

IS THERE A HUMAN RIGHT TO DEMOCRACY?

A RESPONSE TO JOSHUA COHEN

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RESUMEN

¿Es la democracia un derecho humano? Hay un creciente consenso en la práctica legal e internacional de que la respuesta es “Sí”. Sin embargo, algunos filósofos dudan de que debamos ver la democracia como un derecho humano. En este artículo respondo al desafío más sistemático presentado hasta el momento, el cual ha sido recientemente propuesto por Joshua Cohen. Su desafío se dirige a la idea de que la democracia es un derecho humano, no a la idea de que la democracia es parte de lo que la justicia demanda. Es un desafío instructivo porque nos obliga a considerar importantes preguntas sobre la naturaleza y justificación de los derechos humanos y sobre el supuesto derecho humano a la democracia. Hay una tendencia a ver cualquier demanda de justicia como un derecho humano, y Cohen nos fuerza a considerar si esto no podría estar sucediendo con el caso de la democracia. De este modo mi objetivo es no simplemente refutar el argumento de Cohen sino abordar las preguntas que pone sobre la mesa. Comienzo analizando en la sección 2 la concepción de los derechos humanos de Cohen. En la sección 3 defiendo el derecho humano a la democracia contra su desafío. Concluyo en la sección 4 articulando algunas razones para pensar que el derecho a la democracia es un derecho humano que ponen en movimiento y desarrollan algunas de las premisas clave del propio Cohen.

Palabras clave: Democracia – Derechos Humanos – Joshua Cohen – Justicia Global

ABSTRACT

Is democracy a human right? There is a growing consensus within international legal and political practice that the answer is “Yes.” However, some philosophers doubt that we should see democracy as a human right. In this paper I respond to the most systematic challenge presented so far, which was recently offered by Joshua Cohen. His challenge is directed to the view that democracy is a human right, not to the view that democracy is part of what justice demands. It is instructive because it forces us to consider important questions about the nature and justification of human rights, including the putative human right to democracy. There is a tendency to see every claim of justice as a human right, and Cohen presses us to face the risk that this slip may occur in the case of democracy. Thus my aim is not simply to refute Cohen’s arguments but to engage the questions he forcefully and helpfully puts on the table. I start in section 2 by analyzing Cohen’s account of human rights. In section 3 I defend the human right to democracy against his challenge. I conclude in section 4 by articulating some reasons for the claim that democracy is a human right that mobilize and elaborate on some of Cohen’s own key premises.

Key words: Democracy – Global Justice – Human Rights – Joshua Cohen

1. Introduction

A protester in Cairo’s Tahrir Square, feeling impatient because the transitional military government that took power after the demise of Hosni Mubarak was not taking decisive steps to introduce fair democratic elections, told a reporter that “the street has woken up” and had this to say to the Supreme Council of the Armed Forces: “we are the rulers, and you follow our orders—not the other way around...”¹ Is

1. The protester continued, less politely but revealingly: “We are the fucking red line, you do not cross us.” See “Revolution turns to rancour as Arab spring loses momentum.” *The Guardian Weekly* 22 July 2011, p. 12.

the idea of popular sovereignty, as expressed by the democratic ideal of political equality, a human right? Core documents such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights are somewhat open to interpretation, although they seem to lean strongly toward a democratic construal of political rights. At any rate, there is a growing consensus within the legal and political practice of human rights that the democratic interpretation should indeed be favored. However, some philosophers doubt that we should see democracy as a human right. In this paper I respond to the most systematic challenge presented so far, which was recently offered by Joshua Cohen. Cohen is one of the most important contemporary defenders of the ideal of democracy as a key component of justice. His challenge is directed to the view that democracy is a matter of human rights, not to the view that democracy is part of what justice demands. It is instructive because it forces us to consider important questions about the nature and justification of human rights, including the putative human right to democracy (hereafter “HRD”). There is a tendency to see every claim of justice as a human right, and Cohen presses us to face the risk that this slip may occur in the case of democracy. Thus my aim is not simply to refute Cohen’s arguments but to engage the questions he forcefully and helpfully puts on the table. I start in section 2 by analyzing Cohen’s account of human rights. In section 3 I defend the HRD against his challenge. I conclude in section 4 by articulating some reasons for the HRD that mobilize and elaborate on some of Cohen’s own key premises.²

2. I focus on the articles “Is There a Human Right to Democracy?” and “Minimalism about Human Rights: The Most We Can Hope For?” in Cohen (2010), pp. 349-72 and 319-48. Page numbers in the paper refer to this volume. Other important challenges to the HRD, which I cannot discuss here, are presented in Beitz (2009), Ralws (1999), and Reidy (2012). For defenses, see Buchanan (2004), Gould (2004), and Christiano (2011).

Before proceeding, let me clarify the logical structure of this paper. Given its complexity and power, Cohen's argument deserves to be discussed in full detail. I thus identify and respond to each step in it, blow by blow. In a companion paper, I present an independent case for the HRD.³ My main concern here is to defend the HRD through a detailed engagement with the most important current challenge to it. Thus, although I do not establish that there is a HRD, I show that Cohen does not establish its absence. Furthermore, I identify several (nonconclusive) grounds that favor the view that there is a HRD.

2. An Analysis of Cohen's Account of Human Rights

In this section I analyze Cohen's account of human rights. It includes three key components. The first identifies three common features of human rights and two methodological assumptions of their characterization, the second suggests that we avoid both "minimalist" and "maximalist" approaches to the content of human rights, and the third proposes that we conceive the content of human rights by appeal to their role in global politics and their rationale as part of an ideal of global public reason focused on the preconditions of membership in political societies.

2.1. Three features and two assumptions

The three common "features" of human rights are these:

Universality. Human rights "are *universal* in being owed by every political society and owed to all individuals" (p. 353).

3. Gilabert (manuscript).

Non-juridification. Human rights "are requirements of political morality whose force as such does not depend on their expression in enforceable law" (p. 353).

Urgency. Human rights "are especially *urgent* requirements of political morality" (p. 353).

These features, according to Cohen, are suggested by the Universal Declaration's affirmation of human rights as "a common standard of achievement for all peoples and all nations".⁴ I find this list plausible, although I will amend it in 4.2 (recommending that individuals be seen as the fundamental agents).

The two "methodological assumptions" are these:

Fidelity. "[I]f 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" (p. 354).

Open-endedness. "[A]ny proposed enumeration of human rights—as in the Declaration or the Covenants ...—is open-ended in at least two ways ...: (1) we can, through normative reasoning, argue in support of human rights that were not previously identified or enumerated; and (2) moreover, such rights as are identified are expressed in abstract language whose application requires interpretation" (p. 354).

I also find these assumptions plausible, although I suggest two additional points that I think Cohen would accept. Regarding Fidelity, I agree that we can take claims in the Universal Declaration as "'provisional fixed points' in our reflection on the nature and content of human rights" (p. 354). I add that one reason for holding a form of Fidelity that demands that we start by considering existing human rights documents is a concern of semantic continuity with the practice in which

4. For central human rights documents see Brownlie and Goodwin-Hill (2006).

reflection operates. This is not a conservative point, as continuity may include criticism and change.⁵ But that criticism and change is responsive to, and intelligible against, the pre-existing views they assess. Second, the possibility of criticism and change is also important for a fuller account of Open-endedness. Besides the points (1) and (2) that Cohen mentions, I add (3) that we may find reason to revise our lists of human rights not just by adding new members, but also by abandoning existing ones. Provisional fixed points are indeed provisional.

2.2. *Neither minimalism nor maximalism*

Cohen rejects minimalist accounts of human rights that restrict their content to the protection of bodily security. An example is to claim that human rights only focus on “the minimal conditions for any life at all”.⁶ This kind of view is often motivated by a concern for toleration. But it misconstrues that concern by tying it to deference to what people actually believe rather than to what they could come to believe after engaging in public reasoning (see 2.3).

Cohen also rejects maximalist accounts that see the domains of human rights and justice as coextensive. An example is to take Rawls’s principles of fair equality of opportunity, or the difference principle, as stating human rights. This view is implausible. Although we should not accept minimalism’s exclusion of socioeconomic rights from the list of human rights, we may limit that list so that it does not become as demanding as Rawls’s theory of justice as fairness. Most would agree,

5. In an otherwise sympathetic discussion of Cohen’s views, Kenneth Baynes suggests that reflection on current global political practices may support the acceptance of a HRD. See Baynes (2009: 16).

6. Ignatieff (2001: 56).

Cohen says, that human rights only constitute a “proper subset” of justice (p. 352). This was Rawls’s own view. I also agree that human rights do not exhaust the domain of justice, but will characterize this point in a different way (see 4.3).

2.3. *Content, role, and rationale*

A satisfactory account of human rights cannot merely state a list of human rights. It should defend the contents of that list. There is disagreement about what should go into the list, as the cases of socioeconomic and democratic rights make obvious. We need some shared procedures and standards of assessment of alternative proposals. One way to proceed is to propose a normative conception of the practical role and rationale of human rights. Regarding role, Cohen suggests the following:

Practical Role of Human Rights. The “role” of a conception of human rights is “to present a set of important standards that all political societies are to be held accountable to in their treatment of their members” (p. 325; see also 398).

A common (but not uncontroversial) rendering of this point is to see human rights as imposing conditions on the acknowledgment of states’ internal sovereignty.

How do we justify a claim that a putative right fulfills the relevant practical role? We need a rationale. Cohen’s suggestion is that that we frame discussion on any putative right by reference to an “ideal of global public reason.”

Global Public Reason. “[G]lobal 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” (361).

Some key points in Cohen's account of global public reason and the justification of human rights are these. First, global public reason is global in reach and in its agents. It applies to all political societies and it is "presented as the common reason of all peoples, who share responsibility for interpreting its principles and monitoring and enforcing them" (p. 361). This responsibility can in principle be discharged in various ways by national, regional, and global institutional agents, although in current practice the more "immediate responsibility" is likely to fall on existing national political societies (p. 361; see also 329, where the possibility of a "more global society" is not excluded).

Third, global public reason is public. Since it is meant to be shared in a context of wide diversity of ethical, religious, and metaphysical views, its terms should be presented independently of any such views (pp. 361-2). Fourth, this idea of global public reason as involving the autonomous formulation of claims and their justification implies the rejection of two other approaches. One is a "skeptical" approach that rejects deeper ethical, metaphysical, or religious "foundations." Global public reason is "*unfoundational*" rather than "*anti-foundational*" or "*post-metaphysical*" (p. 330). The other is an "empirical" approach according to which "ideas of human rights are somehow to be 'found' within each religious and moral tradition, or located at the intersection of those different traditions, taking their content as fixed and given" (p. 331). Global public reason formulates human rights without having the particular traditional conceptions "in view" (pp. 331-2). Furthermore, in seeking a conception of human rights that people coming from different traditions "can accept," global public reasoning need not defer to what people currently accept. Showing that a conception of human rights can find common ground among diverse particular ethical traditions "may require fresh elaboration of those traditions by their proponents—where it is understood that the point of a fresh elaboration is not simply to fit the tradition to the demands

of the world but to provide that tradition with its most compelling statement" (p. 332).

Fifth, and finally, global public reason operates with a standard of "inclusion" or "membership."

Standard of Inclusion or Membership. "Human rights are best thought of as norms founded on an idea of membership or inclusion in an organized political society ... 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 process of arriving at authoritative collective decisions and in the content of those decisions" (362).

It is important for Cohen that we distinguish between a demand of "due consideration" of persons' interests or good and a more stringent demand of "equal respect and concern." The latter is appropriate for a democratic society and its public reason. It is not, like the former, integral to *global* public reason and its articulation of human rights (pp. 10, 349, 364, 399). I will have much to say about this contrast as we proceed.

3. Response to Cohen's Arguments Against a Human Right to Democracy

In this section I assess Cohen's arguments against the claim that there is a HRD. Such a right would imply an "equal individual right to political participation" (p. 360); it would involve "*equal rights of participation*, including rights of voting, association, and office-holding, as well as rights of political expression," "a strong presumption in favor of *equally weighted votes*," and "*equal opportunities for effective political influence*" (p. 367). According to Cohen, democracy is a correct demand of justice, but it is not a human right. On the "proper subset" view of human rights, political rights involve "forms

of political representation and accountability that suffice for collective self-determination, although not a full complement of democratic rights, including full equality of political rights” (p. 357). I discuss three groups of arguments presented by Cohen. I find them insufficient, but they involve important insights that I will identify and seek to integrate.

3.1. *Three initial arguments challenging maximalist conceptions of human rights*

The first group of arguments presented by Cohen challenge maximalist conceptions of human rights, which include a HRD. They concern considerations about collective self-determination, political obligation, and toleration, all of which would recommend a “proper subset” view that falls short of maximalism and does not include democracy.

(1) *Collective self-determination*. The first argument says that we can construe the principle of collective self-determination in a way that is not democratic but is satisfactory in terms of human rights. Collective self-determination involves three conditions:

1. “[B]inding 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”
2. “[R]ights to dissent from, and appeal, those collective decisions are assured for all”
3. “[G]overnment normally provides public explanations for its decisions, and those explanations—intended to show why decisions are justified—are founded on a conception of the common good of the whole society” (pp. 357-8).

These conditions can hold even if there is political inequality (for example, if citizens endorsing certain religions can-

not be public officials). If there are institutional mechanisms that can represent their interests, they can dissent with and appeal decisions, and they are given explanations sensitive to their fundamental interests (such as those protected by civil and socioeconomic rights), then the partially excluded are adequately treated so far as human rights are concerned.

This view is puzzling. A first concern is whether it is realistic to expect that conditions 1-3 will reliably be satisfied, and lead to the protection of people’s fundamental interests, without political equality. The important issue is not whether it is *possible* for this to happen. For example, an enlightened ruling elite certainly *could* exist that satisfies these conditions without democratic accountability. But it seems irresponsible to bank on this possibility. We want to know what is the *relative probability* of different political arrangements protecting fundamental interests. The onus of proof falls primarily on the view that democratic rights are not required. Given the overwhelming wealth of historical evidence about the tendency to bias and abuse of political power, it is imprudent for agents not to favor regimes granting robust mechanisms of accountability through equal rights to affect the political process of the kind only democracy affords.⁷ As historical experience concerning the interests of property-less workers and women suggests, those who lack equal and effective rights to affect the political process are more likely to be bypassed by decision-makers. Their interests are less likely to be duly represented, and they are less likely to be consulted or offered explanations. And being consulted, being allowed to dissent and appeal, and being given explanations is not likely to be enough. People also have reason to be able to unseat those

7. “The fundamental interests of adults who are denied opportunities to participate in governing will *not* be adequately protected and advanced by those who govern. The historical evidence on this point is overwhelming.” Dahl (1998: 77; see pp. 77-8 and 52-3).

in power who do not in fact cater to the fundamental interests they pledge to track. Thus instrumental considerations regarding the fulfillment of civil and socioeconomic rights in principle support strong political rights. I return to this point in 3.3.2.⁸

In defending the view that collective self-determination may ground political rights without democracy, Cohen also asks us to consider a context in which “democratic ideas lack substantial resonance in the political culture, or the history and traditions of the country” (p. 358). In such an environment, to require democratic rights would be to disrespect people’s self-determination. But this argument is unconvincing. First, it simply defers to what people already think is correct. This is in tension with the rejection of the “empirical” approach to public reason (see 2.3) if there are, and there indeed are in this case, independent reasons for rejecting what some people happen to believe. Of course, what people think is important to how we should treat them. This is one reason why democracy is important. But even if we treat those who currently prefer a nondemocratic political structure in a way that defers to that preference (for example by not forcing a democratic structure on them), we should not agree to the content of that preference. Basic political structures are special in that they systematically frame most areas of social life. Precisely if political self-determination is valuable, a basic political structure that disempowers people at the level of fundamental social decision-making must be disvaluable.

Second, in the absence of democratic practices involving full freedom of political association and participation, how can we really know what the people of a country think just? How can they themselves develop a considered and reflective poli-

8. Many have argued that a “linkage argument” of this kind is in fact very strong. On linkage arguments (including reference to political liberty) see Shue (1996), Nickel (2007), and Gilbert (2010).

tical outlook without robust and equal freedoms allowing not only open discussion but also experience in wielding political power and responsibility? (I return to this epistemic consideration in section 4.)⁹

Third, besides the instrumental arguments mentioned in the foregoing paragraphs, there is the intrinsic consideration about individuals’ status in a political system that calls for their allegiance. Being rendered second-class citizen (which is normally the case in a nondemocratic regime) is arguably injurious to an individual’s dignity, or a failure of due consideration. It is insulting to be told, or treated in a way that pragmatically implies, something like the following: “Our fundamental collective decisions are yours just as much as everyone else’s, although you deserve fewer rights to participate in shaping them than some others.” Why not see this as a matter of human rights besides wider justice?¹⁰ Recall that we are considering the basic political structure of social life, not a specific decision-making framework within it (for example one running a sports club). Regardless of whether one actually takes offense, it is in fact an affront to one’s dignity to be subject to a basic political structure within which one has less than equal rights of participation.

(2) *Political Obligation*. A second argument concludes that human rights cannot exhaust the domain of justice on the basis

9. See also Forst (2010). Could Cohen rely on the possibility that we just do know that democratic ideas lack resonance? Would the case for democracy then be defeated? No. Whether democracy, like any other putative fundamental right, exist is not dependent on whether it is currently accepted. What is accepted need not coincide with what is acceptable in public reason. This is a key point in Cohen’s own account of public reason.

10. A further, related worry is that it is not clear that the self-determination of the “collective” should be taken to fully represent that of an individual belonging to it unless that individual is as allowed to shape collective decisions as everyone else.

of two premises. The first is that members of a country may have an obligation to obey its regulations even if these regulations, and the regime they flow from are not fully just. The second is that “human rights are urgent standards of political morality whose violation warrants external reproach (and in extreme cases sanctions and intervention)” (p. 359). This argument does not mention democracy, but it might be appealed to within another argument that concludes that democracy is not a human right because countries that are not democratic (but satisfy the conditions of collective self-determination) are ones whose members may have obligations to obey unjust regulations and may not be the target of foreign interference. But this argument would not be convincing. One problem is that the moral impermissibility of disobeying certain unjust laws produced by an unjust regime does not imply the moral impermissibility of foreign interference with the regime that produces those laws. The citizens of the country may have an obligation to obey the laws because the consequences of non-compliance may, all things considered in the circumstances, be worse in terms of overall rights fulfillment. (Perhaps disobedience would likely elicit brutal repression and be successfully used by factions of the governing elite to make the regime even more oppressive.)¹¹ But foreign agents (including governments and social movements) may still have reason to act. The reasonable forms of action would depend on the circumstances, but they could in principle involve soft forms of pressure

11. An alternative is to say that the citizens have a stronger, content-independent obligation owed to their rulers to do what they have said *because* they have said it. A defender of democracy would say that there is no such stronger obligation where a democratic regime can exist but is not in place. As the Tahrir Square protester (see note 1 and surrounding text) seemed to suggest, political obligation is owed to the fellow members of the democratic community, all of whom, together, are the ultimate legitimate rulers. To start by denying this would be to assume as a premise against a HRD the negation of it, which would be circular.

such as public criticism and economic incentives to encourage the elites of the country to introduce democratic reforms. There are many forms of reasonable global action targeting human rights deficit.¹² Depending on multiple considerations (including the risks of imperial assertion), they are likely to fall short of forceful intervention. And they are not defeated by facts about political obligation of the kind referred to here.¹³

(3) *Toleration*. Another reason to avoid maximalism about human rights, and its inclusion of democratic rights, is based on “the idea of tolerating reasonable differences.” We may think that nondemocratic countries are unjust, but if we acknowledge that “reasonable people disagree,” we may prefer to be less demanding in our global public reasoning than in the public reasoning of a democratic society:

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 (p. 359).

Cohen recognizes that the notion of toleration is quite unclear, and that in any case it is parasitic upon a substantive normative idea of “reasonability,” as toleration is owed to other views when they are reasonable. So the appeal to toleration regarding conceptions of human rights does not do much

12. Cohen acknowledges this (p. 361). See also Beitz (2009: 31-42).

13. There are in fact various experiments of international action to foster democracy. For a survey see Rich (2001). The incorporation of an international democratic norm “is both articulated in various regional and global instruments and increasingly demonstrated in international practice by such policies as promoting democracy abroad, making democracy a qualification for membership in certain regional organizations, establishing democratic conditionality for development cooperation, and, in a limited number of cases, defending democracy through collective security mechanisms” (p. 21).

normative work independently of a standard of reasonability for global public reasoning. Cohen ties such a standard to the recognition of the demands of membership: “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 ... they need not endorse the democratic idea of society as an association of equals” (p. 360). So whether toleration involves dropping a HRD depends on whether the norms of membership should include democratic rights. We will turn to this issue momentarily, but before proceeding I want to comment on a remark advanced in defense of tolerating nondemocratic regimes. Part of the importance of toleration in the global setting is based on “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 aspects of it (p. 360). This is an important point. But it may actually tell against being deferential toward nondemocratic regimes out of respect for their members. This is because, arguably, those regimes do not respect their own people, as they treat some of them as second-class citizens whose voice and will can be publicly considered as less important than those of other fellow citizens. By criticizing the nondemocratic character of those regimes, we express our respect for the individuals the regimes subject to comprehensive coercive rule but simultaneously disempowers.¹⁴

14. What if the sense of self-respect of many people in nondemocratic societies is, as a matter of empirical fact, even more bound up with the maintenance of a society whose basic norms they accept? External critics, to be consistent, must believe that self-respect is bound up with political self-determination. This is a normative claim, not a psychological report. But they can accept that self-respect has other bases as well. Some of those alternative bases may be (normatively or psychologically) stronger in some circumstances. This does not defeat the claims that political disempower-

3.2. *The argument concerning democracy and equality*

A second set of considerations introduced by Cohen concerns the relation between two uses of the term “democracy” (pp. 364-8). The first is the standard one of “political democracy,” which characterizes (in its full realization) an organization of the highest decision-making institutions of a society in which citizens have equal and effective opportunities for participation and influence. The second use involves the idea of a “democratic society,” and characterizes a kind of society in which persons see each other as free and equal cooperators. An example of the second use is Rawls’s account of his strong principles of economic distribution as part of an idea of “democratic equality.” Cohen notes that there is a tendency for each form of equality to foster the other, in the sense that if one accepts any, one is furnished with a rationale that leads to embracing the other. Thus, if one sees people as having equal political rights to affect the supreme decision-making structures of their society, why not grant them also equal rights in other important spheres, such as the economic one? And if one thinks that people should have equal opportunities to participate in, and benefit from social cooperation, why not also grant them equal opportunities to affect the political processes that structure the legal conditions of social cooperation? Cohen notes that in fact a common way of supporting political democracy is by seeing it as part of a strong idea of a society of equals.

How might these remarks undermine a HRD? Although the text is not fully clear to me on this score, the main thought, I think, is that since we consider the idea of a democratic society as pertaining to justice but not to human rights, we should feel moved to reject the idea that political democracy is a matter of human rights once we see its close relation with the idea

ment *is* a form of disrespect, and that it *does* constitute a form of intolerance.

of a democratic society. But I am not convinced that a HRD is thereby undermined. The fact that there would be a tendency to accept a wider idea of a democratic society if one accepts the narrower idea of democratic politics is no argument for not seeing the latter as a matter of human rights. If there are independent grounds for democracy as a human right, the inference from the former to the latter is not defeated by showing that the latter in turn has implications (or suggestions) regarding wider justice. Furthermore, if as a matter of justice a wider democratic society is desirable, and the recognition of a human right to political democracy would foster the transition toward it, then one in fact has an additional reason of justice to welcome the recognition of a HRD.

I will return to the last, transitional point in 4.3. But of course the difficult issue now is whether one could recognize that there is a HRD independently of its contribution to the achievement of wider social justice. Can we disentangle the idea of political equality from the more demanding idea of a “society of equals”? It seems to me that we can, as the relation between political democracy and a democratic society is contingent. Thus, although there are arguments for democratic political rights that see them as part of a wider package of rights making up an egalitarian society, this does not imply that democratic rights cannot be modules in different, and less demanding sets of claims.

To illustrate, consider two ideas discussed by Cohen as essential to the conception of a “society of equals.” These ideas indeed help ground political democracy, but I think that they can be given a plausible interpretation on which they are part of a conception of human rights without needing to involve the complement of the “proper subset” of justice that human rights populate. The two ideas are the following: (a) “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”; (b) “the basis of equality lies, in particular, in ... 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” (p. 365).

Cohen is not a relativist, and his endorsement of democracy as a requirement of justice is universalist (p. 372). He in fact accepts (a) and (b) as universal ideas of justice. But the issue is whether we can also have, and accept, a rendering of them that is not tied to the “maximalist” idea of a society of equals. And we can. Consider the Preamble and Articles 1 and 2 of the Universal Declaration. The Preamble opens by referring to the “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family” as being “the foundation of freedom, justice and peace in the world.” Article 1 says that “[a]ll human beings are born free and equal in dignity and rights,” and “are endowed with reason and conscience and should act toward one another in a spirit of brotherhood,” and Article 2 claims that “everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” These three framing clauses evidently support an idea of equal respect of the kind envisaged in (a), according to which all should be seen as equal in rights regardless of their social position and background. Article 1’s reference to certain cognitive endowments, if applied to human adults who are not severely mentally impaired (i.e. those in whom the endowments are clearly present), also identifies aspects of the idea of political capacity targeted by (b). If all such human adults are free and equal in dignity and rights, and have reason and conscience, and can (given that they ought to) act toward each other in a spirit of brotherhood, then they have enough political capacity to be responsible citizens in a democratic polity. This can be captured as part of the ideal of membership within a global public reasoning that is broadly sharable. Wider conceptions of social justice, and alternative comprehensive doctrines,

would of course extend or provide deeper foundations of these claims about freedom, equality, and capacity in different ways. But they can converge on those claims as providing sufficient support for the intrinsic value of democracy.

3.3. Discussion of two arguments for a human right to democracy

Cohen concludes by briefly discussing three arguments for a HRD, none of which he finds compelling. I focus on two of them.

(1) *Bootstrapping*. According to one argument, the conception of persons as free and equal “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” (p. 369).

The formulation of this argument may be somewhat exaggerated, as it is not clear that defenders of a HRD need to say that *all* human rights are based on a conception of persons as free and equal. The right to basic alimentation may not depend on the view of persons as free. However, as I said in 3.2, there are some framing clauses in the Universal Declaration that indeed appear to involve some such conception of persons, and these may be seen as important for the justification of many human rights.

Cohen’s rebuttal to the Bootstrapping argument fails. He says that the argument assumes that human rights should come in a normative package that includes a view of persons as free and equal and that such an assumption is mistaken. To support this, he first recalls his discussion (in the paper “Minimalism about Human Rights”) of a possible development of Confucianism that supports a more than minimalist conception of human rights without embracing a maximalist one that endorses the ideas of free and equal persons entitled to

democratic opportunities. The problem here is that Cohen has not also shown that the Confucian view *cannot* and *should not* also be developed so as to accept the further ideas. Thus one can simply consider the fresh interpretation of Confucianism suggested as incomplete.¹⁵

The second response is the following:

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 (p. 370).

In reply I note, first, that even if we accept the membership standard as a criterion for human rights, we can still see membership (and “due consideration”) as tied to an idea of persons as free and equal.¹⁶ Since Cohen does not provide any account of how to construe the content of the standard of membership, I don’t see any preemptive reason to rule out this suggestion. Certainly ruling out the option by invoking a proposal that involves a definition of membership that excludes it would be unacceptably circular. Second, we can tie membership to ideas of freedom and equality that are thinner than the ones found in more extensive pictures of social justice (including what Cohen calls a “democratic society”). Thus, we need not be collapsing human rights into justice when we say that the former mobilize a normative view of persons as free and equal.

15. There is of course also the option of branding a view that cannot be developed so as to endorse what there is strong independent reason to consider crucial ideas of personhood and certain human rights as unreasonable. I do not pursue this approach here, but it cannot be ruled out a priori.

16. I am not endorsing the view that all human rights are demands of membership. I think that it is too restrictive. But my argument here and in section 4 is consistent with the standard of membership if it includes thin ideas of freedom and equality as I present them.

(2) *Unacceptable Conditions*. The other argument for a HRD does not ground it in the ideas of persons as free and equal, but in the importance of avoiding terrible outcomes such as tyranny, war, famines, and cruel subordination.¹⁷ Democracy (and the ideas that come associated with it) is supported on the instrumental consideration that it is a requirement for avoiding such unacceptable conditions.

Cohen has two responses to this argument. The first grants that if democracy is a requirement for avoiding the unacceptable conditions then there is a case for it, but mentions the worry that the instauration of democracy could be difficult because many people may, in some contexts, reject the ideas of freedom and equality associated with it. Cohen accepts that people's minds may change over time, but his worry concerns the initial steps towards democratization. In reply, I say that people that do not already accept the ideas of freedom and equality associated with democracy can initially be motivated to embrace democratic institutions precisely in order to avoid the terrible conditions they already find unacceptable. Presumably they will be acquainted with them in nondemocratic institutional contexts.

Cohen's second response is more troubling. It says that "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" (p. 371). The Unacceptable Conditions argument for democracy assumes that it is the lack of specifically democratic rights that is crucial when explaining the occurrence of famine, tyranny, etc. But, Cohen notes, when

17. Arguably, however, part of the badness of some of these outcomes (such as tyranny and cruel subordination) is that they express disrespect for people's equality and freedom.

those terrible outcomes ensue we often find other factors that might be explanatorily relevant, such as weak or absent rule of law, freedom of the press, and collective self-determination.

This is an important challenge that merits careful empirical exploration.¹⁸ Things may be more complex than initially assumed by some defenders of a human right to democracy. As we carry out the empirical investigations called for we should not, however, think that we should put the claim of a human right to democracy aside. First, the Unacceptable Conditions argument should not be construed in terms that are too strong. From a practical standpoint, to support democracy instrumentally we do not need to find that famines and other terrible outcomes can only occur when and only because democracy is absent. It is enough if the evidence shows that democracy is an important (even if not the only) relevant causal factor so that in its absence the likelihood of such conditions increases significantly. Second, in the face of uncertainty about the precise composition of the explanatory etiology of unacceptable conditions, and given that so far research appears to show that democracy is an important factor, it is only prudent to avoid risks and err on the side of keeping the list of rights generous (including democracy besides the rule of law, freedom of the press, and the other potential factors). The last point is strengthened by the facts that there are also powerful arguments for a human right to democracy that rely on its intrinsic rather than instrumental value (see 3.1.1, 3.1.1, and 3.2 above); and that the epistemic and strong accountability considerations supporting democracy (see 3.1.1) are not defeated by the empirical challenge just mentioned.

18. For a response examining the empirical evidence see Christiano (2011). I am not hereby endorsing Christiano's reading of the empirical evidence.

4. Some Reasons Supporting the Human Right to Democracy

In this section I turn to positive argument. Many have argued for democracy on what I consider to be compelling grounds. These are of two kinds. The first turns on democracy's intrinsic significance as expressing due respect for people's status as agents sufficiently able and equally deserving to be the ultimate rulers of the political system to which they are subject. The second concerns democracy's double instrumental relevance: it generates severe accountability checks on decision-makers (so that citizens have for example equal voting power to unseat them if they fail to cater to citizens' good), and it provides robust and open practices of political participation that foster epistemic conditions for people to identify their fundamental interests and the relative weight these have in view of the practical difficulties they face.¹⁹ The issue we should address here is whether these points can be appropriately articulated within a conception of human rights. A suggestion as to how to do this is given in what follows. I gather the threads of support for a HRD identified in the previous section, and build on, while going beyond, some aspects of Cohen's own framework on how to understand human rights.

4.1. *Fit with Universality, Non-juridification, Urgency, Fidelity, and Open-endedness*

A HRD is consistent with the five conditions on human rights mentioned in 2.1. Let me start with the assumptions of Fidelity and Open-endedness. Regarding Fidelity, as we saw in 3.2, there are ideas of freedom and equality already operating in crucial, framing clauses of the Declaration. That we

19. For powerful versions of these arguments see Sen (1999), and Christiano (2008).

can see them as leading to a commitment to democratic rights is further supported by the Declaration's Article 21, which states political rights that seem quite robust:

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret or by equivalent free voting procedures.

Article 25 of the International Covenant on Civil and Political Rights is also quite strong:

Every citizen shall have the right and opportunity, without any of the distinctions mentioned in Article 2 [concerning "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"] and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

The rights to political participation stated in these clauses do not use the word "democracy." But it is hard to think that the idea of democracy is not implied once we see "the will of the people" as "the basis of the authority of government," and claim that the former is to be given expression (inter alia) in "periodic and general elections" involving "universal and equal suffrage" that "guarantee the free will of the electors". The

idea of a right to democracy is not the subject of complete consensus, as the rulers of some countries still reject it, or do not publicly endorse it. But the tendency is toward its recognition in international law and in human rights political practice.²⁰

Regarding Open-endedness, we have the option of considering it as including the possibility of striking a right out of the list. If the list included a HRD, we could delete it (see point (3) in 2.1). But the reasons we considered in section 3 are not sufficient. The balance of argument leans in the direction of articulating an explicit right to democracy (and thus to a case of point (1)). I would also emphasize point (2) of Open-endedness, which concerns the fact that human rights are normally formulated in a rather abstract way, so that their application requires interpretation. This point is important for democracy. We should not present too concrete a statement of the institutional form that democracy should take when we present the core statement of it as a human right. (In this respect, perhaps the clauses from the Declaration and the Covenant discussed above are too specific.) Political equality can and should be construed in different ways in different settings, depending on what implementations (for example what kinds of electoral systems) are reasonably feasible in the circumstances. As long as a firm idea of political equality is clear, some vagueness regarding its implementation may in fact be a good thing. It allows diversity of implementation that is appropri-

20. Roland Rich explains that in the context of the Cold War “article 25 [of the Covenant] was not given its ordinary and natural meaning, and single-party states were able to put on electoral displays that they claimed met the standards.” But the apparent vagueness started to be removed in the General Comment 25 by the United Nations Human Rights Committee in 1996, which established a “checklist that, if followed, will result in a functioning electoral democracy—and, if combined with adherence to the other obligations in the basic human rights treaties, a functioning liberal democracy” (Rich 2001: 23). Further efforts tackled more directly the issue of truly competitive or multi-party elections.

te to different contexts and enhances broad shareability. A useful analogy is with socioeconomic rights. Their statement in the Universal Declaration was intentionally vague to allow for different views about how to combine market and governmental mechanisms of allocation of resources.²¹

I turn now to the three characterizing features. Non-juridification is an obvious case, the existence of a right to democracy does not depend on whether democratic institutions already exist, and it extends to practices pertaining to civil society that go beyond the sphere of the state. Regarding Universality, the instrumental and intrinsic arguments for democracy clearly address abilities, interests, and threats that are likely to exist in any society. Is there any feasible society in which it is not true that nearly every adult can become an active political agent? Is there any feasible society in which, without robust and equal rights to political participation, their fundamental interests (including those protected by civil and socioeconomic rights) do not run a very serious risk of being ignored or undervalued? Is there any feasible society in which persons do not have reason to resent their not being treated as agents whose political will must count as of equal importance to that of everyone else?

What about Urgency? As stated in 2.1, this condition refers to what is “especially urgent.” A difficulty here is to identify criteria for deeming a right “especially urgent.” Three considerations are helpful. They concern the moral importance of the interests at stake, the likelihood and severity of the threats or obstacles their fulfillment faces, and the degree of feasibility of the elimination or significant mitigation of such difficulties through political action.²² To say that a right is especially

21. On the intended vagueness of socioeconomic rights, see Glendon (2001: 69-70, 115-7).

22. These types of considerations are also mentioned in Beitz (2009: sect. 17), Nickel (2007: ch. 5), and Shue (1996: chs.1-2) (although they are given a different articulation). The consideration of interests should include those

urgent is to mark it as more salient than others in our practical reasoning about what to do. If a right belongs to a class of especially urgent rights then we have stronger reason to act to fulfill it than we have to fulfill other rights not belonging to that class. The three considerations are plausible grounds for reaching this judgment.

The instrumental and intrinsic grounds for democracy show it to have great moral importance. The nature of the instrumental ground regarding the protection of basic civil and socioeconomic rights is such that democracy inherits the moral importance attached to those rights (and their underlying interests) for whose protection it is highly useful, if not necessary. These rights are clearly more urgent than others. For example, securing access to food, water, basic education, and basic health care is more important than non-basic social rights concerning higher levels of education or health care, or a fair distribution of wealth and income. The epistemic ground also yields salience for democracy precisely because democratic processes are useful arenas for citizens to respectfully confront and elaborate their disagreement and uncertainty as to what relative weight to acknowledge for rights that conflict in practice, or for whose full realization they do not currently have sufficient resources. The intrinsic ground may appear to yield less morally important results. But in my opinion the injury to self-respect involved in being rendered a second-class citizen is quite significant.

As for threats or obstacles, the intrinsic and instrumental considerations are responsive to historically obvious obstacles. Political disempowerment is a constant and often realized threat. As the recent phenomenon of the “Occupy” movement

of the agents called to respect or promote the alleged rights of others. I do not say more on this point in the text because (a) those called to respect and promote democracy themselves have an interest in its success and (b) no unreasonable costs need be imposed regarding their other interests in the generation of democratic institutions.

reveals, this worry does not only apply to countries ruled by despotic regimes or in young democracies. It is arguably the case in established democracies, where the power of money tends to colonize the power of citizens, and undermines political participation both at home and abroad (for example by supporting despotic regimes that supply market opportunities or resources such as oil). The feasibility issue, finally, is somewhat murky, both in general and with respect to human rights.²³ Achieving, consolidating, and deepening democracy is harder in some contexts than in others. It is sometimes very hard. But it is not impossible in any strict sense (it does not flout laws of logic or physics, or collide with general conditions of human psychology or social organization). But if democratic rights have great moral importance, then our response to feasibility obstacles should be to remove them over time, by acknowledging what I call “dynamic duties” targeting their progressive fulfillment. The degree of feasibility of rights varies historically partly as a function of agents’ political choices to maintain or change factors that underpin the likelihood of certain forms of social organization. Often the recognition of a claim as a human right amounts to the commitment to urgently work towards its progressive realization by the conscientious enhancement of institutional capacity, political culture, and other factors.²⁴ Furthermore, the linkage arguments provide an additional reason to foster the feasibility of democratic governance. If democracy enables, or significantly contributes to the likelihood of, the protection of other crucially important rights, then concern for expanding the feasibility of the latter should move us to see the expansion of the feasibility of the former as an urgent matter. Historical experien-

23. For exploration see Gilabert (2009), and Gilabert and Lawford-Smith (2012).

24. An example of progressive realization is present in the International Covenant on Economic, Social, and Cultural Rights, Article 2.1.

ce is instructive here. Around the world, workers and women movements pressed for the equal right to associate politically and to vote partly in order to be more able to secure that their other urgent rights were fully respected.

4.2. *Cosmopolitanism, humanism and global public reason*

The foregoing remarks are not conclusive, but they suggest that democracy is a serious candidate for a human right. In the remainder of this paper I address two further issues that are relevant for the justification of a human right to democracy. The first, considered in this subsection, concerns the relation between the forgoing argument and the ideal of global public reason. The second, addressed in 4.3, concerns the issue of the difference between human rights and wider demands of justice. I acknowledge that the claims that follow are likely to be more controversial than those presented in earlier sections, but given the prominence of the two issues in Cohen's discussion, I believe that these claims are worth advancing, even if only as hypotheses for further discussion.

How would discussion of a human right to democracy connect with the ideal of global public reason? I said in 2.1 that we could partially reconsider the phrasing of the three features of human rights by seeing individuals rather than political societies as the fundamental agents. This is not because political institutions are not crucial for human rights. It is because their importance is always dependent upon what they do for individuals. Individuals are the ultimate carriers of human rights and of the responsibility to uphold them, which includes (but goes beyond) sustaining existing rights-fulfilling institutions, reforming deficient institutions, and creating new ones (both domestic and international).

The last point can be developed by referring to the cosmopolitan ideal and a humanist formulation of core ideas within human rights practice. They combine with, and affect,

the role and rationale of global public reasoning by giving it more substantive guidance. Cosmopolitanism is the normative view that all individuals are ultimate units of equal moral concern and respect for everyone.²⁵ Human rights elaborate this ideal of moral equality when it comes to the articulation of the most urgent rights of every individual in the contemporary world. Such articulation is often quite specific institutionally, referring for example to responsibilities by states and other modern institutions. But as I have argued elsewhere, this specific articulation can be seen as mobilizing more abstract humanist ideas about what human beings as such are owed in their social existence with others.²⁶ The thin ideas of freedom and equality underpinning democratic rights mentioned above belong in this category. They point in the direction of an abstract human interest in, and right to, political self-determination or autonomy.

To the natural worry whether such ideas can be broadly shared in public reasoning we can respond by noting that there are many conceivable levels of moral discussion about universal rights. Consider four possible such levels, of progressive depth. First, there are the many statements of human rights that are quite specific institutionally, such as those identifying mechanisms of free and equal political participation by all citizens. Second, there is the formulation of thin ideas of freedom and equality backing the claims at the first level. These would include a view of individuals' abstract equal rights to political self-determination, for example. These ideas are comparatively shallow, as we can distinguish them from deeper or more encompassing ideas of freedom and equality that might involve, at a third level, the kind of direct grounding for liberal egalitarian justice of the kind Cohen refers to (as involving—at the first level—not just institutions of political democracy but

25. Pogge (2008:175).

26. Gilabert (2011: 439-67).

also of egalitarian economic justice). All of the former could in turn be seen as relatively shallow when compared to fundamental views in ethics, such as Kantian moral constructivism or theological theories. Different views about the contents of deeper levels can be, and often are, coupled with agreement at more superficial levels. The idea that the will of the people is the basis of the authority of government can be given a Kantian rendering that ties political autonomy to a more comprehensive view of moral autonomy as the source of all value, but it can also be tied to a theological theory according to which individuals' will is the basis of political authority because of their nature and status within God's creation.

Note that cosmopolitan and humanist considerations can help in shaping the procedure and substance of global public reason.²⁷ The debates involved in global public reasoning (in contrast with discussion taking place in a philosophy seminar or in some associations in civil society) may be organized so that they (or specifically identified types of them) remain at relatively superficial levels. Thus, participants are not called to search for the ultimate foundations of human rights. The aim is to achieve a consensus providing shared grounds for international political action. It might then be important, in this context, to avoid the foundationalist overtones of traditional philosophical versions of the humanist approach. To this extent, Cohen might be right to recommend a "justificatory minimalism" that brackets discussion on ultimate philosophical foundations (pp. 323-4). But how do we identify and defend any proposal about the appropriate procedures and goals of global public reasoning? Should we do it without appealing to substantive ideas of the kind advocated by humanism?

I believe that the answer is No. International debate on human rights is shot through with substantive general moral

27. Gilabert (2011: 450-1). This and the next two paragraphs partially reproduce and revise the previous text.

claims about the status of individuals in their social relations with others, claims that cannot be reduced to any current institutional framework because they are meant to ground the assessment of any such frameworks. Humanist concerns are already operative within the international practice of discussion on human rights in a way that seems, on reflection, correct. Such a discussion aims (at least in the view of many participants) not only at the amelioration of current institutional structures, but also at their progressive change. Our dignity as free and equal agents with "reason and conscience" and our duty to act in a "spirit of brotherhood" shape the moral motives for joining international discussions about what specific human rights we should acknowledge and how we should implement them. We care about having a form of non-strategic, respectful, and consensus-searching discussion because (inter alia) we recognize that the dignity of others is incompatible with imposing on them institutions they could not autonomously accept. For the same reason we also care about global public discussion being inclusive, open to all relevant voices, comprising not only representatives of governments, but also individuals and organizations in domestic and global public spheres.

We can see the very ideal of justificatory minimalism within global public reason as grounded in a combination of normative and empirical assumptions. The empirical assumption is that the modern world displays a depth of cultural diversity such that it is highly unlikely that public reasoning will yield converging results on ultimate philosophical foundations. The normative assumption is that political structures should track the reasoned consent of those they affect. A call for robust, but still relatively "minimal" practices of public justification makes sense precisely because our respect for the political autonomy of others demands that we justify our shared institutions on substantive moral premises they can accept, while being mindful that we should not expect such justification to yield convergence on even deeper moral premises that are just

too contentious for everyone to acknowledge (at least in the short term).

Arguably, the same grounds favor democracy. If we ask “Whose global public reasoning matters?” and answer, as we should, “Every person’s,” then we must support robust political rights enabling the free and equal participation of all in the political debate and the control of the institutions that debate is meant to assess. Importantly, the foregoing cosmopolitan and humanist considerations also support robust global duties correlative to democratic rights. We should acknowledge, in addition to special or agent-relative duties to foster the democratic rights of *our* fellow citizens, general or agent-neutral duties to foster the democratic rights of citizens in *any* political framework.

4.3. Minimalism and maximalism

Someone might object: If we acknowledge the cosmopolitan and humanist ideas of freedom and equality mentioned above, will we not be opening the floodgates to an escalation of demands that will end up erasing the distinction between human rights and justice? In reply, I make two concluding remarks.²⁸ The first is that even if it is true that agents relying on those ideas will start pressing for higher demands, the distinction between human rights and the wider domain of justice can be retained. We can still mark some claims (such as those focused on the conditions for a decent life rather than a flourishing one) as more morally urgent and feasible, and thus as making up a circumscribed domain of global public reasoning with specific aims and rationales of international political action. Second (and more speculatively), we should in fact welcome the pressure for seeing global public reasoning

28. See also Gilabert (2012: sects. 5.2, 6.1, 8.3).

as including further layers of consideration. If the third level of moral discussion mentioned above comes to articulate more pressing demands of humanist distributive equality (calling for example for global equal access to goods all have strong reason to value, such as high levels of education and health care), or more exacting associative entitlements (such as profounder forms of distributive reciprocity), and these demands enter global public reasoning, then we will be encountering scenarios in which the democratic will of people across the world deepens its specification, and thus its commitment, to the cosmopolitan ideal of a world in which each person is given equal concern and respect. From a long-term transitional standpoint this is good news. If human rights are only the first wave of this current of global justice, then let us open the gates.

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