup> The thesis in the text is one of a family of claims about the relevance of regime type to war: that democracies do not fight wars against other democracies (either because democratic institutions empower those who bear the costs of war or because of the regnant norms in a democracy), that democracies win their wars more frequently than non-democracies (either because they are better at mobilizing the population or better at picking their fights), and that democracies are less likely to use unacceptable methods in fighting wars. Moreover, claims about democracy and war are part of a larger family of anti-realist theses about the importance of factors other than the distribution of power—for example, economic and institutional cooperation—in shaping international politics. All these claims are disputed by realists, who see the conduct of states under conditions of anarchy and associated insecurity as driven by the underlying distribution of power, which is assumed to be more fundamental than ('second image') differences in regime type (see Brown, Lynn-Jones, and Miller 1996; Desch 2002). See Waltz (1979) and Mearsheimer (2001) for general statements of realist skepticism about the relevance of regime type to the conduct of international politics. See Russett, Oneal, and Berbaum (2003) for a recent defence of the democratic peace theory, along with allied ideas about the relevance of trade and international institutions to peace.

<sup>2</sup> Although reasons for caution would remain. As Edward Mansfield and Jack Snyder argue, even if democracy is good for peace, democratization may not be. They argue that democratization, absent strong political institutions (rule of law, executive authority), often generates belligerently nationalist mobilization and conflict (see Mansfield and Snyder's *Electing to Fight*, forthcoming). If this view is right, the case for outside intervention in the name of a human right to democracy (assuming there is such a right) would be extremely tenuous. Democracy-promoting intervention would require that outside agents help to establish the strong institutional preconditions—and there are many reasons for skepticism about that ability, not the least being the limited staying power of outside agents.

and of the law of peoples. Justice as fairness includes, as part of its first principle, an equal right to participate in the processes of authoritative collective decision-making. According to this principle of participation, ‘all citizens are to have an equal right to take part in, and to determine the outcome of, the constitutional process that establishes the laws with which they are to comply’ (Rawls 1999a: 194). Here we have a right to democracy—more particularly, a collection of individual rights that require democratic processes of collective decision-making—founded on justice. Rawls’s proposed law of peoples (1999b: 78–81), in contrast, has a relatively short list of human rights that does not include either an equal right of participation or an equal liberty of conscience.

This distinction between the rights that must be assured in a just political society and human rights is associated with Rawls’s distinction between liberal and decent but non-liberal peoples (ibid. 64–72). A liberal people endorses some form of political liberalism, all forms of which assign priority to a set of equal basic liberties, including equal rights of participation. A decent but non-liberal people has a legal system founded on a ‘common good’ conception of justice that includes protection of human rights and imposes genuine obligations on everyone in the territory. Associated with this common good conception of justice—and helping to ensure that its conditions are met—is a ‘consultative’ scheme of political decision-making that permits the expression of a range of opinions (including political dissent) and ensures representation of the fundamental interests of all. But consultation—joined with human rights, a rule of law, and arrangements that serve the common good—does not suffice for democracy.

Thus a political society with an official religion, as well as religious restrictions on office-holding and positions of influence, could in principle be decent and protect human rights, including liberty of conscience. And its decency would qualify it as a member in good standing in the global society of peoples—an equal member, beyond reproach by reference to the standards suited to cooperation across peoples and to which different peoples may reasonably hold one another accountable (the law of peoples), and owed justifications by reference to reasons that we can expect both liberal and decent peoples to reasonably accept (ibid. 59). But while beyond reproach (in the sense just specified), the decent society would nevertheless be unjust in virtue of the inequalities of rights that violate (among other things) the principle of participation.

Details aside, the essential idea—that a society might protect human rights (and be in other respects decent) while falling short of justice because it fails to ensure all the rights that justice demands<sup>3</sup>—is, I think, widely shared: it is,

<sup>3</sup> Without the clause that begins with ‘because’, the claim would be fairly trivial: a society might protect all the human rights and yet fail to be just because justice requires more than protection of rights.

for example, rare to see an argument for an account of human rights that proceeds simply by providing an account of the rights ingredient in a just society.<sup>4</sup>

I will not say more about Rawls's view, though I will return later to the distinction between rights founded on justice and human rights. I mention the difference between his conception of the requirements of justice as fairness—and other politically liberal views—and of the law of peoples because it crisply illustrates my initial point: that the thesis that there is a *human right* to democracy represents a distinctive normative case for democracy, different on its face from (although of course consistent with) both consequentialist arguments about the merits of democracy as a way to forestall great evils such as war, famine, and tyranny, and arguments for democracy that appeal to rights required in a just society. I want to consider whether there is a compelling case of this kind.

To be clear: I am not asking whether, when all the relevant considerations are in, there is a compelling case for democracy, but instead what kind of case there might be, and, more specifically, whether a case of a particular type—a human rights case—is available. Investigations of this kind, characteristic of philosophy, often provoke an impatient response, because they are not about, bottom line, all-things-considered political judgements, but about the force and implications of particular lines of argument. I do not share this impatience because I think that normative-political argument is itself an important feature of political life. What matters is not simply the conclusions we arrive at, but how we arrive at them.

#### HUMAN RIGHTS: NEITHER MAXIMAL NOR MINIMAL<sup>5</sup>

I have not yet explained how I understand 'human rights' as a distinct normative category. As a preliminary, then, I will say that human rights have three features:

- They are *universal* in being owed by every political society, and owed to all individuals.

<sup>4</sup> The idea that human rights are a special subset of rights—not simply to be identified with rights founded on justice—is endorsed by theorists who embrace expansive sets of human social and economic rights, and is not confined to human rights minimalists, who believe that human rights are confined to rights of bodily security. See, for example, Sen(2004), in which he emphasizes that human rights are associated with freedoms of a particular importance.

<sup>5</sup> This section draws on and extends Cohen (2004). That companion essay also contains a range of references that I have not included here, for reasons of space.

- They are requirements of political morality whose force as such does not depend on their expression in enforceable law.<sup>6</sup>
- They are especially *urgent* requirements of political morality.

These features are suggested by the remark in the Universal Declaration of Human Rights, that human rights are ‘a common standard of achievement for all peoples and all nations.’<sup>7</sup>

I also make two methodological assumptions. First, I assume that an account of human rights must meet a condition of *fidelity*: if there are human rights, then at least some substantial range of the rights identified by the principal human rights instruments—especially the Universal Declaration—are among them. The rights identified in those instruments represent ‘provisional fixed points’ in our reflection on the nature and content of human rights. Second, I assume a condition of *open-endedness*. Thus, any proposed enumeration of human rights—as in the Declaration or the Covenants on Civil and Political Rights and on Economic and Social Rights<sup>8</sup>—is open-ended in at least two ways that parallel the open-endedness of rights embodied in law: (a) we can, through normative reasoning, argue in support of human rights that were not previously identified or enumerated; and (b) moreover, such rights that are identified are expressed in abstract language whose application requires interpretation.

I will say more later about these five general features—universality, non-juridification, urgency, fidelity, and open-endedness. With these as background, I want to now expand on my earlier comments about the nature and distinctiveness of a human rights case for democracy. To clarify the point, I will distinguish two stylized views about human rights: *maximalist* and *minimalist*. Maximalism holds that human rights are coextensive with rights founded on justice, and that the case for a human right to democracy is correspondingly straightforward—assuming (as I do) that an equal right to participation is a matter of justice. Minimalism confines human rights to protections of bodily security, and thus denies a human right to democracy (except derivatively, if democracy turns out to be the unique way to ensure the right to bodily security). If we reject both minimalism and maximalism about human rights, the issue is correspondingly less straightforward.

A popular case for minimalism is founded on an interpretation of the value of toleration.<sup>9</sup> This case presents a minimal set of human rights as

<sup>6</sup> See Sen(2004) for discussion of this point.

<sup>7</sup> The Universal Declaration, as well as other human rights conventions and charters, are printed in the Annex on Documents in Steiner and Alston (2000).

<sup>8</sup> See the Annex to Steiner and Alston (2000).

<sup>9</sup> I discuss this argument in some detail in Cohen (2004).

the lowest common denominator of distinct ethical and religious traditions—as their ethical intersection. As Ignatieff summarizes it: ‘Human rights can command *universal assent* [emphasis added] only as a decidedly ‘thin’ theory of what is right, a definition of the minimal conditions for any life at all’ (2001: 56).

But this rationale for minimalism misconceives toleration. Toleration, in this domain, requires that a conception of human rights be formulated and defended independently of particular ethical and religious traditions, and that the autonomously formulated conception be capable of eliciting support from adherents of different and conflicting ethical and religious traditions, reasoning within the terms of their tradition. However, such support may require a reformulation of the tradition—some form of doctrinal evolution. Toleration does not require, as Ignatieff suggests, ‘universal assent’ or acceptance, but a certain kind of broad acceptability. Once we reject the lowest-common-denominator conception, the case for a minimalist account of human rights based on toleration is no longer so clear.

Six other considerations are commonly offered against more demanding lists of human rights, including a richer class of civil and political rights as well as some social and economic rights:

- They threaten to overtax the resources and disperse the attention required for monitoring and enforcing human rights.
- More expansive lists cannot be fully realized because their realization is simply too costly or burdensome, and for that reason are not genuinely speaking lists of *rights*.
- Because rights correspond to obligations, and we cannot give determinate content to the obligations associated with an expansive class of rights in advance of their legal institutionalization, rights are limited in scope.
- Expansive lists threaten to substitute legal principles for political judgements—often uncompromising rights claims for informed and more supple political deliberation and judgement.
- Expansive lists threaten to subordinate legitimate political self-determination to the decisions of outside agents, who justify their interventions in the language of human rights.

For reasons that I will discuss later, the sixth consideration—collective self-determination—is not at all plausible as a basis for minimalism. As for the others, suffice to say that each has some force, but none presents a robust case for the minimalist’s narrow circumscription of human rights.

You might, finally, arrive at minimalist conclusions if you begin with the premise that human rights are Lockean natural rights, understood as moral

rights that individuals would have even in a pre-institutional state of nature.<sup>10</sup> Because of the non-institutional setting, the content of natural rights is necessarily relatively restricted, and on a conception that identifies natural and human rights, the latter would inherit that limitation. So it would be difficult, for example, to explain the human right to fair legal process—a right that presupposes an institutional context—on the theory that a human right is a Lockean natural right.<sup>11</sup>

But the concepts of natural right and human right are fundamentally different, as is evident from the institutional presuppositions of many of the rights enumerated in the Universal Declaration and the 1966 Covenants—including rights to a fair hearing, to equality before the law, and to take part in government, none of which could obtain in a pre-institutional state of nature. Unless the authors of the Declaration were conceptually confused in their enumeration of human rights, or believed that the institutionally specified human rights in the Declaration can be derived by applying non-institutional natural rights to institutional conditions, the argument for minimalism premised on an identification of human and natural rights is deficient. The idea that they were conceptually confused is implausible and defeated by considerations of fidelity; and the idea that all the institutionally specified human rights—for example, the right to fair legal protections—are simply instruments for protecting pre-institutional natural rights is nowhere suggested in the arguments for the declared rights that seem to be answerable to considerations of a different kind. Human rights are not rights that people are endowed with independent of the conditions of social and political life, but rights that are owed by all political societies in light of basic human interests and the characteristic threats and opportunities that political societies present to those interests. They are, in ways I will explain later, conditions of membership or inclusion in such societies.

Shifting attention from minimalism to maximalism: I said earlier that human rights are not as expansive as rights founded on justice, that they are only a ‘proper subset’ of the rights required by justice. Minimalism—with rights limited to bodily security—is an extreme version of the proper subset view. Other versions embrace more expansive sets of rights than minimalism—say, rights to an adequate standard of living, to adequate levels of

<sup>10</sup> In *A Theory of Justice*, Rawls (1999a: 442–3n.) mentions a different, non-Lockean conception of natural rights, freed from the idea that natural rights are rights that individuals would have in a pre-institutional state of nature. According to this conception, natural rights are fundamental rights of persons, founded on justice, rather than on law or custom. The point in the text applies only to the Lockean idea. I am grateful to Valentina Urbanek for emphasizing the importance of this alternative conception.

<sup>11</sup> I draw here on Beitz (2001, 2003, unpublished).

health, education, and housing, and to forms of political representation and accountability that suffice for collective self-determination, though not a full complement of democratic rights, including full equality of political rights.

While we should resist the pressure to the minimalist extreme, the proper subset view has much to be said for it. I want to present three considerations that recommend it: arguments based on self-determination, obligation, and toleration. To make the discussion a little less abstract, it will help to have a specific norm of justice at hand. So I will assume that justice requires, *inter alia*, rights to equal liberties of conscience, expression, association, and participation. Even if you embrace this principle as a requirement of justice, however, you might still resist its extension to the whole world as a human rights principle. Intuitively, the reason for such resistance is that human rights have, as I have said, a particular *urgency*, which transcends the urgency that surrounds considerations of justice generally. The three considerations here represent different ways of articulating that urgency.

First, a plausible element of any conception of human rights is a requirement of collective self-determination, which I understand to be a normative requirement, but less demanding than a requirement of democracy, which is one form of collective self-determination. In particular, let us say that collective self-determination requires that: (i) binding collective decisions result from, and are accountable to, a political process that represents the diverse interests and opinions of those who are subject to the society's laws and regulations and expected to comply with them. The representation may, for example, be organized territorially, functionally, or ascriptively; but however it is organized, it may—consistent with collective self-determination—assign special weight to the interests of some social groups; (ii) rights to dissent from, and appeal, those collective decisions are assured for all; and (iii) government normally provides public explanations for its decisions, and those explanations—intended to show why the decisions are justified—are founded on a conception of the common good of the whole society.

These three conditions of collective self-determination are politically important, and commonly violated, but they can be satisfied by an undemocratic political arrangement. Thus a society that meets the conditions of collective self-determination may still have an official religion endorsed by a preponderance of the population. Moreover, it may be that only adherents of that religion are permitted to hold official positions, that special privileges and assignments of resources are associated with the organizations of the official religion (though other religious groups are politically represented), and that the selection of representatives is made through separate social groups and not through competitive party elections.



Suppose now that the three conditions of collective self-determination are satisfied, and, in part for that reason, the political process does not result in gross infringements of other fundamental interests. But suppose, too, that democratic ideas lack substantial resonance in the political culture, or the history and traditions of the country. Then the value of collective self-determination itself recommends resistance to the idea that the political society should be required to meet the standard expressed in a principle of equal basic liberties, even if we think that that standard represents the truth about justice. I want to emphasize, though, that the case for this conclusion is stronger to the extent that the political society does accommodate and advance the good of all those subject to its laws and regulations, by providing, say, assurances of decent levels of health, education, and economic security, and some form of political accountability, as well as protections of personal security: assurances that extend well beyond a minimalist programme of human rights. That is, the argument from self-determination to the proper subset view is stronger to the extent that the political society can—by embracing a more than minimal class of human rights—meet the charge that, in the name of collective self-determination, it establishes and enforces a form of group domination. So the value of self-determination is important, and provides a basis for more than minimalist rights, but does not imply maximalism.

A second consideration turns on the distinction between justice and political obligation. It is widely agreed that the members of a society have obligations to obey regulations even when those regulations are not fully just and/or do not emerge from just institutions: something less normatively demanding than justice is sufficient for an obligation to obey.<sup>12</sup> Now suppose the members of a society have an obligation to obey—that is, the institutions meet the normative standards, whatever they are, that suffice for political obligation but fall short of the more demanding standards of justice. Then outsiders ought to show some reluctance to pressure for changes, and certainly a reluctance to intervene more forcefully or forcibly in the name of justice. Surely it is impermissible for outsiders to forcibly intervene to change arrangements with which members themselves are obliged to comply. So if human rights standards are urgent standards of political morality whose violation warrants external reproach (and in extreme cases sanctions and intervention), the distinction between norms of justice and norms of political obligation exerts some downward pressure, away from maximalism, on the content of those human rights standards.

<sup>12</sup> See Simmons (1979), Dworkin (1986: ch. 6, especially 202–6) for discussion on obligations within unjust arrangements.

A third point concerns toleration. If you accept a principle of equal public and private liberties as one requirement of justice, you think that non-liberal political arrangements—arrangements that are undemocratic but that nevertheless meet the three conditions for collective self-determination—are unjust. But you also endorse the idea that, on complex normative issues, reasonable people disagree: a commitment to toleration is another part of your political outlook. The idea of tolerating reasonable differences strongly suggests that the standards to which all political societies are to be held accountable—the appropriate common standards of achievement—will need to be less demanding than the standards of justice one endorses. In making this point—to underscore what should by now be clear—I am not endorsing a relativist view of justice, which has the fundamental requirements of justice varying with circumstance.<sup>13</sup> Instead, the point is that a political society can, within limits, be unjust but beyond reproach, from the point of view of a global public reason (an idea I will explain soon).

Of course the requirements of toleration are not obvious. Later, I will be connecting human rights, as standards of global public reason in judging organized political societies, to conditions of membership or inclusion in an organized political society. In effect, I propose—as a substantive normative thesis, not as an analysis of the concept of reasonableness—that political conceptions and doctrines count as reasonable within global public reason (as distinct from what counts as reasonable within other settings) only if they accept the norms of membership, and that they need not endorse the democratic idea of society as an association of equals. To be sure, the value of toleration is not absolute. But it is a profoundly important value, and its importance in the current setting owes in part to the connections between the respect shown to a political society and the respect shown to members of that society, who ordinarily will have some identification with that political society and its way of life, even if they are critical of the society, its ethos, and its practices. Not extending toleration has serious costs, and those costs must sometimes be paid. But the costs are real: in Rawls's forceful words: '[L]apsing into contempt on the one side, and bitterness and resentment on the other, can only cause damage' (1999*b*: 62). 'Only' puts the point too strongly. But the point remains: the presence of these costs operates to create some distance between the requirements of justice and the rights that are part of a doctrine of human rights.

<sup>13</sup> Walzer embraces a form of relativism about justice when he says that a society is just when it is 'faithful to the shared understandings of the members' (1983:313).

## RIGHTS AND MEMBERSHIP

If the human right to democracy is neither excluded (as with minimalism) nor demanded (as with maximalism) we need to determine whether the right to democracy—that is, an equal individual right to political participation—lies in the range of rights comprised by a reasonable conception of human rights, where the range includes more than a minimalist guarantee of bodily security but not everything required by justice. To address this issue, I will need to say more about the bases of human rights—building on the earlier points about how human rights norms are universal, urgent standards of political morality that need not be legally expressed and that are open-ended though their content must broadly fit with settled understandings—and then about democracy.

First, then, a conception of human rights—as I said earlier—presents a set of especially important, urgent standards that are universal in that all political societies are to be held accountable to them in their treatment of members. As a way to interpret this idea, I suggest that we think of the conception as a partial statement of the content of an ideal of what I will call *global public reason*. Generally speaking, global public reason comprises a set of political values, principles, and norms for assessing political societies, both separately and in their relations, that can be widely shared.

Global public reason is global *in its reach*, inasmuch as it applies to all political societies, and global *in its agent*, inasmuch as it is presented as the common reason of all peoples, who share responsibility for interpreting its principles, and monitoring and enforcing them. Because it is presented as the *common reason* of all peoples in a deeply pluralistic world, as a reason whose content can be shared, it needs to be formulated autonomously from different and conflicting religious, philosophical, and ethical traditions—as a conception of reasons that adherents of different traditions can reasonably be expected to share. It is *public* in its use, in that it provides terms of argument and justification used in discussing the conduct of different political societies.

The precise ways of exercising the responsibility of interpretation, monitoring, and enforcement—who exercises it (international courts and other institutions, regional bodies, individual states, non-governmental organizations) and with what instruments (ranging from monitoring, to naming and shaming, to sanctions, to force)—vary widely. Although the agent and reach of the reason are global, often acting on the principles of global public reason may consist principally in observing the implementation of its principles by separate political societies, or perhaps in assisting in their implementation.

The more immediate responsibility for interpreting and implementing the principles will—as the Declaration and Covenants emphasize—typically fall to separate political societies themselves, in part, though not only, because of the value of collective self-determination affirmed in Article 1 of the Covenant on Civil and Political Rights.

Second, part of a conception of human rights is an account (a normative theory) of why the rights have the content that they have, and how the content of the conception may be extended, interpreted, and revised: the open-endedness that I mentioned earlier requires such an account. Thus, while a conception of human rights needs to be expressed, at least provisionally, in a definite statement of rights, it is not given simply by an enumeration of rights, much less an enumeration of highly specific rights—a kind of rule book of enumerated rights—but also includes an account about what rights belong on the list and how to interpret the rights when their content needs application to an issue. Global public reason is better understood as a terrain of reflection and argument than as a list of determinate rules: that is part of the force of the term ‘reason’.

At the same time, because the conception of human rights belongs to global public reason, the rationale for human rights needs to be formulated in terms that can plausibly be shared, which means that it cannot be formulated by reference to a particular religious or secular moral outlook.<sup>14</sup> So we should not present, as the underlying rationale, the theory that, for example, human rights are preconditions for the autonomous moral agency prized by Kantians and the special dignity owing to the capacity for such agency; or that they are necessary for fulfilling divinely imposed obligations, whether the preferred statement of the obligations is found in Thomistic or Lockean natural law theory, or some formulation of shariah; or that they are required for the full expression of human powers associated with Aristotelian ethical views.

Instead, I propose that human rights norms are best thought of as norms founded on an idea of *membership or inclusion* in an organized political society, and not on a deeper outlook about the proper conduct of a good or righteous life. The relevant notion of membership is a normative idea—distinct, for example, from living in a territory. The central feature of the normative notion of membership is that a person’s good is to be taken into account by the political society’s basic institutions: to be treated as a member is to have one’s good given due consideration, both in the processes of arriving at authoritative collective decisions and in the content of those

<sup>14</sup> See Bull (2002: especially 41–3) for a suggestive discussion of related ideas. Thus Bull distinguishes cases in which a power has its own moral rationale for its conduct from cases in which that rationale is founded on ideas that provide a common terrain. Only in the latter case do we have, in Bull’s special sense, an international society.

decisions. For this reason, an idea of collective self-determination of a kind that I mentioned earlier is a natural correlate of the requirement of treating all as members (especially because of the first two features of collective self-determination). And while human rights are not confined to matters of process, the prerequisites of a process of collective self-determination—including rights of dissent, expression, and conscience—are among the human rights.

Correspondingly, disagreements about the scope of human rights may be seen as proceeding on a shared terrain of political argument—the terrain of global public reason—and not (or not only) as disputes among different moral and political traditions themselves. They can be understood, in contrast with disputes about the content of natural rights, as disagreements about what is required to ensure membership—about what consideration is due to each person in a political society, and how to ensure that consideration under particular circumstances.

In emphasizing the connection between human rights and membership, I mean to affirm a view more or less precisely opposite to the classical Bentham–Marx critique of rights. Rights are not excluding, dividing, atomizing, and community-defeating, but instead a partial expression of norms of social and political inclusion.

I referred earlier to a condition of fidelity on a conception of human rights: it must be broadly faithful to the content of the rights as laid out in the standard statements, in particular the Universal Declaration. The membership theory, I believe, meets this test of fit. The importance of the notion of membership in an account of human rights is suggested by the breadth and substance of the rights in the Universal Declaration and the Covenants—including rights to education, work, and cultural inclusion, as well as assembly, expression, and participation. To be sure, some human rights (e.g. to life and to personal security) are not tied only to membership but are also more plausibly associated with demands of basic humanity, irrespective of membership in an organized political society. But the guiding thought behind the more capacious lists in the principal human rights instruments seems to be that an acceptable political society—one that is above reproach in its treatment of individuals—must attend to the common good of those who are subject to its regulations, on some reasonable conception of that good, and ensure the goods and opportunities that people in the territory and those subject to political rule need in order to take part in the political society. Human rights claims, then, identify goods and opportunities that are socially important because they are requirements of membership (and that are not provided as a matter of course, if they are provided at all). Failing to give due consideration to the good of members by ensuring access to such goods and

opportunities is tantamount to treating them as outsiders, persons whose good can simply be dismissed in making laws and policies: no-counts, with no part to play in the political society.

One reason for emphasizing membership in this way—apart from considerations of fidelity—is suggested by the idea of political obligation. Thus, on a plausible account of political obligation, attending to the common good, on some interpretation of that good, is necessary if the requirements that a political society imposes on people under its rule are to have the status of genuine obligations and not mere forcible impositions. Regulations cannot impose obligations of compliance on those who are subject to them unless the regulations reflect a concern with their good. If an account of political obligation along these lines is correct—and it is more plausible than a theory of obligation that makes the justness of processes and outcomes a necessary condition for political obligations—the rights that are required if individuals are to be treated as members would be identical to those that are required if the requirements imposed by law and other regulations are to be genuine obligations.

## EQUALITY AND DEMOCRACY

Having said some things about a conception of human rights, I now need to introduce a conception of democracy. Simplifying a vast terrain: the essential point for addressing the question about human rights and democracy is that an idea of equality plays a central role in any reasonable normative conception of democracy. In fact, disagreements in normative democratic theory are typically disagreements about what is required in treating those subject to the rules (laws and regulations) as equals under the rules that apply to all and with which all are expected to comply.

One way to bring out the special importance of an idea of equality in any plausible conception of democracy is to note that the term ‘democratic’ is sometimes used to characterize a form of politics, and also used more broadly to describe a type of society, characterized, broadly speaking, by conditions of equality—a society of equals, with equal rights and equal status, whose members relate to one another as equals. When de Tocqueville (2000) discusses the democratic revolution in his *Democracy in America*, and the replacement of an aristocratic by a democratic society, he has in mind a transformation of the social hierarchy characteristic of feudalism into equality of condition, and not the emergence of electoral competition or widespread suffrage rights.

Similarly, Rawls says that his two principles of justice as fairness express the underlying ‘democratic conception of society as a system of cooperation among equal persons’, and the idea of ‘democracy in judging each other’s aims’, meaning that members of a just society do not—‘for the purposes of justice’—assess the ‘relative value of one another’s way of life’. He also describes his conception of equal opportunity and fair distribution—his difference principle—as a conception of democratic equality.<sup>15</sup>

Two ideas are essential in the characterization of a society as democratic, as a society of equals. First, each member is understood as entitled to be treated with equal respect, and therefore as entitled to the same basic rights, regardless of social position. An aristocratic or caste society or some other society with fixed social orders requires equal respect (and equal rights) within social ranks, but differential respect (and rights) across ranks. Second, the basis of equality lies, in particular, in what I will refer to as political capacity: we owe equal respect to those who have sufficient capacity to understand the requirements of mutually beneficial and fair cooperation, grasp their rationale, and follow them in their conduct. So the basis of equality in a society of equals lies in the capacity to understand and follow the requirements that provide the fundamental standards of public life—a capacity that appears to be more or less universally characteristic of human beings (though its basis, either in a particular mental module or in more generalized powers of reflective thought, is not well understood).

The fact that ‘democracy’ has these two applications—to a form of society and a form of political regime—expresses an insight, not an equivocation: the insight that a democratic political arrangement expresses in the design of its institutions, in particular at the supreme level of political authority, the conception of the members as equal persons owed equal respect. Moreover, the connections between a democratic society and democratic political arrangement run in both directions.

Thus, once the institutions of political democracy are in place, it is natural to regard the members of society as equals, with a broader claim to equal concern and respect in the arrangements of society: that is, natural to endorse the democratic conception of society. It is natural inasmuch as the conception of members as equal persons is itself suggested by the practices associated with democratic politics. For those practices entitle individuals—irrespective of class position or place in the distribution of natural assets—to bring their interests and their judgements of what is politically right to bear on supremely authoritative collective decisions. They provide that entitlement in the form of rights of participation, association, and expression: not just any rights, but

<sup>15</sup> This paragraph and the next three draw on Cohen (2002).

equal rights to participate in making fundamental judgements about society's future course. 'The instant the people is legitimately assembled as a sovereign body', Rousseau says, 'all jurisdiction of the government ceases, the executive power is suspended, and the person of the humblest citizen is as sacred and inviolable as that of the first magistrate' (1997: ch. 14).

At the same time, once the members of society are regarded as free and equal individuals—once we reject the idea of a fixed aristocratic hierarchy of unequal worth and entitlement, and accept the idea of a sufficient equality of political capacity—it is natural to conclude that there ought to be widespread suffrage and elected government under conditions of political contestation, with protections of the relevant liberties (of participation, expression, and association). For the extension of political (and other) liberties expresses the respect owed to persons as equals, with political capacity: Dahl calls this extension of the idea of a society of equals to political arrangements 'the logic of equality' (2000:10). The thought is that once a democratic society is in place, with its ideas of equal standing and equal respect, a political democracy is a natural concomitant, inasmuch as its gives public expression—manifest and crystallized in institutions—to the idea of equality and equal respect, and provides that expression in the basic design of the essential arrangements of collective decision-making. Martin Luther King, Jr. said that the 'great glory of American democracy is the right to protest for right'—that citizens have a right to bring not only their interests but also their *sense of justice* to bear on matters of common concern: a right to exercise what I have called their political capacity. So the emergence of a democratic society fosters the emergence of a political democracy, with the basic liberties of citizenship secured for all adult members—fosters, at least in the sense that it provides a forceful rationale for a democratic political society.

Three dimensions of a right to participate are suggested by an account of democracy founded on this conception of persons as equals:

1. *equal rights of participation*, including rights of voting, association, and office-holding, as well as rights of political expression;
2. a strong presumption in favour of *equally weighted votes*; and
3. *equal opportunities for effective political influence*.

I want to make a brief comment on the third element, because it helps to bring out the underlying rationale of the right to participate in a conception of free and equal persons.<sup>16</sup> Thus democracy's right to participate demands equal

<sup>16</sup> See Cohen (2001) for further discussion on the idea of equal opportunity for political influence.



*opportunity* for effective political influence rather than equality of influence. The simple demand for influence—irrespective of one's own actions or of the considered convictions of others—is unreasonable. That is because a compelling interpretation of the idea of political equality, in a society of equals who are endowed with political capacity, must ensure a place for individual responsibility. Members of a democratic society are represented as free and equal. As free, they are to be treated as responsible for the exercise of their political capacity, and that must be reflected in the content of the equal right to participate. If I demand influence irrespective of my conduct or the judgements of others, I deny the importance of such responsibility.

The importance of equal opportunity for political influence is obscured by the fact that much democratic theory in the 'elite' tradition, which endorses a more minimalist conception of democracy and the associated political rights, casts persons principally in the role of audience, with a fundamental interest in listening to debates, acquiring information through both formal political communications and more informal processes of discussion, arriving at judgements about policies and candidates, and acting as political agents when they express those judgements at the polls, making informed judgements among competing candidates. But as the conception of persons as free and equal in virtue of possessing political capacities suggests, citizens are also agents, participants, speakers, who may aim to reshape both the terms of political debate and its results, by running for office and seeking to influence the views of candidates, the outcomes of elections, and the interelection conduct of politics. A requirement of equal opportunity for political influence aims to ensure that they are in a position to play that role, should they wish to take it on.

#### A HUMAN RIGHT TO DEMOCRACY?

In asking whether there is a human right to democracy, then, I am asking two related questions: Is the equal right to participate that I have associated with democracy a human right? And is the democratic conception of persons as free and equal—the conception that underlies the equal right—a plausible component of a conception of human rights comprised within global public reason?<sup>17</sup> We know that the conception of persons as free and equal is not

<sup>17</sup> It might be objected that I have loaded the dice against a human right to democracy by presenting a conception of democracy more demanding than the minimalist idea of democracy as a system in which regular, competitive elections decide who runs the government. The objection would say that, on a less demanding view, there is a human right to democracy.

universally accepted by different ethical and religious outlooks, but that is not the relevant question: as I indicated in my earlier remarks about toleration, some conceptions may need to be adjusted to the terms of an acceptable global public reason.

I want to discuss three considerations that might be advanced in support of the thesis that there is a human right to democracy, and respond critically to each. I am unconvinced that there is a human right to democracy, because I do not find these considerations compelling.

1. *Truth.* In support of the claim that the conception of persons as free and equal—and the associated equal right to participation—is a plausible element of a conception of human rights, it might be argued that it represents the truth about human beings and our moral standing: not a truth acknowledged by all, but one that has, like virtually all interesting truths, come to be understood over the course of history. But I have proposed that we think of a conception of human rights as part of a conception of global public reason. The aim of a conception of global public reason is to present standards that one can reasonably expect others to accept: to present reasons that can be shared, and that provide a common standard of achievement and a basis for common responsibility. What is true and what is reasonable to believe are distinct: the former is singular and the latter is plural; incompatible views can each be reasonable to believe, though they cannot both be true.

Now it is objectionably intolerant to hold that everyone must acknowledge the normative truth and that a conception qualifies as an element of public reason simply in virtue of its truth. I am not here denying the truth of the view that persons are free and equal, and entitled to be treated as such as a matter of justice. To the contrary, I believe that individuals are free and equal and that they have an equal right to participate, from which it follows—since believing is believing true—that I believe that these propositions are true. Nor am I suggesting that political argument should exhibit the indifference to truth and falsity that Frankfurt (2005:34) claims is the essence of bullshit. Instead I am affirming the distinction between what is true and what it is reasonable to expect people to believe in the setting of global public reason, and emphasizing that the truth of a proposition does not suffice to win it a place as an element in global public reason. A conception of persons as equals is true, and it may have such a place, but it does not gain entry simply in virtue of being

I am not convinced that the assertion in the previous sentence is true. But even if it were, the point would remain that the democracy and associated rights required by justice are more demanding than the democracy and rights required by a conception of human rights.

true—any more than claims about divine creation gain entry in virtue of being true (if they are true).

2. *Bootstrapping*. It might be said instead that this conception of persons is not only true but also implicit in global public reason because *some* (open-ended) account of human rights is part of global public reason and—here is the controversial claim—*all human rights* depend for their justification on the conception of persons as free and equal. If this latter claim were true, the equal right to participation would not be in any way normatively distinctive: it could not be cabined off from other rights, but would be best understood as part of a single normative structure with a common rationale. Assume that there are some human rights, that, as I have suggested, human rights are not simply given by a list, but have a rationale that is itself part of the terrain of global public reason, and that the rationale includes a conception of persons as free and equal. Then there would be a right to democracy. The right to democracy could not, on the best account of human rights, be separated off, because the democratic conception of a society of equals, and the political norms associated with it, would be implicit in all human rights discourse and an appropriate guide to its interpretation, and thus to the extension of human rights beyond those that are already settled.

But this argument does not seem right. I cannot explore the issues in detail here, but in a companion piece, I sketch interpretations of arguments within Confucianism and Islam that accept the importance of membership, and support a more-than-minimalist conception of human rights, but neither of which depends on the democratic conception of society or the idea of persons as free and equal. The Islamic conception is founded on obligations given by law, and interprets rights as preconditions for fulfilling the obligations. But it may not extend to the idea of an equal political capacity. Similarly, the Confucian view illustrates the idea that rights may be founded on responsibilities associated with positions in social and political relations: in this case, the rights are extended as preconditions for fulfilling those responsibilities, which are differentiated across individuals. But there is no conception of persons as free and equal, and of a moral-political capacity possessed in sufficient degree by all to provide the basis of equal political standing and equal political opportunity.

More generally, I proposed earlier that we think of human rights as partial assurances of membership or inclusion, rather than as founded on an idea of persons as free and equal. The latter conception is associated with membership specifically in a democratic society, understood as a society of equals, and not with membership and the possession of rights as such.

3. *Unacceptable Conditions.* A third argument—which shades back into the instrumental conceptions that I mentioned at the outset—points to unacceptable conditions commonly associated with the absence of democracy: unacceptable consequences (war, famine, and tyranny) and the unacceptable subordination associated with an absence of equal political standing. The claim, then, is that these conditions—quite apart from any *independent* force of the idea of persons as free and equal—provide the case for including an equal right to participate as a human right and thus for including the idea of persons as free and equal, which is associated with that right.

I have two responses. First, if democracy is a requirement for avoiding unacceptable circumstances, we do have a case for it, though it may also be hard to achieve democracy when the political culture is deeply at odds with the underlying rationale for it, in a conception of persons as free and equal. We may hope, with Zakaria (2003: especially 150), that if people practice it long enough they will start preaching it, but there may be large hurdles to establishing and consolidating the practice.

Au: Preach?  
Practicing?

Second, it is not clear how strong a case we have for the claim that a society that ensured a relatively rich set of human rights, including conditions of collective self-determination short of democracy, would nevertheless be so clearly unacceptable as to bear so much argumentative weight in the case for a human right to democracy. Terrible evils are correlated with the absence of democracy, including expansionist foreign policy, famine, tyranny, and cruel subordination. But the same cases are also typically associated with an absence of collective self-determination, which is less demanding than democracy; with a weak or absent rule of law; and with weak protections for speech, press, and association. Isolating and assessing the grossly objectionable implications that flow specifically from an absence of democracy as distinct from these other conditions is difficult. Thus, Sen (1999: ch. 7) famously observes that democracies do not have famines, and points out the terrible Chinese famine after the Great Leap Forward. But in the period after the Great Leap Forward, China also lacked collective self-determination, the rule of law, and (as Sen emphasizes) protections of speech, press, and assembly. It is hard to know whether to lay the responsibility specifically on the doorstep of democracy.

## CONCLUSION

I have argued that there is no human right to democracy. But is this view not deeply patronizing? Does it not suggest, in the name of tolerance, that democracy is good for ‘us’ but not for ‘them’—that benighted peoples, who have not yet received full illumination from enlightenment’s bright candle and fully understood human moral powers, do not have the right to be treated as equals in their political arrangements? Surely toleration has its limits.

Surely it does. And an essential point of a conception of human rights is to describe those limits. But this blunt observation about toleration carries no argumentative weight. The issue is not whether to tolerate genocide, slavery, torture, group starvation, enforced illiteracy, or imprisonment without trial or persecution for religious or political convictions. The question is whether a system with unequal political rights should be tolerated—on the assumption that it ensures collective self-determination and protects a reasonably wide range of other human rights, and thus provides the bases of membership. The answer to that question is not aided by sweeping platitudes about the limits of toleration.

More fundamentally, the objection on grounds of patronizing insult is entirely misconceived. The position I have presented implies no asymmetry in rights to democracy. Justice requires democracy: that is true for everyone, for us—so to speak—as well as them. Democracy is not required as a matter of human rights: that too is true for us and them. A world with more democracy would be a more just world, because it gives people the treatment as equals to which all are entitled. But democracy, with its equal right to participate, is not part of the common standard of achievement, defensible on the terrain of global public reason, to which global public responsibility extends.

Protecting human rights is then a less demanding standard than assuring justice and the democracy it requires. Less demanding, but let us not forget that the world would be unimaginably different—many hundreds of millions of lives would be immeasurably better—if this less demanding but exacting standard were ever achieved.

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# Thanks

*G. A. Cohen*

I want to express my gratitude to Christine and to the loyal friends who responded to her call to contribute to this book. Their generosity, and their affection, are a source of great happiness to me. They have honoured me beyond all reasonable measure and they have provided me, and you, with a great deal of good thought to think about.

When Christine told me that the projected title of this volume was *The Egalitarian Conscience*, I recoiled a little. I resisted the title because I thought that I did not deserve it, on two counts.

My first reason for thinking that I didn't deserve to be called "the egalitarian conscience" is that the phrase represents me as holier than I am. I am certainly not holier than I am: indeed, it's a good bet that I am not even holier than thou. I disavowed all claims to holiness in my *If You're an Egalitarian, How Come You're So Rich?* The book contains a footnote in which I say that someone might ask me: "If you're the egalitarian who wrote, *If You're an Egalitarian, How Come You're So Rich?*, how come *you're* so rich?", and I did not regard the question as out of place. I might have called the book *If I'm an Egalitarian, How Come I'm So Rich?*, but that title would have exposed to public view my vice of self-preoccupation. (I am, of course, indulging the vice here, but this is a special place.)

But, second, and equally strongly, I thought I didn't deserve the mooted designation because it makes me seem so grim, so inspecting, so admonishing, so unremittingly judging.<sup>1</sup>

A friend who had, over the years, built for himself an opulent life, asked me, when he was about to acquire some further expensive accoutrement, whether I thought that he would be wrong to do so. I was taken aback, for at least two

<sup>1</sup> My response to the title was therefore like Elizabeth Bennet's, who responded as follows to a remark of Miss Bingley's: "I deserve neither such praise nor such censure". [Jane Austen, *Pride and Prejudice* (Oxford: Oxford University Press, 2003), p. 27]. I claim no further resemblance between me and Bennet.



reasons. One was that I had this Yiddish reaction where one says (in this case I said it only in my head) “Shpet dermont!” which means<sup>2</sup> “Isn’t it a little late in the day to begin to consider that *now*?” But I was also taken aback because my friend was asking me to judge him, and I didn’t want to. I am not the judge that the title of this book might suggest that I am. My motto is: “Judge not, lest me be judged”. (And anyway, some of my best friends live opulently.)

I nevertheless accepted the title, because I couldn’t think of anything better, and because, in a way, I could see what Christine meant. I admit to deserving the title in one sense. It is true that I seek to press my conviction, and all the intellect at my command, against liberals who profess a certain egalitarianism and then end up (as I believe) retreating from it. Hence the title of my forthcoming book, *Rescuing Justice and Equality*: I try to rescue them from Rawlsian liberalism, but the liberals, the Rawlsians, that I consequently criticize, aren’t being criticized personally. (And it should be clear from the content of this book that some of my best friends are liberals.)

<sup>2</sup> Because of the contrasting pungencies of words in Yiddish and English, it takes many more words to say it in English. The (totally) literal translation is “late remembered”, and that doesn’t cut it.