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# David Miller, 'Is there a human right to democracy?'<sup>1</sup>

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Human rights and democracy are both values that are almost universally endorsed, at least in contemporary liberal societies, and so it might seem somewhat pedantic to ask whether they can be linked together in the way that my question suggests, by seeing democracy itself as something to which we have a human right. Nonetheless there are at least two good reasons for asking the question. First, it is important to know not merely what our political principles are, but also why we hold them.<sup>2</sup> In the case of democracy, for example, we need to be clear whether it matters to us instrumentally, for the other goods and values it helps to promote, or whether it matters for its own sake. Equally, in the case of human rights, if we are going to avoid the mistake of packing everything that's important to us into that particular box, we need to explore the grounds of human rights, and see whether those grounds can get us all the way to an institutional arrangement such as democracy. Those are the more philosophical reasons for exploring the question. But there is a second, more practical, reason. If there is indeed a human right to democracy, and if, as many believe, for a state to be politically legitimate it must respect human rights, it immediately follows that the many undemocratic states that exist in today's world are illegitimate, and don't deserve the respect that we owe to all legitimate states. This would undermine the position of those like John Rawls in *The Law of Peoples* who envisage a pluralistic but tolerant world in which liberal democracies co-exist on terms of mutual respect with 'decent hierarchical societies' whose political institutions are not democratic.<sup>3</sup> It would significantly change the terms on which we interact with such states. We would have a moral responsibility to see that the human right to democracy was realised, even if this meant interfering in their internal affairs.

One might think that the question I am asking is one for international lawyers, not political philosophers. On closer inspection, however, it turns out that the position in international law is ambiguous.<sup>4</sup> On the one hand, there are fairly clear indications in the main declarations and covenants that democracy is to be regarded as a human right. The original UN Declaration states that 'everyone has the right to take part in the government of his country, directly or through freely chosen representatives' and goes on to make this more specific by referring to 'periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures' (Article 21).<sup>5</sup> On the other hand, these same documents also enshrine a strong right of political self-determination, which is usually

understood to include the right to decide on the form of one's own political institutions. Thus the International Covenant on Civil and Political Rights states in its first Article that 'All peoples have the right of self-determination. By virtue of that right they freely determine their political status, and freely pursue their economic, social and cultural development.'<sup>6</sup> 'Determine their political status' might be read in different ways, but one obvious meaning is 'decide for themselves how they are going to be governed'.<sup>7</sup> If this is a collective right of peoples, then it conflicts with the idea of an individual right to democracy as one specific form of government. In the practice of international law, states are not condemned for violating human rights merely because they do not allow people to vote in free elections – this by itself is not regarded as sufficient grounds for sanctions, or stronger forms of interference. We cannot, therefore, turn to international lawyers in the hope of receiving a clear answer to our question. We have to take a more philosophical approach.

Our starting point must be a theory of human rights that will enable us to decide which candidate rights qualify for human rights status and which do not. There are several such theories, and here I will simply sketch my own favoured theory without explaining why I think it is superior to its rivals.<sup>8</sup> How important the starting point is for our specific question about democracy will be left open for now. I believe that human rights are best understood by reference to basic human needs. Their role is to ensure that basic needs are satisfied either by imposing obligations, on the right-holder's state in the first place, to provide for these needs, or by providing protection against predictable threats that would jeopardise their fulfilment. More formally, a candidate right is justified as a human right by showing that it forms an essential part of a set of human rights that together provide the right-holder with sufficient opportunity to meet all of his or her basic needs. The reference to the *set* of rights is important here for two reasons. First, we must examine each candidate right to ensure that recognizing it would not impose obligations on others that would violate *their* candidate rights – the rights we recognize as human rights must be consistent with each other. Thus if faced with a choice between a less demanding and a more demanding specification of a particular right, we should always choose the less demanding version provided it adequately protects the relevant human needs.<sup>9</sup> Second, rights may contribute to needs-fulfilment either directly, as does the human right to subsistence or to health care, or indirectly, through the support or protection

they offer to other rights. Some rights do both. For instance the right to freedom of movement is important because the ability to move around in physical space is indeed a basic human need, but also because in order to fulfil rights such as the right to work, to practise religion, or to meet potential marriage partners, one must be able to go to places where these opportunities are available. But there are other rights, especially procedural rights, whose contribution is mainly if not wholly indirect, such as *habeas corpus*, the right of someone who is arrested to be brought before a judge or court without delay, and the right to a fair trial. Their importance is that they safeguard the right-holder against threats to other rights that are more basic, such as bodily security and freedom of expression.

Where, then, might a human right to democracy fit into this picture? I do not think one could argue that there is a human *need* for democracy. I understand human needs by referring to the conditions required to lead a minimally decent life, and it seems clear to me that one can have such a life without living in a society that provides one with opportunities for democratic political participation.<sup>10</sup> Although political activity is valued by many people, and, as I shall later argue, there may indeed be a human right to opportunities for political participation *of some kind*, the right to democracy specifically could not be defended on the grounds that without it one's life could not count as minimally decent. So a direct argument in favour of the right is not likely to succeed. But this still leaves open the possibility of an indirect argument. There might be a human right to democracy because this is essential to support other rights that can be argued for directly; it would be defended in the same way as the right to a fair trial, for example.

How could such an argument be made? I shall explore two possibilities, the first of which is consequentialist in form, and the second of which is non-consequentialist, since it treats democratic rights as essential expressions of their bearer's equal status. Consequentialist arguments are the ones most frequently offered in support of a human right to democracy. They point to the fact that other human rights, including the ones that rank highest on the scale of urgency, such as subsistence and bodily security, are most likely to be safeguarded in democratic societies, as a wealth of empirical evidence confirms.<sup>11</sup> But before looking more closely at this evidence, it is

worth asking whether this would yield the right kind of justification for the human right, even if the consequential claim is sound.

The problem here is that human rights cannot be ratcheted upwards in such a way that one comes to have a human right to whatever helps to fulfil the human rights one already has. Although indirect arguments in favour of human rights are in order, as I have indicated, the connection between the primary right and the secondary right it justifies must be tighter than that – the secondary right has to be shown to be essential to securing the primary right. In a critical discussion of the idea of a human right to democracy, Andrew Altman and Kit Wellman contrast due process rights, such as the right to a fair trial, with democratic rights along these lines.<sup>12</sup> They argue that whereas due process rights are *directly* important to leading a minimally decent life – without the protection that these rights offer, one would live in a state of constant insecurity – democratic rights are only *indirectly instrumentally* important.<sup>13</sup> Even if there is a strong probabilistic connection between democracy and the protection of human rights, they claim, this shows only that there is a human rights-based *claim* to democracy, not a human right to democracy itself.

Are Altman and Wellman raising the bar too high here? An argument in defence of a human right is not going to be defeated just because one can imagine a counterfactual world in which having that right is not going to be essential to living a minimally decent life. One can imagine a world in which due process rights were not necessary because nobody ever falsely accused another of a crime that she did not commit. But this does not show that such rights are not essential protective devices in our world. The real issue is whether the instrumental argument for a human right to democracy draws in more than is necessary to provide the protection that we need. The crucial point here is that genuine human rights must always be construed minimally.<sup>14</sup> If a less extensive right will do an adequate job of ensuring that basic needs are met, then a more extensive right cannot be justified as a human right, even though it might be justified on other grounds. The reason for this was foreshadowed in my argument above: rights impose obligations on others, and so the more widely a right is construed, the greater the chance that it will unjustifiably limit their freedoms and opportunities.

Let's turn our attention, therefore, to the idea of democracy, and ask what it includes. It is clearly a complex idea, it comes in stronger and weaker forms, and so forth. To simplify matters, I propose that we should look at those systems that are today conventionally regarded as democracies, and examine whether there is a human right to such a system. If the answer is negative, then *a fortiori* there will be no human right to stronger versions of democracy (recall that our subject is not which political system is most desirable in general, but what can be claimed as a human right). Existing democracies contain at least the following three elements. The first is a constitution, written or unwritten, that specifies the powers of each institution within the political system and guarantees certain fundamental rights. The second is the presence of a range of freedoms, particular freedom of association and freedom of expression, without which political rights more narrowly conceived would have little value. And the third is a decision-making mechanism, either direct or through representatives, based on political equality and majority rule. Since these three elements tend to support one another, it is no accident that we find them in combination in the real world. But it causes complications when we are trying to investigate whether there is a human right to democracy. For a question then immediately arises about the content of such a right. Which exact feature or features of democracy as it currently exists are the ones to which people are supposed to be entitled?

We can appreciate the problem better by considering one of the best-known consequentialist arguments for democracy, Sen's claim that 'no substantial famine has ever occurred in any independent country with a democratic form of government and a relatively free press'.<sup>15</sup> Since famine is a clear violation of human rights, this looks at first sight as though it might provide a good justifying argument for a human right to democracy. But it is not so clear what causal thesis Sen is actually proposing. His claim about democracy amalgamates a number of different features of that system. After cataloguing a number of circumstances in which famines have been known to occur, he continues that 'they have never materialised in any country that is independent, that goes to elections regularly, that has opposition parties to voice criticisms and that permits newspapers to report freely and question the wisdom of government policies without extensive censorship'.<sup>16</sup> Now these are all features that we associate with democracy, but they are also features that may exist in the absence

of political equality and majority rule (for example they existed in Britain in 1832 when voting rights were restricted to about 5% of the population). So we need to know which of them plays the key role in preventing the occurrence of famine. Sen himself appears to place considerable weight on the existence of an independent press that can transmit information about what is happening in distant parts of the country to the political centre. He does also mention the incentive effect of free elections on rulers who want to remain in office. But this falls very far short of showing that only majoritarian institutions for choosing rulers of the sort found in Western-style democracies can have this effect.<sup>17</sup>

If we broaden the focus away from famines and consider the connection between democracy and other human rights, the problem we encounter is that some features of democracy, in the wider sense, are themselves human rights. This will be true of the rights to free expression and free association, and of the procedural rights included in the idea of the rule of law. So here the connection between democracy and human rights will not be instrumental but analytic. This of course does not help to establish a separate human right to democracy; the point rather is that human rights that are justified independently are also components of democracy in the wider sense.<sup>18</sup> What we need to investigate, therefore, is the contribution that is made by the features of democracy that are not already recognized as human rights – that is to say, the underlying principles of political equality and majority rule, and the specific institution of competitive elections on the basis of one-person-one-vote that is intended to realise them. What reason do we have to think that a political system with these particular features is an essential guarantor of human rights in general?

To answer this question we need to look more closely at the empirical arguments that have been put forward to show that democracy is instrumental to the protection of human rights. That is a complex and contested topic and it is only possible here to give a short summary. Moreover investigating this question is complicated by the fact that the various criteria that are used to measure a society's democratic credentials when statistical analyses are carried out may not closely track the normative idea of 'democracy' that lies behind the idea of a human right to democracy.<sup>19</sup> They may also incorporate independent human rights standards into the definition of democracy itself: this is particularly true of the widely used Freedom House index, which

includes a long list of civil liberties such as equality before the law, freedom of religious expression, and economic liberties. It is obviously no surprise that democracies should score better in protecting human rights if ‘democracy’ is in part *defined* as a system in which human rights are well protected. To test the instrumental argument, we need to show the independent effects of political mechanisms such as elections that are not already required by other human rights.

Subject to that qualification we can inspect the general correlation between democracy and a number of indicators that would clearly connect to human rights, such as levels of childhood mortality and secondary school enrolment, and these show ‘democracies’ doing better than ‘autocracies’ even when the sample is confined to countries whose annual per capita GDP is less than \$2,000.<sup>20</sup> However such bipolar contrasts tend to conceal a much more complex picture, which reveals that only fully developed and stable democracies are unequivocally ‘good’ for human rights.<sup>21</sup> Introducing particular elements such as competitive elections may have the opposite effect if the other elements are not already in place. According to one study that analyses state repression:

...our results suggest that the adoption of some democratic elements will not automatically decrease repressive activity, something implied within the majority of research within the area as well as within the statements of policy makers and NGOs the world over. Indeed, our empirical findings lead us to conclude that only those regimes which fully develop institutional practices and mass political behaviour consistent with democratic principles will yield any pacifying effect on state repression. Anything below this threshold will not have any impact; in sum, there are no partial democratic solutions to the problem of human rights violation.<sup>22</sup>

Some commentators go further than this and argue that the early steps along the road that might eventually lead to full democratisation are likely to have negative effects on human rights, as levels of violence within the society increase.<sup>23</sup> This is particularly the case when elections are introduced in states that have previously operated as autocracies. Rulers who can mobilise electoral majorities and gain legitimacy thereby are able to sweep away balancing institutions that beforehand had held them in check. The problem is likely to be particularly acute in ethnically divided societies, where elections are often primarily a means for voters to affirm



their ethnic identities by supporting the candidate from their own group. One particular version of this argument was developed in Amy Chua's provocative book *World on Fire*, subtitled 'How exporting free market democracy breeds ethnic hatred and global instability'.<sup>24</sup> Chua points to numerous instances of societies in which market-dominant ethnic minorities – for example the Chinese in Indonesia – confront poor ethnic majorities, and argues that in these circumstances democratisation may produce political leaders whose rise to power depends on stirring up ethnic hatred, with disastrous consequences: the easiest way to win votes from the majority group is to issue threats against the minority which then act as a spur to ethnic cleansing or in extreme cases genocide. Of course an evaluation from a human rights perspective would also have to count in the human rights defects of the alternatives to democracy in these societies – authoritarian regimes or military dictatorships – and Chua herself does not conclude by dismissing democracy outright as a solution. Rather she argues against the sudden introduction of majority-rule institutions, and in favour of the need to explore different constitutional arrangements that would lessen the chances of violent ethnic conflict in the societies she is analysing.

It is not in dispute, then, that in economically developed, stable democracies human rights are usually well protected, and that in these circumstances at least part of the explanation for a society's good human rights record lies with its democratic political institutions. But equally there is a good deal of evidence that in poor societies where human rights are anyway more at risk, introducing competitive elections that allow majority groups to elect and show support for their leaders may often make things worse. This is partly due to the absence of other institutions, such as a strong and independent judiciary, that could restrict the power of elected leaders. But it is partly due to the majoritarian logic of democratic elections themselves: since it is only necessary to win the support of 51% of voters to gain power (say in a Presidential election), political leaders have an incentive to present themselves as embodying the identity and interests of the majority group, and then in carrying out policies that advantage that group to the detriment of the human rights of minorities. This is particularly likely to apply in ethnically divided societies where a single ethnic group is numerically dominant.

Against this background, how should we assess the instrumental argument for a human right to democracy? The context in which it would be most important to assert such a right would precisely be one in which democracy does not already exist. But in that context there is no guarantee that attempting to implement the right – for example by moving to competitive elections on a one-person one-vote basis – would improve the human rights position overall. It might very well have the opposite effect. There is a big difference here between asserting democracy as a human right and aiming at democracy as a long-term goal of political development. When we assert democracy as a human right, we are making a peremptory demand that certain institutions be introduced, and simultaneously declaring illegitimate other political institutions that do not conform to democratic principles, such as hereditary monarchy. But given the context, these might be the very institutions that offer the best protection to human rights in the short to medium term.<sup>25</sup>

Another respect in which asserting a human right to democracy may be unhelpful, if we are addressing a society in which there is latent or open conflict between different social groups, is that it encourages us to think about possible solutions in abstract legal terms rather than in terms of political sociology. Most commentators on societies that are sharply divided along lines of religion or ethnicity agree that the best hope of avoiding violent conflict is to create a power-sharing regime in which leaders drawn from the different factions have an incentive to reach compromises and to promote moderate solutions among their followers.<sup>26</sup> Such regimes usually require quite elaborate constitutional engineering in which certain offices are reserved for members of each group, decision-making is dispersed rather than centralised, on some issues groups are awarded vetoes, and so forth. Electoral mechanisms may be part of the overall set-up, but they are by no means the most important part, and the constitution may be designed explicitly to counteract majority domination – for example constituencies may be rigged so that minority groups are over-represented in the legislature. Since political equality and majority rule are standardly taken to be defining features of democracy, these arrangements may not appear very democratic, and asserting a human right to democracy would be a way of demanding that they be replaced by institutions that give grass roots majorities greater control over decision-making. But once again, this may not be conducive to the protection of other human rights.

Someone defending a human right to democracy might at this point argue that the human right was not intended to pick out any particular set of political institutions as its embodiment. So it is possible to accept the right while leaving it open whether it is best realised through the majoritarian electoral systems that are found in the Anglo-Saxon liberal democracies or the more complex power-sharing arrangements that might conduce to social peace in societies of other kinds. But the question then is whether the right has any determinate content at all, or has become simply a placeholder for ‘whatever regime in this society is likely to protect human rights in general most effectively’. Although human rights can accommodate some flexibility as to the exact form they take in any particular social context, the degree of openness here is far too great. It will not yield anything so specific as ‘periodic and genuine elections which shall be by universal and equal suffrage’ as proposed in the UN Declaration. So what is being added when we announce that there is a human right to democracy, once we recall that many of the rights *associated* with democracy such as free speech and freedom of association qualify as human rights on independent grounds?

It might be argued that the added element is that everyone must enjoy some political rights, must have the opportunity for political voice, regardless of the particular form in which these rights are granted. I shall return at the end of the chapter to the idea that there may be a *human right to political participation* that is distinct from the idea of a right to democracy. But next I want to shift the focus away from consequentialist arguments that defend democratic rights as instrumental to other human rights and towards a non-consequentialist approach that sees human rights as grounded in a concern for equality of status, and treats the human right to democracy as one key expression of that equal status. Allen Buchanan, for example, begins from the ‘Moral Equality Principle’ which holds that ‘all persons as such are worthy of equal regard’.<sup>27</sup> He then argues that this ‘requires that all persons have the same fundamental status, as equal participants, in the most important political decisions made in their societies. On this view, the right to democracy is an important element of the institutional recognition of the equality of persons, quite apart from any value that democracy might have as a reliable way of ensuring that decisions are made with optimal information or that they maximise social welfare’.<sup>28</sup> If successful, this argument

would deliver, as part of the human right to democracy, those features that seemed most problematic from a consequentialist perspective, namely political equality and majority rule, since the first of these, obviously, and the second, with the help of some extra argument,<sup>29</sup> are ways of recognizing the equality of persons qua citizens. So our questions must first be whether human rights are egalitarian in the way that Buchanan suggests, and second whether, even if they are, that egalitarianism must be expressed through political institutions.

Are human rights egalitarian, other than in the trivial sense that if A has a right to X, B has a right to X, C has a right to X...and so forth, then each of them equally has a right to X? In general the answer would seem to be No. A human right is a right to whatever level of freedom, resource or opportunity is necessary for a minimally decent life. It has nothing to say about distribution above that minimum. Once the human right to food or shelter is satisfied, it is not a human rights concern if some have more food or better housing than others (though it may be a concern of distributive justice). Certain human rights, however, seem to require equality in more than a trivial sense. For instance, article 7 of the UN Declaration and Article 26 of the International Covenant both assert a human right against discrimination. The latter reads

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>30</sup>

This is somewhat vague, but it appears to require not merely equality before the law, but the enactment of laws that prohibit discrimination on the cited grounds in areas such as employment and education. Buchanan appeals to the presence of such a right in the international documents when criticising accounts of human rights that do not incorporate the idea of equal status into their foundations, such as James Griffin's personhood account.<sup>31</sup>

Since human rights documents understandably do not give justifying reasons for the rights that they include, it is impossible to say for certain what their framers took to ground particular rights. In the case of the right against discrimination, there are two possible justificatory stories. One is that any act of discrimination, merely by virtue of the fact that the relevant institution unjustifiably treats some people worse than others, violates a human right. The experience of being discriminated against, like the experience of being denied freedom of movement or the opportunity to acquire property, is damaging to the person concerned in such a way that their life goes significantly worse as a result. The other is that the right against discrimination serves a protective function. Where discrimination is prohibited, individuals or groups cannot be singled out for harsh treatment. The fact that everyone without distinction will be subject to a law or a policy once it is enacted means that tough measures will only be introduced if there are compelling reasons for having them. Thus the right's main justification is indirect: like procedural rights, it protects other, more basic, rights.

These two justifications may come apart in cases where the person who suffers discrimination is otherwise well-endowed with resources and opportunities. As Buchanan points out, 'a woman or a person who is gay or lesbian may be subjected to discrimination in the workplace or in various other social settings yet may be able to achieve high levels of well-being. A highly successful woman executive, for example, may lead a life that is far better than that available to most people and yet may receive lower pay than a male doing precisely the same job.'<sup>32</sup> If the right against discrimination were justified purely on protective grounds, Buchanan argues, it would not cover cases such as this. Now as I pointed out above, the documents themselves do not indicate very clearly which forms of discrimination the human right is meant to apply to. However the right, in order to be effective, must be embodied in laws and policies that are general in form, and this must apply to the right to equal pay for equal work (which is separately listed in the UN Declaration, as well as in the International Covenant on Economic, Social and Cultural Rights). You could not have an effective right which took the form 'everyone has a right to equal pay for equal work, except in cases where the person being paid is already well-off by absolute standards.....' since that would leave the door wide open to controversy about the level of pay at which discrimination no longer amounted to a breach of

human rights. So the fact that the documents appear to embody a human right against all forms of discrimination does not settle the question whether equality of status plays the foundational role in the justification of human rights that Buchanan attributes to it.<sup>33</sup> The right might instead be justified as necessary to prevent laws and policies being enacted that would threaten the substantive rights of unpopular minorities.

What reason could there be to avoid giving human rights an egalitarian foundation of the kind that Buchanan favours? The argument against is that equality of status is a social ideal that prevails in Western liberal societies, but has not taken hold elsewhere – and it is undesirable to ground human rights on an ideal that is sectarian in that sense. If there is an alternative form of justification that appeals only to ideas that people in non-liberal societies (for example those that resemble Rawls' decent hierarchical societies) have reason to accept and that can still deliver a robust set of human rights, that should be preferred. I have argued elsewhere that a needs-based justification can do this.<sup>34</sup> But assume for the moment that Buchanan is right and that equal status plays an essential justificatory role in the best account of human rights. Does this directly entail that there is a human right to democracy?

Buchanan himself acknowledges that there is a gap here. What if in a particular society, equal status generally were best secured by an arrangement other than democracy, in the full sense that involves political equality and majority rule? As he puts it, what has to be shown is that 'participating as an equal in the public processes for determining who wields political power is such an important dimension of equal regard for persons that democracy is required even if a non-democratic arrangement would do a better job of producing laws that achieve the goal of equal regard for all persons' basic interests'.<sup>35</sup> So the question turns on the significance that is attached to having political rights, or more specifically to having *equal* political rights, from the perspective of a person's overall standing. In contemporary liberal societies, it is clear that this significance is quite high, even if people don't care very much about the actual exercise of their political rights – hence the sometimes fierce debates about lowering the voting age, political rights for prisoners, and so forth. It is very important in these societies not to be classified as a second-class citizen. But can we generalise from this and say that in every society the ability to participate politically

as an equal is, as Buchanan puts it, ‘such a profoundly important dimension of equality that it must be achieved even if doing so comes at the cost of losses in other dimensions of equality’?<sup>36</sup> This seems implausible. It must depend on the place that the possession and exercise of political rights is understood to occupy in a person’s life as a whole. Given that many specific rights in all societies are distributed unequally without necessarily undermining equality of status, how significant is it if this applies to political rights as well?

For Western readers, with a century’s experience of political equality, at least at the formal level, behind them, it may be hard to understand how any alternative arrangement could be justified. But recall here John Stuart Mill’s argument about voting: Mill thought it was essential that all citizens should have the right to participate (unless disqualified for specific reasons), but he also thought that the *distribution* of political rights should reflect competence as measured by level of education.<sup>37</sup> We are not likely to follow him in this particular direction, but we can borrow his distinction, and argue that from a human rights perspective, what is essential is that no-one should be excluded from political participation. So there is a human right to political inclusion, which is more than just the right to free political expression. Since the right’s purpose is to contribute to the overall effectiveness of the set of human rights, it must give the right-holder the power to check those who make political decisions, for example by removing them from office, or voting against the decisions they have made in a referendum. So the human right must include the right to vote in some form, but not necessarily in the form favoured in Western democracies, where it means specifically the right to choose political representatives through equal votes in geographical constituencies. The right might be fulfilled in a system in which representation was tailored to protect the interests of specific religious, ethnic or national groups, for example, in a consociational arrangement which gave these groups control or veto rights in areas of policy of special concern to them.

As I noted above, it is unhelpful to stretch ‘democracy’ so that it means any system that gives ordinary citizens some political rights; it should be distinguished from the broader concept of representative government. So what, in conclusion, are the main reasons for rejecting a human right to democracy? The first is that it would have the

effect of foreclosing investigations into how human rights should best be protected in societies of different kinds, in favour of a single model which works very successfully in some places but would work less well, or not work at all, in others. And this is dangerous: it encourages rash interventions under the heading of ‘democracy promotion’ of the kind that we have witnessed in recent decades. The second is that it misleads us about the value of democracy itself. Human rights, let us recall, are supposed to be the moral bedrock, conditions that are needed for any decent human life to be possible. Democracy takes us well beyond that. It is a valuable political achievement, to be sought after and treasured when the conditions for its existence are favourable. It involves a particular way of associating together politically, on terms of equality, and where it exists it has the effect of promoting egalitarian norms in society generally. Nothing I have said is meant to detract from this value. But we should recognize democracy for what it is, a form of political association that has social preconditions and embodies particular values, rather than a universal prescription for achieving the conditions of a decent human life.

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<sup>1</sup> This chapter was first given as a lecture to the conference on *Moral and Political Perspectives on Democracy*, University of Geneva, June 27-28, 2012 and shortly afterwards to the conference on *Democracy: Justice, Participation and Deliberation*, University of Basel, July 6-7, 2012. It was also presented at a seminar in the University of Oxford on February 26, 2013. I am very grateful for the critical comments I received on these occasions, and also to Emanuela Ceva and Andrew Williams for their helpful suggestions for improvement.

<sup>2</sup> This point is well made in relation to the same issue in Joshua Cohen, “Is There a Human Right to Democracy?” in *The Egalitarian Conscience: Essays in Honour of G.A. Cohen*, ed. Christine Sypnowich (Oxford: Oxford University Press, 2006), 229.

<sup>3</sup> John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 1999), esp. sections 8-9. Note that Rawls’ short list of human rights on p. 65 does not include a right to democracy, and that he is explicit that human rights proper should not be confused with ‘all the rights that liberal governments guarantee’ (p. 78).

<sup>4</sup> The case for an ‘emerging right’ is made in Thomas Franck, “The Emerging Right to Democratic Governance,” *American Journal of International Law* 86 (1992): 46-91. Franck concedes however that the full implications of recognizing such a right, which would include intrusive external monitoring of electoral processes and ‘sanctions against gross violators’ (p. 89) has not yet gained widespread acceptance.

<sup>5</sup> Ian Brownlie and Guy Goodwin-Gill, eds., *Basic Documents on Human Rights*, 5<sup>th</sup> ed. (Oxford: Oxford University Press, 2006), 27.



<sup>6</sup> Brownlie and Goodwin-Gill, *Basic Documents*, 359.

<sup>7</sup> Jeremy Waldron also interprets the right in this way. According to Waldron, ‘In its moderate and widely accepted form, self-determination simply means that the people of a country have the right to work out their own constitutional and political arrangements without interference from outside’. Jeremy Waldron, “Two Conceptions of Self-Determination,” in *The Philosophy of International Law*, ed. Samantha Besson and John Tasioulas (Oxford: Oxford University Press, 2010), 397.

<sup>8</sup> For a fuller statement, see David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007), ch. 7, and David Miller “Grounding Human Rights,” *Critical Review of International Social and Political Philosophy* 15 (2012): 402-27, which slightly revises my earlier account.

<sup>9</sup> We measure how demanding a right is by asking what burdens recognizing it would place on others, either in terms of constraints on their freedom or in terms of the resources they would need to give up.

<sup>10</sup> It is important to distinguish the position of someone deprived of democratic rights in a society that otherwise extends these rights to all citizens from the position of someone who lives in an undemocratic society. I am focusing here on the second case. In the first case, the deprivation might frustrate the person’s need for recognition as an equal. I return to this issue later in the chapter.

<sup>11</sup> This is very well summarised and discussed in Thomas Christiano, “An Instrumental Argument for a Human Right to Democracy,” *Philosophy and Public Affairs* 39 (2011): 142-76.

<sup>12</sup> Andrew Altman and Christopher Wellman, *A Liberal Theory of International Justice* (Oxford: Oxford University Press, 2009), ch. 2.

<sup>13</sup> Altman and Wellman, *Liberal Theory*, 32-34.

<sup>14</sup> To avoid confusion here, let me stress that I am not a ‘minimalist’ about human rights in Joshua Cohen’s sense: see Cohen, “Is There a Human Right to Democracy?” and Joshua Cohen, “Minimalism About Human Rights: The Most We Can Hope For?,” *Journal of Political Philosophy* 12 (2004), 190-213 (the latter article hinges on a distinction between *substantive* and *justificatory* minimalism). For Cohen, ‘minimalism confines human rights to protections of bodily security’, whereas the needs-based approach that I favour generates a substantial list not only of civil and political rights but of rights to material resources of various kinds. I am a minimalist, therefore, only in the sense of requiring candidate rights to pass the test that there should be no less demanding way of protecting the corresponding human needs adequately.

<sup>15</sup> Amartya Sen, *Development as Freedom* (Oxford: Oxford University Press, 1999), 152.

<sup>16</sup> Sen, *Development as Freedom*, 152-3.

<sup>17</sup> Rather similar doubts about Sen's argument for democracy are expressed in Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009), ch. 7.

<sup>18</sup> Christiano recognizes that this is potentially a problem for the instrumental argument for a human right to democracy: see Christiano, "Instrumental Argument," 154-5.

<sup>19</sup> For a critical discussion of various measures that have been employed, see Gerado Munck and Jay Verkuilen, "Conceptualizing and Measuring Democracy: Evaluating Alternative Indices," *Comparative Political Studies* 35 (2002): 5-34.

<sup>20</sup> See Morton Halperin, Joe Siegle and Michael Weinstein, *The Democracy Advantage: How Democracies Promote Prosperity and Peace* (New York: Routledge, 2010), ch. 2. Control for GDP per capita is important because level of economic development is conducive both to democracy and to human rights, making it hard to disentangle correlation and causation.

<sup>21</sup> It may also be problematic to examine democracy's impact on the protection of human rights without distinguishing between different categories of rights. For example, one study separates *violence* enacted by the state – such as the killing of dissidents – from *restrictions* of civil and political rights – such as limiting freedom of expression or assembly – and finds that the effects of democracy are clearly positive with respect to the former but may be negative with respect to the latter. See Christian Davenport, *State Repression and the Domestic Democratic Peace* (Cambridge: Cambridge University Press, 2007).

<sup>22</sup> Christian Davenport and David Armstrong, "Democracy and the Violation of Human Rights: A Statistical Analysis from 1976 to 1996," *American Journal of Political Science* 48 (2004): 552. Similar conclusions are reached in Bruce Bueno de Mesquita et al., "Thinking inside the Box: A Closer Look at Democracy and Human Rights," *International Studies Quarterly*, 49 (2005): 439–57.

<sup>23</sup> See e.g. Paul Collier, *Wars, Guns and Votes: Democracy in Dangerous Places* (London: Bodley Head, 2009), ch. 1.

<sup>24</sup> Amy Chua, *World on Fire: How Exporting Free Market Democracy Breeds Ethnic Hatred and Global Instability* (London: Heinemann, 2003). A similar argument is developed in Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (New York: Norton, 2003), esp. ch. 3.

<sup>25</sup> This also indicates what I would say to someone who favours an understanding of human rights as 'rights that set limits to the sovereignty of states', to use Joseph Raz's formulation (Joseph Raz, "Human Rights Without Foundations," in *The Philosophy of International Law*, ed. Samantha Besson and John Tasioulas (Oxford: Oxford University Press, 2010), 328. If human rights are rights whose violation lowers the barrier that otherwise inhibits states from interfering in one another's internal affairs, then acknowledging a human right to democracy would open the door to interventions

undertaken in ignorance of the political sociology of the target society. (There is no evidence that Raz himself would recognize such a right.)

<sup>26</sup> This claim can be traced back to the theory of ‘consociational democracy’ developed by Arend Lijphart in a series of studies running from Arend Lijphart, *Democracy in Plural Societies: a Comparative Exploration* (New Haven: Yale University Press, 1977) to Arend Lijphart, *Thinking about Democracy: Power Sharing and Majority Rule* (New York: Routledge, 2008). For a recent general assessment of the arguments in favour of power-sharing regimes, see Pippa Norris, *Driving Democracy: Do Power-Sharing Institutions Work?* (Cambridge: Cambridge University Press, 2008)

<sup>27</sup> Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2004), 131.

<sup>28</sup> Buchanan, *Justice, Legitimacy, and Self-Determination*, 143.

<sup>29</sup> As provided for example in Jeremy Waldron, *Law and Disagreement* (Oxford: Clarendon Press, 1999), ch. 5.

<sup>30</sup> Brownlie and Goodwin-Gill, *Basic Documents*, 366.

<sup>31</sup> See Allen Buchanan, “The Egalitarianism of Human Rights,” *Ethics* 120 (2009-10): 679-710.

<sup>32</sup> Buchanan, “Egalitarianism of Human Rights”, 687.

<sup>33</sup> Buchanan does not suggest that equal status is the sole basis of human rights. He argues for ‘a plurality of converging justifications’. His claim, however, is that some of the rights that appear on the canonical list cannot be fully explained without reference to equality of status and the underlying Moral Equality principle. See Buchanan, *Justice, Legitimacy, and Self-Determination*, 131-42.

<sup>34</sup> See Miller, *National Responsibility and Global Justice*, ch. 7, Miller “Grounding Human Rights,” and David Miller “Personhood versus Human Needs as Grounds for Human Rights,” in *Griffin on Rights*, ed. Roger Crisp (Oxford: Oxford University Press, forthcoming).

<sup>35</sup> Buchanan, *Justice, Legitimacy, and Self-Determination*, 251-2.

<sup>36</sup> Buchanan, *Justice, Legitimacy, and Self-Determination*, 252.

<sup>37</sup> He therefore advocated plural voting, with more educated people being awarded multiple votes. See especially John Stuart Mill, “Thoughts on Parliamentary Reform,” in *The Collected Works of John Stuart Mill, vol. XIX: Essays on Politics and Society Part 2*, ed. John Robson (Toronto: University of Toronto Press, 1977) and John Stuart Mill, *Considerations on Representative Government*, ch. 8 in John Stuart Mill, *Utilitarianism, On Liberty, Considerations on Representative Government*, ed. Harry B. Acton (London: Dent, 1972).

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