

## **IS THERE A HUMAN RIGHT TO DEMOCRACY? THE ONGOING ISSUE...**

### **Abstract**

This paper will try to elaborate a very complex and fundamental question which is seen not only as a challenging, but also as provocative. Actually, the issue is like a “never ending story”. In political theory there is an existence of divergent answers to the question “is there a human right to democracy”? For example, the answer of Joshua Cohen is “no”, but the answer of Pablo Gilabert, as well as the answer of contemporary international law is “yes”. Although the right to democracy is not the subject of complete consensus among theoreticians and politicians, it could be stated that the contemporary tendency of its recognition in international law and in the human rights political practice is more and more visible. In some views and concepts, the human right to democracy is understood as minimally egalitarian democracy on the basis of three claims. The first claim is that there is strong moral justification for states to realize minimally egalitarian democracy, i.e. to protect fundamental human rights. Secondly, there is moral justification for the international community to attempt to protect and promote these democracies, which protect fundamental human rights. Finally, there is moral justification for society to defend the rights of all its members. Could democracy be protected as a human right, and if so would it not be paradoxical to do so without or against the will of the people themselves?

**Key words:** democracy - pluralist democracy - human right - rule of law democratization - good governance – international treaty

### **1. Some relevant critiques on a human right to democracy**

Despite its central role in the international law of human rights there has been significant resistance among political theorists and philosophers on the idea that there is a human right to democracy. For instance, in **John Rawls’s** late political philosophy<sup>2</sup> of international justice and in the views of many who are sympathetic to these positions, the idea that there is a human right to democracy is rejected. Other major

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<sup>2</sup> See: John Rawls (1999), *The Law of Peoples* (Cambridge, MA: Harvard University Press), pp. 71-81, and in David Reidy, “Political Authority and Human Rights,” and Allysa Bernstein, “A Human Right to Democracy? Legitimacy and Intervention,” in *Rawls’s Law of Peoples: A Realistic Utopia?* Ed. David Reidy and Rex Martin (Oxford: Blackwell, 2006).

recent theoreticians have either rejected the human right to democracy<sup>3</sup>, or shied away from making arguments one way or the other.<sup>4</sup>

**There are three relevant critiques against the existence of a human right to democracy.** The first is based on unjustifiable consequences in terms of its enforcement, the second critique is based on its incompatibility with the principle of equal sovereignty, while the third critique is based on its imperviousness to cultural diversity.

**Joshua Cohen** is a relevant author who gives a negative answer to the question "Is there a Human Right to Democracy?"<sup>5</sup> The author has elaborated this conclusion on the basis of the **five interconnected claims**, which have played an important role: **1.** justice requires democracy; **2.** human rights are a proper subset of the rights founded on justice: so a society that fully protects human rights is not *ipso facto* just; **3.** a conception of human rights is part of an ideal of global public reason: a shared basis for political argument that express a common reason that adherents of conflicting religious, philosophical, and ethical traditions can reasonably be expected to share; **4.** that conception includes an account of membership, and human rights are entitlements that serve to ensure the bases of membership; and **5.** the democracy that justice requires is associated with a demanding conception of equality, more demanding than the idea of membership associated with human rights.

**According to Cohen's views, democracy is a correct demand of justice but it is not a human right.** The author has concluded that democracy is a **demanding political ideal**. The thesis that there is a human right to democracy threatens to strip away its demanding substances. **Cohen presented three groups of arguments** which challenge the conceptions of human rights, including the human right to democracy:

1. collective self-determination,
2. political obligation and
3. toleration.

The principle of collective self-determination is not democratic in its essence, but is satisfactory in terms of human rights.<sup>6</sup>

<sup>3</sup> See, for example, Charles Beitz (2009), *The Idea of Human Rights* (Oxford: Oxford University Press), pp. 174-186 and Andrew Altman and Christopher Wellman (2009), *A Liberal Theory of International Justice* (Oxford: Oxford University Press), pp. 31-2.

<sup>4</sup> See: James Griffin (2008), *On Human Rights* (Oxford: Oxford University Press), p. 255.

<sup>5</sup> See: Joshua Cohen, "Is there a Human Right to Democracy?", <http://www.iis-db.stanford.edu/pubs/21328/is-there-a-human-right-to-democracy.pdf>.

<sup>6</sup> Collective self-determination involves three conditions: 1. Binding collective decisions result from, and are accountable to, a political process that represents the diverse interests and opinions of these who are subject to the society's laws and regulations and expected to comply with them, 2. Rights to dissent from, and appeal, these collective decisions are assured for all, 3. Government normally provides public explanations for its decisions, and these explanations – intended to show why decisions are justified – are founded on a conception of the common good of the whole society". See: Pablo Gilabert, Is there a Human Right to Democracy? A Response to Joshua Cohen, RLFP, Revista Latinoamericana de Filosofía Política, Centro de investigaciones Filosóficas, ISSN

It is often argued that the existence of a human right to democracy in the international system would somehow violate the collective right of a people to self-determination. It is claimed that some states reject democracy so that the recognition of a human right to democracy would impose upon them a set of norms that are alien to their political cultures. There has also been a popular spate of writings suggesting that new democracies often violate basic rights of citizens. This majority tyranny worry suggests a strong conflict between democracy and other basic rights.<sup>7</sup> 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”.<sup>8</sup> In such an environment, to require democratic rights would be to disrespect people’s self-determination.<sup>9</sup>

## 2. International standards for human right to democracy

It is crucial to emphasize that the international documents such as the **United Nation Universal Declaration of Human Rights**<sup>10</sup>, as well as the **ICCPR**<sup>11</sup>, in several articles **have defined democracy as a universal human right**, acclaiming that **"everybody has the right to democracy"**. **Article 21 of the Universal Declaration** has enshrined the principle of **"pluralist democracy" which provides that:**

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

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<sup>7</sup> See: Thomas Christiano, “An Instrumental Argument for a Human Right to Democracy”, p.1-2. [http://www.polisci2.ucsd.edu/.../An\\_Instrumental\\_Argument\\_for\\_a\\_Human\\_Right\\_to\\_Democracy](http://www.polisci2.ucsd.edu/.../An_Instrumental_Argument_for_a_Human_Right_to_Democracy)

<sup>8</sup> See: Cohen, J. (2010), *The Arc of the Moral Universe and Other Essays*, Cambridge, MA: Harvard University Press, p. 358.

<sup>9</sup> On the other side, according to the views of Pablo Gilabert, this argument is unconvincing. First, it simply defers to what people already think is correct. 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 what is just? Third, there is intrinsic consideration about individual’s status in a political system that calls for their allegiance. Being rendered second-class citizen is injurious to an individual’s dignity, or a failure of due consideration. See more details in: Pablo Gilabert (2012), *Is There a Human Right to Democracy?*, A Response to Joshua Cohen, *Revista Latinoamericana de Filosofia Política*, ISSN 2250-8619, Vol.1, No. 2, Argentina.

<sup>10</sup> Universal Declaration of Human Rights, General Assembly Resolution 217 A (III), 10 December, 1948, <http://www.unhchr.ch/udhr/lang/eng.htm>.

<sup>11</sup> The differences between the two articulations in the UDHR and ICCPR are very interesting. Article 21 of the Declaration can be read syllogistically to mean that the basis of governmental authority is such popular will as has been expressed in the elections, whereas non-liberal regimes would prefer it to mean that the popular will is (in some abstract sense) the basis of - and therefore expressed by - governmental authority, and is also expressed in elections. The Covenant version simplifies the matter by leaving undefined the relationship, if any, not only between authority and elections, but also between authority and participation.

2. Everyone has the right to equal access to public service in his country.

3. The will of the people<sup>12</sup> shall be the basis of the authority of government; this will of the people shall be expressed in 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<sup>13</sup>.

**According to the UN Declaration “human rights are a common standard of achievement for all peoples and all nations”. Also Article 25 in the ICCPR is quite strong in stating that:** “Every citizen shall have the right and opportunity, without any of the distinctions concerning “race, color, 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 term “democracy”, but it is difficult to assume that democracy is not implied in their content.

Also, the rights enshrined in the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, and subsequent **human rights instruments covering group rights (e.g. indigenous peoples, minorities, people with disabilities)**, are equally essential for democracy as they ensure an equitable distribution of wealth, and equality and equity in respect of access to civil and political rights.

New guarantees have been adopted post-1990, in particular **Article 23 of the American Convention on Human Rights (ACHR)**

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<sup>12</sup> From my point of view, “the will of the people” is an abstraction which does not have an observer independent existence. Only the wills of individuals exist. And these are never the same for all individuals. The only “will of the people” which is not a prelude to a totalitarian society is the democratic principle. Gregory Fox and Brad Roth made this point on Article 21: “Article 21 of the UDHR, in a manner strikingly dissimilar to that of the document's other Articles and that of the ICCPR, speaks not merely of the individual right to take part in government, but also of the principle that ‘(t)he will of the people shall be the basis of the authority of government”, and that “this will shall be expressed in periodic and genuine elections”. Implicitly, Article 21 links governmental legitimacy to respect for the popular will. Yet thus linkage does not appear in the subsequent, and legally binding, International Covenant on Civil and Political Rights (ICCPR). Article 25 of the Covenant speaks of the right to participate in public affairs - including the right to genuine and periodic elections - but it does not purport to condition governmental authority on respect for the will of the people. See: International Covenant on Civil and Political Rights, signed 16 December 1966, entered into force 23 March 1976, 999 UNTS 171.

See: Gregory Fox and Brad Roth, “Democracy and International Law”, Review of International Studies, Volume 27, 2001, p. 335, and also Henry J Steiner, “Political Participation as a Human Right”, Harvard Human Rights Year Book 77, 1998, (p. 87-88, 90, 93).

<sup>13</sup> This paragraph of the Article 21 is actually the link between democracy and human rights.

**and Article 1 of the Inter-American Democratic Charter (IADC)** in which it is declared that “peoples of the America have a right to democracy and their governments have an obligation to promote and defend it”. Despite the existence of so many international instruments for human rights protection it is obvious that in all of them the term “democracy” is not explicitly used. Even the **General Comment of the UN Human Rights Committee No. 25 of 1996 does not provide much detailed information as to what a democratic government ought to look like.**<sup>14</sup>

It is important to acknowledge that **the European Union also believes that democracy and human rights are universal values** that should be vigorously promoted around the world. Having come into force on 1 January 2007, the European Instrument for Democracy and Human Rights (EIDHR) is the concrete expression of the EU’s intention to integrate the promotion of democracy and human rights in the European continent as a whole.<sup>15</sup>

### **3. The Human right to democracy and International Law- Two dimensions**

Referring to the practical side of the question is there a human right to democracy, it is no longer important whether there is a human right to democracy in international law, **but whether there should be one and whether it should be guaranteed and protected** differently. In other words, the question is no longer a positive, but a normative one with **two different dimensions: 1. a legal one, and 2. A moral one.**

The question whether there should be a **legal right to democracy** is not exactly the same as the question whether there is **moral right to democracy**. Both questions are related, but are not identical. It is important to focus on the existence of a moral right to democracy as a step forward in recognizing the legal right to democracy.<sup>16</sup>

<sup>14</sup> See: Human Rights Committee, General Comment The Right to participate in public affairs, voting rights and the right of equal access to public service (Art.25), Fifty-seventh session, 1996, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 168 (2003).

<sup>15</sup> The key objectives of the EIDHR are: Enhancing respect for human rights and fundamental freedoms in countries and regions where they are most at risk; strengthening the role of civil society in promoting human rights and democratic reform, in supporting the peaceful conciliation of group interests and in consolidating political participation and representation; supporting actions in areas covered by EU Guidelines: dialogue on Human rights, human rights defenders, the death penalty, torture, children and armed conflicts and violence against women; supporting and strengthening the international and regional framework for the protection of human rights, justice, the rule of law and the promotion of democracy; building confidence in and enhancing the reliability and transparency of democratic electoral processes, in particular through monitoring electoral processes.

See: [http://ec.europa.eu/europeaid/how/finance/eidhr\\_en.htm](http://ec.europa.eu/europeaid/how/finance/eidhr_en.htm).

<sup>16</sup> Buchanan mentions at least two reasons to recognize an international legal right to democracy that do not depend on the existence of a moral right to

According to the **Besson's opinion**<sup>17</sup>, **human rights are moral rights** of a special kind, as they protect fundamental and universal interests. He stressed that a moral right exists when an interest is regarded as a sufficient ground or reason to hold someone else (the duty-bearer) under a duty to respect that interest *vis-à-vis* the right holder. For a right to be recognized a sufficient interest must be established and weighed against other interests, and other considerations, with which it might conflict in a particular social context.

Rights are, in Besson's view, intermediaries between interests and duties. A right may be recognized and protected before specifying which duties correspond to it.<sup>18</sup>

Once a duty is specified, it is correlative to the right, but the right may preexist without all its specific duties being identified. The relationship between rights and duties is justificatory therefore, and not logical. A right is, secondly, a sufficient ground for holding other individuals under all duties necessary to protect the interest rather than in terms of the details of these duties. A right might provide for the imposition of many duties and not only one. Besides, rights have a dynamic nature and specific duties can be grounded on a right depending on the circumstances.<sup>19</sup> That means that the determination of the duty-bearer(s) of a right and its certainty are not conditions for the existence of a moral right.

As far as the second element of the definition is concerned, e.g. that human rights are moral rights of a special intensity, and that the interests protected are regarded as fundamental and universal, **it is worth mentioning that the nature of the protected interests will have to be determined by reference to the context and time rather than established once and for all.**

Human rights are not merely a consequence of individual's equal status, but also a way of actually earning that equal status and consolidating it. Without human rights, political equality would remain an abstract guarantee: through human rights, individuals become actors of their own equality. Human rights are power-mediators: they both enable political equality and maintain it.<sup>20</sup>

On the other side, legal (human) rights are legal propositions and sources of legal duties. In other words, legal rights are legally protected

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democracy: 1. the instrumental value of democracy for the realization of other human rights, on the one hand, and the legitimacy of the role of state consent in international law as democratic state consent, on the other. See more details in: Buchanan A. (2008), "Human Rights and the Legitimacy of the International Order", *Legal Theory*, p. 39-70, as well as Buchanan A. (2010), "The Legitimacy of International Law", in Besson, S. and Tasioulas, J. (eds) "The Philosophy of International Law", (Oxford: Oxford University Press).

<sup>17</sup> See: Besson, S. and Tasioulas, J. (eds) "The Philosophy of International Law", (Oxford: Oxford University Press).

<sup>18</sup> See also: MacCormick, N (1997), "Rights in Legislation", in Hacker, P. & Raz, J. (eds), *Law, Morality and Society*, (Oxford: Clarendon), p. 201.

<sup>19</sup> See: Raz, J. (1984), "Legal Rights", *Oxford Journal of Legal Studies* 1; as well as Raz, J. (1984) "On the Nature of Rights", 93 *Mind* 194.

<sup>20</sup> See: Samantha Besson (2010), "The Human Right to Democracy- A Moral Defence With a Legal Nuance", Venice Commission Documents, CDL-UD(2010)003, [http://www.venice.coe.int/webforms/documents/?pdf=CDL-UD\(2010\)003.e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-UD(2010)003.e).

moral interests.<sup>21</sup> It follows that legal rights may also be regarded as moral rights. **But, the other way around, not all moral rights are or should be legally recognized.**

#### 4. Human rights and democracy

In 1776, **Thomas Jefferson**, in the American Declaration of Independence, wrote, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are Life, Liberty, and the pursuit of Happiness.” It is well known that Jefferson stood most directly on the shoulders of **John Locke**, whose design of government for the protection and promotion of “life, liberty, and property” was a foundation stone of the American constitutional system. Locke, in turn, built on far older religious and philosophical antecedents.<sup>22</sup>

Although the right to democracy is not the subject of complete consensus among theoreticians and politicians, it is quite clear that the tendency of its recognition in international law and in human rights political practice is more and more visible.

Democracy<sup>23</sup> is a voluntary association of people wanting to live in a healthy society which respects their right to their own opinions, beliefs and interest, a condition which requires that in terms of decision-making all are considered as equals (subjective equality). They will have to accept all decisions which meet that principle, or the principles, which can be deduced from it, or which are taken in a procedure which has been established under such decisions. A basic principle not acknowledged in the Declaration is that with each right comes a duty.

Universal rights imply universal responsibility of all those who are able to shoulder it to ensure that the conditions necessary to meet these rights are fulfilled.

**Democracy is identified by certain key principles, and by a set of institutions and practices** through which these principles are

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<sup>21</sup> See: Feinberg, J.(2003), “In Defence of Moral Rights”, in Problems at the Roots of Law: Essays in Legal and Political Theory, Oxford: Oxford University Press.

<sup>22</sup> See: [http://www.viacom.com/news/News\\_Docs/cassintellectualproperty.pdf](http://www.viacom.com/news/News_Docs/cassintellectualproperty.pdf).

<sup>23</sup> The word democracy itself is from the Greek meaning “rule of the people”. The Athenian conception of democracy was that a select group, the “citizens”, free-born men, would rule the rest. This was essentially representative democracy in which all heads of families would represent everyone else in their households. When democracy is defined as “rule of the people”, it is much easier to see democracy as a universal concept. But, human rights and democracy have to be elaborated as distinct concepts.

In the Western mind, they are intertwined. Convenient shorthand of many Americans is that “human rights” include the ones mentioned prominently in the Declaration of Independence (life, liberty and the pursuit of happiness) and those enumerated in the Bill of Rights. The American Constitution and Bill of Rights say very little about democracy or elections but quite a lot about the rights of individuals and states. On the other hand, the Bill of Rights was written to ensure that the individual was protected from the government.

According to the European Court of Human Rights, “Democracy appears to be the only political model contemplated by the ECHR and, accordingly, the only one compatible with it”.

realized. Its starting point, like that of human rights, is the dignity of the individual person. However, democracy also has a specific focus - that of decision-making in the rules and policies for any group, association or society as a whole, and a distinctive conception of citizens, not only as the bearers of rights and responsibilities, but as active participants in the collective decisions and policies which affect their lives.

**The core principles and institutions of democracy are:**

- a) Popular control and political equality realized through a framework of guaranteed citizen rights,
- b) Representative and accountable political institutions subject to electoral authorization<sup>24</sup>, and
- c) An active civil society.

**But the essential elements of democracy are:**

- a) Respect for human rights and fundamental freedoms,
- b) Freedom of association,
- c) Freedom of expression and opinion,
- d) Access to power and its exercise in accordance with the rule of law,
- e) The holding of periodic free and fair elections by universal suffrage and by secret ballot as the expression of the will of the people,
- f) A pluralistic system of political parties and organizations,
- g) The separation of power,
- h) The independence of the judiciary,
- i) Transparency and accountability in public administration and
- j) Free, independent and pluralistic media.

All the **UN human rights texts** embody a commitment to a democratic form of the government, and according to **A. W. Brian Simpson**<sup>25</sup>, reflect **four ideas**:

- a) The first is that government should be based on the will of the people,
- b) The second is that all appropriately qualified citizens should be able to participate in the government of their country,
- c) The third is that the will of the people should be ascertained through periodic elections and
- d) The forth is that elections should be free elections, with universal suffrage and a secret ballot.

Therefore, the basic principles of democracy are that the people have a right to a controlling influence over public decisions and decision makers, and that they should be treated with equal respect, and as of equal worth in the context of such decisions.

Today, the concept of a democratic society where democracy could be implemented **"is acknowledged as a fundamental feature of**

<sup>24</sup> "Democracy cannot be understood in terms of some unmediated notion of popular will. The aspirations of the multitude inevitably conflict, which is precisely why the practice of politics has emerged. The aggregation of interests and opinions implicit in the concept of a democratic will can be recognized only when absorbed into some representative form". See: Martin Loughlin (2003), *The Idea of Public Law*, Oxford: Oxford University Press, p. 112.

<sup>25</sup> See: A W Brian Simpson (2001), "Human Rights and the End of Empire: Britain and the Genesis of the European Convention", Oxford: Oxford University Press, p. 757.



**the European public order".<sup>26</sup>** This is apparent, firstly, **from the Preamble of the ECHR**, which establishes a very clear connection between the Convention and democracy by stating that the maintenance and further realization of human rights and fundamental freedoms are best ensured on the one hand by an effective political democracy and on the other by a common understanding and observance of human rights... The phrase "democratic society" also appears in articles 6, 8, 9, 10, 11 and article 2 of Protocol 4 of the European Convention of Human Rights<sup>27</sup>.

Also the European Union is abundant with rhetoric in regard to democracy and human rights promotion. The Nice Treaty, as well as Lisbon Treaty, extends the objective of promoting democracy and human rights and fundamental freedoms inside and outside of the Union. A 'Joint Statement on EC Development Policy' by the Council of Ministers and the European Commission incorporated the promotion of human rights, democracy, the rule of law and good governance as an integral part of development cooperation as a **"new framework for the European Commission's activities in support of human rights and democratization"**.<sup>28</sup>

## 5. Conclusion

From the above mentioned, it is fair to conclude that democracy and human rights cannot be treated as a unitary and indivisible concept, but **should rather be considered as separate and distinct concepts which are very much intertwined**. They cannot function separately. They need each other and reinforce each other.

Where there is democracy, there is also human rights and vice versa. A democracy without human rights is not an ideal democracy, because it cannot function adequately. Human rights without democracy are not complete.

From one side, the values of freedom, respect for human rights and the principle of holding periodic and genuine elections by universal suffrage are essential elements of democracy, but from the other, democracy provides the natural environment for the protection and effective realization of human rights.

Democracy unsupported by respect for human rights cannot in itself guarantee observance and realization of human rights. Also, democratic deficits and weak institutions are among the main challenges to the effective realization of human rights.

Democracy is the application of human rights to the field of government.

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<sup>26</sup> See more details: Philip Leach (2005), *Taking a Case to the European Court of Human Rights* 2nd edition, Oxford: Oxford University Press, p. 161.

<sup>27</sup> Article 6, right to fair trial, Article 8, right to respect for family and private life, Article 9, freedom of thought, conscience and religion, Article 10, freedom of expression, Article 11, freedom of assembly and association, and Article 2 of Protocol 4 of the European Convention of Human Rights, freedom of movement.

<sup>28</sup> See: Gordon Crawford, "Evaluating EU promotion of human rights, democracy and good governance: towards a participatory approach", University of Leeds, <http://www.edpsg.org/Documents/Dp22.doc>.

Human rights are democratic rights because they are necessary for democracy, just as democracy is necessary for human rights. Yet, human rights are not just a necessary prerequisite for democracy, but they rather bring about democracy. We can talk about human rights only in terms of a particular predefined environment.

In today's world, the most fundamental environment is democracy, and hence the sort of relationship human rights share with democracy is vital.

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