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Can There Be a Human Right to an Essentially Contested Concept?

The Case of Democracy

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Abstract

The idea of a human right to democracy has received substantial attention from political theorists, philosophers, and international lawyers. Arguments for its existence ignore the fact that democracy is the paradigm essentially contested concept, so cannot establish what a right to democracy would be a right *to*. I survey three responses to essential contestability. The first holds that history has decided upon liberal democracy, so essential contestation is a philosophical worry with few practical implications. The second seeks a broadly acceptable minimal definition of democracy. The third would deploy sophisticated empirical analysis to determine which aspects of democracy have desired positive effects. All three prove inadequate. The right to democracy must instead be understood as the right to engage the contestation at the core of the concept, through formative agency that determines what democracy should mean in practice in particular contexts.

Keywords: Human rights, essentially contested concepts, democracy, human right to democracy, formative agency.

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Democracy promotion as well as judgments about the legitimacy of particular states as members in good standing of the international system would rest on more secure foundations if it could be established that there is a human right to democracy.

These considerations may help explain the substantial attention that this right has received from political theorists, philosophers, and international lawyers in recent years. A human right to democracy was intimated long ago (though the word 'democracy' was not explicitly proclaimed) in Article 21 of the 1948 Universal Declaration of Human Rights, which states that 'Everyone has the right to take part in the government of his country, directly or through freely chosen representatives' and '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 vote or by equivalent free voting procedures.'

This 1948 formulation certainly did not lay the matter to rest, and if we look at contemporary arguments both for and against such a right we see substantial departures from it. The variety of these departures intimates a more profound problem: democracy is the exemplary case of an essentially contested concept. Thus it is understandable that arguments both for and against its existence find it very hard to specify what a human right to democracy would actually be a right *to*. I will survey three possible responses that try to avoid the implications of essential contestability, and explain why each proves inadequate. My proposed alternative entails embracing essential contestability rather than trying to banish or overcome it. In this light, the human right to democracy is the right to formative agency in

regard to the core contestation over the meaning and practice of democracy in particular settings. Few of the existing arguments either for or against the human right to democracy prove able to survive this reformulation, but the right can still be justified.

Is There a Human Right to Democracy?

Over the years the possibility of a human right to democracy has received increasing attention (for examples of advocates see Franck 1992; Gould 2004; Forst 2010, 729-30; Christiano 2011; Benhabib 2011; Gilibert 2012; Gilibert forthcoming). Perhaps most ambitiously, Gould (2014) links the human right to democracy to an expansive 'interactive' conception of democracy grounded in a view of 'persons as active and social beings' (2014, 4), so applicable to many domains of life, including transnational governance, and 'more participatory and deliberative' than 'free and universal election of representatives' (2014, 82). For Forst (2010, 730), a human right to democracy protects 'those who criticize exclusions and asymmetries', it is 'a right to codetermine one's polity in an autonomous manner' and people can 'use that right in such a way that it realizes a form of liberal or egalitarian democracy.' For Benhabib (2012, 195) the right to democracy is basic because it is 'essential for being able to make justifiable claims concerning the valid range of variation in the articulation of human rights at all.' Similarly for Sen (2009) the capacity to participate effectively in public discussion – at the heart of his idea that democracy's universal aspect involves the exercise of public reason - is a truly fundamental

capability that enables societies to deliberate the more specific capabilities (such as bodily integrity, health, self-respect) that societies should secure. While treating this capability as universal, Sen himself does not insist that a right should therefore be attached to it.

If accepted as a universal legal right, the implications of a human right to democracy would be profound, for non-democratic states would become illegitimate members of the international system. The 'right to choose who will govern them' is specified in the 2002 *National Security Strategy of the United States of America* (signed by President George W. Bush) as one of the 'values of freedom [that] are right and true for every person, in every society.' A very partial and controversial interpretation of this universal right could therefore be deployed in neo-conservative arguments for the 2003 invasion of Iraq on the grounds it would remove an illegitimate authoritarian government and enable democracy to flourish.

That *Strategy* was the proclamation of just one government which happened to be a superpower. Charlesworth (2013) argues that there is in fact no right to democracy implied in contemporary international law, though of course the absence of a legal right says nothing about the corresponding moral right. Yet the existence of the moral right itself remains disputed by political philosophers (for deniers, see for example Cohen 2006; Reidy 2012; Lister 2012). In his recognition of 'decent' peoples (essentially, states) that are not liberal democracies, Rawls (1999) in his *Law of Peoples* implies that there is no universal human moral or legal right to democracy. Beitz (2009) for his part favors instead a right to self-determination that could entail a people choosing to reject democracy. He believes that regimes can

protect the more important human rights adequately without democracy – or any human right to it.

A number of recent treatments of the issue have the same title: ‘Is There a Human Right to Democracy?’ (Cohen 2006; Gilabert 2012; Benhabib 2011, ch. 5; Benhabib 2012; Charlesworth 2013; Gould 2014, ch. 4). The fact that this popular title is a question indicates that whether or not democracy should be recognized as a basic, universal human right remains unsettled.

Before we even get to the moral and legal arguments for and against the existence of the right, there is prior matter which needs attention – and which goes a long way to explaining why the question remains unsettled. Any purported human right to democracy immediately gets us into the problem that democracy can be defined and practiced in different ways by different people in different places – and sometimes in the same place. What exactly is the human right to democracy a right *to*? The universal right proclaimed by the neo-conservatives meant something very different to the democracy that Occupy protestors believed they were practicing as they took on Wall Street in 2011. Democracy typically comes with adjectives (Collier and Levitsky 1997). Gagnon (2013, 75-76) counts 62 types with a further 43 sub-types.

One might try to retrieve a human right to democracy amid this variety by distinguishing between an ‘abstract’ right that is universal and ‘specific’ manifestations of the right that can vary by institutional and cultural context, as suggested by Gilabert (2011) for rights in general. However this retrieval does not resolve matters once we recognize the depth of dispute about the meaning of

democracy within particular contexts, such as nation-states. Neo-conservatives and Occupy Wall Street protestors are after all citizens in the same country, and as such inhabit the same institutional and cultural context.

Democracy as an Essentially Contested Concept

Observed variety in the interpretation of the meaning of democracy in theory and practice hints at a deeper problem: democracy is an *essentially* contested concept. Of course the contestation must be within boundaries, for democracy cannot mean just anything: democracy is not dictatorship or a market or a system of military command or war or anarchy. Its range covers questions concerning the collective construction, distribution, exercise, and limitation of legitimate public authority.

My intent here is to inquire into the form the right can possibly take, given that democracy is an essentially contested concept. The idea of essentially contested concepts was introduced by Gallie (1956). Any such concept is normative, internally complex, open in being amenable to revision, and recognized by those who engage it as involving the need to argue for their favored definition against others. Essential contestation means not just that there is a lot of disagreement about a concept; but rather that disagreement is integral to the concept, which would not be recognizable without the disagreement. As Waldron (2002, 152) puts it, “the contestation between rival conceptions deepens all sides’ understanding of the area of value that the contested concept marks out.” The value is itself reproduced, and its importance confirmed, through the contestation.

Democracy is often taken as the paradigm case of an essentially contested concept, in Gallie's original presentation and many other treatments since (for example, Collier, Hidalgo and Maciuceanu 2006). In this light, the many different conceptions of democracy observable in the writings of political theorists, the specifications of empirical scholars of democracy, the assertions of social movements, and the justifications of political leaders are not a matter of conceptual confusion that could be cleaned up. All conceptual clarification can do is specify specific sub-types of democracy, such as adversarial, consensual, electoral, participatory, republican, limited, pluralist, agonistic, cosmopolitan, liberal, or social. And even then, many of the sub-types may themselves feature essential contestability. For example, when it come to pluralist democracy there is long-standing and probably irreducible dispute between those for whom pluralism is a matter of accommodating material interests in the content of public policy, those for whom it is a mode of collective inquiry, and those for whom it must entail recognition of the standing of historically oppressed groups and be accompanied by radical critique (Schlosberg 2006).

Is it possible to recognize essential contestability while securing a human right to democracy that is universal in its applicability? For any human right is by definition universal; otherwise it would not be a human right at all, but only a right for some humans. A human right to democracy (or anything else) makes sense to the degree it applies to all persons, everywhere (though not, I will conclude, necessarily in all epochs). Beitz (2009) argues that the terms in which a right applies can vary if the right in question requires a particular institutional context, such as a

functioning state, though if that is true then rights may be least available when they are most needed. I survey three responses to essential contestation that prove inadequate when it comes to enabling specification of the content of a universal human right to democracy. I then propose a resolution that embraces contestation rather than seeing it as a problem to be overcome, enabling retention of a human right to democracy, but now conceived as the right to exercise formative agency in contestation over the meaning of democracy and its practice. Agency here entails expression and reflection that have consequences for practice. In engaging the normative principles to be adopted in specific situations, agents can draw on general ideas about democracy, but also respond to the specific circumstances of the context at hand.

First Response: History Has Decided

While essential contestation is the kind of thing that might worry political philosophers, it is arguable that in reality the problem is nothing like so great: that successive iterations of political practice will sort the wheat from the chaff, and eventually yield just one practical conception of democracy to which a human right can then be attached. Many observers thought something like this happened with the end of the Soviet bloc and the accompanying wave of democratization. So leading democracy scholar Giovanni Sartori (1991, 437) could claim “In today’s modern world, there is but one ‘rightful government’: freely elected government. But remember, the winner is an entirely liberal government, not only popularly elected government, but also, and indivisibly, constitutional government; that is, the

hitherto much belittled 'formal democracy' that constrains and restrains the exercise of power.' Francis Fukuyama (1989) famously proclaimed 'the end of history' with the triumph of liberal democracy plus capitalism as a globally applicable normative model for the political economy. Fukuyama did of course allow that many parts of the world might still be stuck in history and cling to nationalist or religious fundamentalist ideologies: his point was that none of them had any globally applicable ideas to offer. So given that any human right has to be universal in its applicability, and no rights could be derived from any of these illiberal alternatives, the only place worth looking for such a right would be in the globally triumphant doctrine of liberal democracy.

Proclamations of the sort made by Sartori and Fukuyama in those heady years may no longer be so popular in a world of multiple dysfunction in U.S. liberal democracy, resurgent authoritarianism, religious fundamentalisms, and the soft power in the international system of China's 'harmonious society' alternative to liberal democracy. However, Deudney and Ikenberry (2009) insist that history is still on the side of liberal democracy. None of the more prominent alternatives to liberal democracy seems capable of providing the substance of a human right to democracy (only resistance to it). In that sense, there may still be resolution in favor of liberal democracy. Still, what looks like resolution in the present may actually prove in hindsight to be just another episode with a beginning and an end. Hanson's (1989) conceptual history of democracy demonstrates how accepted meanings of democracy have changed substantially and frequently in the past few centuries. Fukuyama might reply that the end of history means the end of conceptual history

too; but that is manifestly not what has actually happened. John Keane (2009) concludes his magisterial history of the practice of democracy not with a model of the liberal democratic state, but rather with a successor to that in the form of a 'post-parliamentary' 'monitory democracy', which features a variety of mechanisms to constrain and guide power that extend across national boundaries, and which can be claimed by all sorts of new kinds of actors and movements. The right to monitory democracy would look very different to the right to liberal, electoral democracy. So history has not produced any single, settled model of democracy that has lasted long enough to constitute the basis for a human right.

Second Response: Minimal Definition

A second response to contestability would seek to define democracy in terms that are substantively minimal enough to be the subject of a Rawlsian overlapping consensus that can reach into many comprehensive doctrines (Benhabib 2012). Successful minimalism might enable a reply to for example Cohen (2006), who believes a human right to democracy would have to be accompanied by an overly controversial egalitarianism. The search for a progressively more minimal definition might begin with what Christiano (2011, 146) refers to as a 'minimally egalitarian democracy' which he defines as:

a democracy that has a formal or informal constitutional structure which ensures that persons are able to participate as equals in the collective decision making of their political society... Persons have formally equal votes that are effective in the aggregate in determining who is in power, the normal

result of which is a high level of participation of the populace in the electoral process... Persons have equal opportunities to run for office, to determine the agenda of decision making, and to influence the processes of deliberation... Christiano goes on to add freedom to organize parties and interest groups, freedom of expression, party competition, and constraints on executive power. The result is 'cluster of rights' to be 'realized in one's political society' that constitute the human right to democracy.

Christiano's definition proves not to be especially minimal. It does go some way toward accommodating diversity in democratic practice. So this definition encompasses the aspirations of seemingly different political systems such as consensual Switzerland and the adversarial United States (though in both the practice of democracy might violate equal opportunities to run for office and determine the political agenda, in the United States participation levels are generally low, and in Switzerland there is not much competition between parties given they are all guaranteed a share in government).

But what happens when we go slightly further afield? Consider the case of Botswana, where political legitimacy appears to depend not on elections, but rather on the performance of leaders in public settings where they must justify their positions in the face of criticism – which if successful can even induce party leaders to vote for their opponents (Maundeni 1997). In this light, competitive electoral politics can look as though it undermines the Tswana conception of a people that rules itself. Note here that it is not the anti-democratic culture of a people that is

causing problems (and so their right to self-determination undermining any right to democracy), but rather the way democracy itself is interpreted.

If our world tour then takes us to East Asia, some theorists of Confucian democracy stress harmony and community over political competition, with virtuous behavior oriented to the common good central. For Confucians, politics (democratic or otherwise) should be a comprehensively ethical practice (Tan 2014).

In this light, Christiano loads too many contestable elements into his 'minimally egalitarian' conception of democracy to which a right should be attached. The same could be said for any argument using as its reference point Article 21 of the Universal Declaration of Human Rights (see for example the electoralist specification of Franck 1992, 77).

Can we overcome such problems of interpretation and local specification by making the definition of democracy more minimal still? Here we could try to take out specifics referring to majority rule, political parties, competitive elections, and constitutionalism, such that the right to democracy 'need not be claimed in a "liberal" sense if "liberal" means conformity to current social orders in the West' (Forst 2010, 730). Along these lines, Benhabib tries to identify a minimal core. She clarifies her working definition of democracy as

assuming that the equal right of persons to take part in the affairs governing their collective existence through the medium of law and the articulation of their opinions and preferences in a political community through the right of freedom of speech and association is the essence of the democratic form of government. Whether this is institutionalized through periodic elections, a

multi-party system, proportional representation, mandates and recalls, and the like are questions which do not belong to the *idea of democracy* [emphasis in original] itself but to its concretization in specific socio-historical circumstances, and there can be quite an acceptable range of variation here (Benhabib 2011, 234, fn 25).

In light of *essential* contestability, Benhabib's clarification of her starting point misfires because she removes the variety that is grist for contestation from the core of the concept where it belongs, and downgrades it to the periphery of 'institutionalization'.

More minimally still, Gilibert (forthcoming) in his advocacy of a human right to democracy says 'A system of political decision-making is democratic when those subject to it have effective and equal opportunities to participate in it and shape its results.' Gilibert's position is consistent with the widely-applied democratic audit principles of popular control and political equality (Beetham 1994). However it does not necessarily escape controversy. Gilibert's definition implies a democracy of the subjected in the image of a self-contained sovereign unit of government creating binding decisions for citizens. This definition therefore implicitly rules out a broader democracy of the affected, which can transcend formal boundaries (Schaffer 2012). The 'effective and equal' requirement is quite demanding, and inconsistent with other minimalist views.

The term 'minimalist model of democracy' is often used to describe a Schumpeterian model of democracy that requires no more than rulers chosen by competitive elections (for example, Przeworski 1999). In this model there are no

'effective and equal opportunities to participate... and shape its results' as required in Gilabert's definition, for there is a firm distinction between the elites who govern and the people who are occasionally allowed to choose between competing elites – and no more. The Schumpeterian definition allows electoral authoritarianism, under which an elected government wields unconstrained power.

The specter of electoral authoritarianism could perhaps be banished by adding some conditions to the simple presence of elections, such as individual rights to safeguard against oppressive proclivities of elected leaders. But how then to balance the claim of majorities to rule with the rights of minorities against oppression? Crude Schumpeterianism might also be softened by specifying that elections be frequent, fair, and free (as Dahl 1989, 233 puts it). But should freedom extend to all parties to stand for election? What then are we to make of (for example) the constitution of Germany, which bans revival of the Nazi Party? Does fairness have to be accepted by permanent minorities who know they can never achieve a say in government through electoral means? The problem is of course that the more refinements we introduce, the greater the possibilities for contestation. Moreover, tying the human right to democracy to choosing rulers through elections will not help those trying to promote democracy in settings where competitive state-level elections are not feasible - for example, China, or the global system. People struggling in such settings need something more subtle to assist them. Gould (2014, 86) in arguing for a human right to democracy stresses the importance of its cultural interpretation such that it does not have to look like the imposition of a Western liberal conception of democracy. And any minimalist electoralist

conception of democracy tied to the state means accepting a (contestable) all-subjected principle as opposed to some kind of all-affected principle. Such considerations might lead us back toward Gilabert's kind of minimalism, which does not mention elections in its specification of the human right to democracy – but as we have just seen, that kind of minimalism too is contestable.

The underlying problem here is that minimization converges not on a single definition of democracy, but on potentially multiple minima that are inconsistent with one another.

The reason that progressively stripping down the concept of democracy to some core that could be acceptable across different comprehensive doctrines will not work is that *essential* contestation means that dispute exists at the core of the concept – not just in its applications or elaborations. As I pointed out earlier, contestation does though take place within boundaries: the range covers questions pertaining to the collective construction, distribution, exercise, and limitation of legitimate public authority.

Third Response: Empirical Analysis

Democracy is valuable in large part because of its consequences for other values. Along these lines, Christiano (2011, 144-5) argues for the right to democracy on the grounds democracy is instrumental to the attainment and protection of 'urgent moral goods', such as rights against physical harm, torture, and arbitrary imprisonment. Any instrumental argument has to be informed by empirical evidence. Now, the social science textbook approach to analysis of the

consequences of democracy here would involve first specifying the concept in empirically tractable terms, then operationalizing, then measuring, then testing the relationship to other valued outcomes through empirical inquiry (which could involve quantitative methods such as regression, or qualitative methods such as process tracing and comparative case study). Unfortunately empirical studies in this idiom prove not to be very useful when it comes to informing the content of any human right because they generally use controversial (and contested) summary indices. Summary indices of national democratic performance as compiled most prominently by Freedom House and Polity cannot escape arbitrariness in aggregation of components such as freedom of the press, freedom of association, accountability of representatives, freedom and fairness of elections (and in practice do not escape selectivity in the specification of the components). So even if democracy so defined and measured could be shown to have a positive correlation with particular moral goods, that does not help when it comes to specification of the precise content of any human right to democracy.

However it is possible to discard summary indices and alter the logic in order to use empirical analysis to help identify the aspects of democracy that are most conducive to moral goods such as (say) protection against famine (Amartya Sen's famous observation), domestic and international peace, freedom from torture and arbitrary imprisonment, environmental sustainability, or distributive justice. This would at least help identify the specific elements of democracy that merit the attachment of a right on instrumental grounds. This kind of approach could draw on recent moves in the comparative empirical study of democracy. Some scholars have

recently recognized the limitations of summary indices of democracy with a view to more sophisticated disaggregated specification. In their landmark proposal, Coppedge and Gerring (2011) identify six 'conceptions of democracy' (electoral, liberal, majoritarian, participatory, deliberative, and egalitarian) and 43 specific indicators for country-level data collection and analysis. Empirical inquiry can then determine 'which elements of democracy are related to which results' (Coppedge and Gerring 2011, 260).

Would this empirical work produce convergence on a small set of indicators which could then be used as the basis for detailed specification of the right to democracy? That remains to be seen; though the whole justification for a move to a disaggregated approach suggests it is unlikely, and that what would result instead would be different indicators proving to be associated with different valued outcomes. There is for example a body of work which suggests that consensual, corporatist democracies do better than adversarial ones when it comes to income equality and minimization of unemployment (Freeman 1989) but neoliberals would insist that even if this is true it is at the expense of economic growth which is the best way to lift people out of poverty.

To take another example of different empirical results pointing in different directions when it comes to the aspect of democracy that matters, consider instrumental arguments by Franck (1992, 89) and Christiano (2011, 163-4) for a human right to democracy drawing upon (among other things) the seemingly well-established 'democratic peace' thesis from international relations: democracies do not go to war with each other. The standard response of defenders of this thesis to

counter-examples (where democracies do go to war with each other) is to redefine democracy so that we end up with a Western liberal democratic peace (Oren 1995). Thus the right to democracy would be the right to Western liberal democracy. But what then if another dependent variable, such as famine protection, leads to a different specification of the independent variable of democracy? This is actually quite likely. Amartya Sen, with whom the famine protection point is associated, has also argued that (liberal) democracy as voting is a Western construct, while democracy as public reason (by which he means deliberation) is truly universal (Sen 2003). If Sen is right, then famine protection and peace would point to two different specifications of the human right to democracy.

If the specification of a right depends on social scientific evidence then it is vulnerable to changes in the results of what is often very inexact science. Råby and Teorell (2010) argue that there is a 'quality of government peace' whose effect is actually stronger than (and indeed subsumes) the democratic peace; is that an argument for abandoning the human right to democracy in favor of a human right to good governance?

In short, while democracy – or different aspects of democracy – may have instrumental value, empirical inquiry of anything like the kind that is currently practiced and producing evidence in social science cannot enable us to answer with any confidence the question of what exactly a human right to democracy should be a right to. Moreover, improved empirical inquiry that disaggregated democracy would be highly unlikely to yield convergence on any single aspect of democracy that provided the requisite explanatory power meriting the attachment of a right. The

limitations of empirical inquiry mean that any instrumental argument for a human right to democracy has to fail. A corollary is that any instrumental argument against a human right to democracy will also fail. For example, Beitz (2009) (with a fairly conventional liberal electoral conception of democracy in mind) believes a human right should not be attached to democracy because more hierarchical regimes can in practice (that is, instrumentally) protect the more important human rights just as well as democratic regimes can. Any such argument against the human right to democracy run into identical problems to arguments in favor when it comes to specifying the content of the 'democracy' independent variable. This specification is necessary in such arguments, in order to establish the comparative explanatory power of a competing independent variable (such as decent hierarchical government). Argument both for and against therefore has to proceed on intrinsic grounds (which empirical inquiry cannot reach). These intrinsic grounds can involve, as Gilibert (forthcoming) puts it, 'expressive recognition and respect for human beings as agents with the capacity for political judgment and self-determination.' I will now suggest that the way to think of these intrinsic grounds is in terms of the exercise of formative agency engaging contestation over what democracy should mean and how it should be applied in particular contexts.

Reframing the Human Right to Democracy

If the human right to democracy could not accommodate essential contestability it would have to be abandoned. What then can be redeemed from the idea of a human right to democracy in light of the objections that essential contestability raises? An

answer can be approached through the observation that contestation is indeed at the core of the concept of democracy. So if the right to democracy is anything, it is the right to what is at the core of the concept: contestation about the very meaning of democracy. It cannot be the right to more peripheral and debatable goods like elections or parties.

Lister (2012, 259, fn 5) in an aside to his case against a human right to democracy believes that ‘insisting on answers to extremely difficult foundational issues before attempting to make progress on practical problems is a recipe for inertia and despair,’ but this assumes that moving to foundations means looking for unambiguous definitional resolution before proceeding further. The practical and the foundational are not in fact mutually exclusive categories: embracing essential contestation in foundations is actually a practical move, because it enables definition of the human right to democracy such that it can handle the contestatory character of the real world.

The human right to democracy is, then, the right to exercise agency in contestation concerning what democracy means, and in how democracy as understood through this contestation should be implemented. This agency should be exercised within the boundaries I established at the outset (democracy pertains to questions concerning the collective construction, distribution, exercise, and limitation of legitimate public authority), which demarcate democracy’s area of value. This is not a version of the minimal approach I criticized earlier. For the idea is not to make the definition as uncontroversial as possible, by stripping out

potentially contestable bits. Rather, the idea is to embrace contestation, not to find ways for contestable aspects to be avoided.

The human right to democracy so conceived does not just reduce to a specific form of free speech about what democracy should mean. This right applies not just to participation in theoretical discussion, but also to engagement of what democracy means in practice, and so what needs institutionalizing. In other words, agency involves not just expression, but also that the expression be consequential for practice. For essential contestability does not just mean that philosophical dispute exists: it also has implications for the substance of what democracy in practice in particular real-world situations must contain. In similar fashion, Sen (2009) argues that plurality in defensible conceptions of justice (which he does not describe as essential contestability) has implications for the real world practice of justice – which must involve public reason open to a variety of interlocutors in particular contexts, leading Sen to endorse a particular view of democracy.

What should formative agency be consequential for? In keeping with essential contestability, the target of agency ought to be left open. Agency might affect constitutional structure or interpretation. It could also involve creating forms of political life separate from formal authority (such as the parallel political society created by Solidarity in Poland in the 1980s, separate from the communist state). Or agency could entail influencing the way governmental authorities relate to publics; or the norms of engagement across ethnic or religious groups in divided societies; or the responsiveness of international negotiations to different sorts of inputs from transnational civil society. The nature of the target indicates the categories of

entitlements that would need to accompany specification of the right to democracy. These entitlements would include participation in constitutional processes, construction of alternative forms of political association, participation in determination of the way governments consult their citizens, and in the way transnational authority is constructed, as well as familiar entitlements to free speech, association, and activism directed at constitutive questions and in social processes of norm construction.

The human right to democracy as I have framed it does not imply that democracy itself must be simply a never-ending contest over its own meaning. There must be provisional moments of resolution about how to proceed in (for example) making collective decisions – otherwise, there is actually no point to the contestation. However, it is important that such moments of resolution do not preclude future contestation.

Though it can be conceptualized as an individual right, it is hard to see how the human right to agency concerning what democracy means and how it should be applied could be engaged by an individual in isolation, without being embedded in communicative processes involving other individuals exercising the same right. Otherwise, there would be no contestation for the individual to engage. Moreover, As Benhabib (2012) points out, the justification of moral rights in general (not just the right to democracy) should take place within a communicative process involving respect for others' ability to make arguments and accept or reject claims. But individuals exercising their right to democracy in this fashion do not need to meet the standards of philosophical argument; their invocation of democracy might be

partial, occasional, and even self-serving (though purely self-serving arguments that cannot be backed by more general principle will generally not last long in any public sphere).

The idea that the human right to democracy consists of the right to exercise agency when it comes to what democracy should mean and how it should be applied has integrity because the very notion of such agency itself can be located within the range of meanings of democracy. But it does not imply any more specific commitment to (say) participatory democracy, because individuals can choose not to exercise agency; it is simply that they have a right to do so. Nor does this specification entail any specification of borders. It can be exercised in relation to any sort of public authority, be it local, regional, national, transnational, or global. As such, it does not reduce to the right to contest the essentials of a democratic state.

A skeptic might argue here that specifying the human right to democracy through reference to the capacity to engage contestation must itself be contestable (this would challenge not just my own argument, but the very idea of essential contestability of any concept). However, formative agency must have some particular features that cannot themselves be (essentially) contested. These key features include the capacity to understand, interpret, and assess competing conceptions of democracy and how they would apply to a particular context; to recognize the key features of that context; and to give shape to how principles should be applied and practice pursued in any case at hand. A human right to democracy would have to protect the exercise of these capacities. As such, a human right to democracy defined in terms of the right to engage contestation through

formative agency is not self-subverting. Democracy cannot do without such agents, and it is here that we find the non-contestable core of the human right to democracy.

Anyone in practice denying the need for democracy to involve contestation would be caught in a performative contradiction, validating and exercising the right to engage contestation in order to deny the right to contestation. Just as the right to liberty does not imply individuals are free to sell themselves into slavery, so the right to contestation does not imply the right to try to shut down contestation.

A further advantage of defining the right to democracy in terms of agency concerning what democracy should mean and how it should be applied is that it provides some defense against catastrophic misuses of the right when it is defined in terms of more peripheral and debatable goods. Earlier I pointed out that neo-conservatives could use their very partial view of democracy to justify the invasion of Iraq in 2003. This in turn was based on the idea that democracy was one very well established model: as the 2002 *National Security Strategy of the United States of America* put it, 'a single sustainable model for national success: freedom, democracy, and free enterprise.' Essential contestability means there can be no 'single sustainable model' – and so no excuse to impose such a model on others. Such top-down imposition is inconsistent with recognizing the right to contest what democracy means and how it should be applied. This way of specifying the right to democracy would help guard against anyone or any people being seen as the object of democratization, rather than its subjects.

The way I have framed the human right to democracy suggests that democratic development could benefit from the presence of this right. In this

dynamic light, democracy can be thought of as not as a settled order, but rather as an open-ended project that societies undertake (see for example Downs 1987, 146; Connolly 1991, 476-78; Charlesworth 2013, 282). Advancement of the project benefits from contestation concerning what democracy should mean and how it should be applied, which a right to democracy framed as I have suggested could protect. Once a society seems to commit to democracy in some shape or form (as is true for example of contemporary China) then that should imply acceptance of the right of the people in that society to exercise agency concerning what democracy in that society should actually mean in theory and practice. This societally-specific recognition does of course leave open the question of whether or not those who want to initiate such a societal commitment can appeal to a universal human right to democracy.

The Human Right to Democracy and Other (Essentially) Contested Concepts

It might be argued that the human right to democracy is not distinctive because a right to *any* essentially contested concept will boil down to the same thing: the right to exercise formative agency in the contestation at the concept's core. However, most essentially contested concepts do not have a right plausibly attached to them. While science and art are essentially contested concepts, there is no basic human right to art or science. This is true even for the case of that other exemplary essentially contested concept, justice. Justice can of course be home to particular rights (to property, liberty, etc) that enter into contestation of what justice should be about in theory and practice. But even if in Rawls's terms justice is the first virtue

of social institutions, that is not the same as saying that there is a human right to justice (beyond the ordinary language sense of fair treatment in a legal system, which is not essentially contested).

One of the few philosophers who explicitly proclaims a right to social justice is Nagel (2005, 132), who says in passing (he does not develop any argument) that 'The right to justice is the right that the society one lives in be justly governed.' If Nagel is correct, then what is at issue here is the right to a mode of government – not to a substantive set of social conditions of the sort that would characterize more conventional definitions of justice. But if we do think of the right to justice in Nagel's governmental terms, there is really no problem in treating it the same way as I have treated the human right to democracy: it is the right to exercise formative agency in contestation concerning what the essentials of a political order or just government should look like. In practice the implementation of this right would resemble the right to democracy as I have defined it.

When it comes to concepts such as development and human security to which a right is attached, we may find disagreement – but that is not the same as *essential* contestation. Essential contestation means that contestation is necessary to reproduce the area of value in question. When it comes to development, for example, there are things that are recognizably development – such as a move from mass starvation to a secure food supply – without *essential* contestation in their vicinity. Essentially contested concepts to which a right might be attached are actually quite rare. And if they do exist, the right to them can be treated as the right to contest and shape the essentials of a political order that validates the right in

question – which is consistent with the human right to democracy as I have defined it.

So is there a Human Right to Democracy?

I have specified what a human right to democracy has to entail, and argued that there *can* be such a right ; but *should* there be such a right?

The political importance of essential contestability is (paradoxically) a contingent historical feature, its bite depending on the degree to which the concept is regarded as denoting an area of value. So between ancient times and the late 18th century democracy was either ignored or reviled by political thinkers; it was certainly not regarded as denoting an area of value, let alone one that had to be contested.

In this light, a human right to democracy as I have defined it is not so much an absolute and timeless human right, but rather a right required to navigate a profoundly and increasingly contestatory world (in many ways the opposite of the world portrayed by those who saw the ‘end of history’ in liberal democracy and capitalism). That world is characterized by struggles over not just democracy, but also over the meanings of justice, sustainability, development, and security. While among these other concepts it is probably only justice that is *essentially* contestable, those who have wrestled with these concepts are increasingly drawn to democracy as part of the solution to the contestation they find at the conceptual core, to the degree that democracy itself has to be located in that core. This move is made most explicitly and famously by Amartya Sen when it comes to the concept of justice. Sen

(2009) argues that because in any particular context there will always be multiple plausible conceptions of justice available, a democratic process of public reason is necessary to sort them out, such that democracy becomes a fundamental meta-capability. The work of Sen and others on the necessity for democracy to be at the heart of the concept of development can be seen in similar fashion, when democracy is treated as necessary for communities to determine what development should mean for them (Crocker 2008). The concept of sustainability receives similar treatment in Boeker (2014) and Ratner (2004). Security, while recognized as a contested concept (though Buzan 1991 is in a minority in regarding security as an *essentially* contestable concept) has yet to receive similar treatment – possibly because the people who have wrestled with it are international relations scholars unable to escape their field’s historical (and increasingly problematic) denial that democracy can be an attribute of the international system.

What this suggests, then, is that democracy is necessary in order for competent political actors to wrestle with justice, development, sustainability and security. But not just any conception of democracy will do, still less any one-size-fits-all conception of democracy. What is appropriate when it comes to democracy in an Indian village figuring out how to allocate welfare expenditures may be different to what is appropriate in a multi-national process involving the definition of climate justice. In order to negotiate this multi-level, contestatory world, people need to have their capacity to act as authors of their own democracy protected: which points directly to the need to specify the human right to democracy in terms

of the exercise of formative agency in relation to what democracy should mean and how it should be implemented in particular contexts.

This argument is not a version of the instrumental case for a human right to democracy I dismissed earlier because it does not turn on the empirical confirmation of casual relationships between democracy and other urgent values. (For a historically contingent argument along these lines that only 'under modern conditions' is a human right to democracy necessary to protect other rights, see Griffin 2008, 251-55.) Rather, democracy proves to be necessary to determine what these other values should mean in practice in particular contexts. At the same time, the form of democracy appropriate to a given context will be variable and contestable. The human right to democracy is necessary for effective formative agency in relation to this contestation.

One can imagine a world in which the right to exercise formative agency in relation to the contestation at the conceptual core of democracy is not required, but that is not the kind of world we live in. While democracy may not be an absolute and timeless human right, it is a right that will enable individuals individually and jointly to navigate a political world constituted in important measure by the contested meaning of vital concepts. And that, in the end, is why there should now be a human right to democracy.

The essentially contestable character of concept of democracy does not preclude a human right to democracy. This right can only be understood and defended as the right to exercise formative agency in the contestation at the heart of democracy, and at the democratic heart of other urgent values.

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References

- Beetham, David, ed. 1994. *Defining and Measuring Democracy*. London: Sage.
- Beitz, Charles. 2009. *The Idea of Human Rights*. Oxford: Oxford University Press.
- Benhabib, Seyla. 2011. *Dignity in Adversity: Human Rights in Troubled Times*.
Cambridge: Polity.
- Benhabib, Seyla. 2012. "Is There a Human Right to Democracy? Beyond Interventionism and Indifference." In Claudio Corradetti, ed., *Philosophical Dimensions of Human Rights: Some Contemporary Views*. New York: Springer, 191-223.
- Boeker, Marit. 2014. "Associo-Deliberative Democracy for Sustainable Societies."
PhD Thesis, University of Essex.
- Buzan, Barry. 1991. *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*. 2nd ed. Boulder, CO: Lynne Rienner.
- Charlesworth, Hilary. 2013. "Is There a Human Right to Democracy?" In Cindy Holder and David Reidy, eds., *Human Rights: The Hard Questions*. Cambridge: Cambridge University Press, 271-85.
- Christiano, Thomas. 2011. "An Instrumental Argument for a Human Right to Democracy." *Philosophy and Public Affairs* 39 (2): 142-76.
- Cohen, Joshua. 2006. "Is There a Human Right to Democracy?" In Christine Sydnovich, ed., *The Egalitarian Conscience: Essays in Honour of G.A. Cohen*. Stanford: Stanford University Press, 226-48.

- Collier, David, Fernando Daniel Hidalgo and Andra Olivia Maciuceanu. 2006. "Essentially Contested Concepts: Debates and Applications." *Journal of Political Ideologies* 11(3): 211-46.
- Collier, David, and Steven Levitsky. 1997. "Democracy with Adjectives: Conceptual Innovation in Comparative Research." *World Politics* 49 (3): 430-51.
- Connolly, William E. 1991. "Democracy and Territoriality." *Millennium* 20 (3): 463-84.
- Coppedge, Michael and John Gerring. 2011. "Conceptualizing and Measuring Democracy: A New Approach." *Perspectives on Politics* 9 (2): 247-67.
- Crocker, David A. 2008. *Ethics of Global Development: Agency, Capability, and Deliberative Democracy*. Cambridge: Cambridge University Press.
- Dahl, Robert A. 1989. *Democracy and its Critics*. New Haven: Yale University Press.
- Deudney, Daniel and John G. Ikenberry. 2009. "The Myth of the Autocratic Revival: Why Liberal Democracy will Prevail." *Foreign Affairs* 88 (1): 77-93.
- Downs, Anthony. 1987. "The Evolution of Democracy." *Daedalus* 116 (3): 119-48.
- Forst, Rainer. 2010. "The Justification of Human Rights and the Basic Right to Justification: A Reflexive Approach." *Ethics* 120 (4): 711-40.
- Franck, Thomas M. 1992. "The Emerging Right to Democratic Governance." *American Journal of International Law* 86 (1): 46-91.
- Freeman, John R. 1989. *Democracy and Markets: The Politics of Mixed Economies*. Ithaca, NY: Cornell University Press.
- Fukuyama, Francis. 1989. "The End of History?" *National Interest*, Summer: 3-18.

- Gagnon, Jean-Paul. 2013. *Evolutionary Basic Democracy: A Critical Overture*.
Basingstoke: Palgrave Macmillan.
- Gallie, W.B. 1956. "Essentially Contested Concepts." *Proceedings of the Aristotelian Society* 56: 167-98.
- Gilbert, Pablo. 2011. "Humanist and Political Perspectives on Human Rights."
Political Theory 39 (4): 439-67.
- Gilbert, Pablo. 2012. "Is There a Human Right to Democracy? A Response to Joshua Cohen." *Revista Latinoamericana de Filosofía Política* 1 (2): 1-37.
- Gilbert, Pablo. Forthcoming. "The Human Right to Democracy and the Pursuit of Global Justice." In Thomas Pogge and Thom Brooks, eds., *The Oxford Handbook of Global Justice*. Oxford: Oxford University Press.
- Gould, Carol C. 2004. *Globalizing Democracy and Human Rights*. Cambridge: Cambridge University Press.
- Gould, Carol C. 2014. *Interactive Democracy: On the Social Roots of Global Justice*. Cambridge: Cambridge University Press.
- Griffin, James. 2008. *On Human Rights*. Oxford: Oxford University Press.
- Hanson, Russell L. 1989. "Democracy." In Terence Ball, James Farr, and Russell L. Hanson, eds., *Political Innovation and Conceptual Change*. Cambridge: Cambridge University Press, 68-89.
- Keane, John. 2009. *The Life and Death of Democracy*. London: Simon and Schuster.
- Lister, Matthew. 2012. "There is No Human Right to Democracy, But May We Promote It Anyway?" *Stanford Journal of International Law* 48 (2): 257-76.

- Maundeni, Zibani. 1997. "Mutual Criticism and State/Society Interactions in Botswana." *Journal of Modern African Studies* 42 (4): 619-36.
- Nagel, Thomas. 2005. "The Problem of Global Justice." *Philosophy and Public Affairs* 33 (2): 113-47.
- Oren, Ido. 1995. "The Subjectivity of the Democratic Peace: Changing U.S. Perceptions of Imperial Germany." *International Security* 20 (2): 147-84.
- Przeworski, Adam. 1999. "Minimalist Model of Democracy: A Defense." In Ian Shapiro and Casiano Hacker-Cordón, eds., *Democracy's Value*. Cambridge: Cambridge University Press, 23-55,
- Råby, Nils and Jan Teorell. 2010. "A Quality of Government Peace? Bringing the State Back Into the Study of Inter-State Armed Conflict." Paper presented at the Annual Meeting of the American Political Science Association.
- Ratner, Blake D. 2004. "'Sustainability' as a Dialogue of Values: Challenges to the Sociology of Development." *Sociological Inquiry* 74 (1): 50-69.
- Rawls, John. 1999. *The Law of Peoples*. Cambridge, MA: Harvard University Press.
- Reidy, David A. 2012. "On the Human Right to Democracy: Searching for Sense without Stilts." *Journal of Social Philosophy* 43 (2): 177-203.
- Sartori, Giovanni. 1991. "Rethinking Democracy: Bad Polity and Bad Politics." *International Social Science Journal* 43 (2): 437-50.
- Schaffer, Johan Karlsson. 2012. "The Boundaries of Transnational Democracy: Alternatives to the All-Affected Principle." *Review of International Studies* 38 (2): 321-42.

- Schlosberg, David. 2006. "The Pluralist Imagination." In John S. Dryzek, Bonnie Honig, and Anne Phillips, eds., *The Oxford Handbook of Political Theory*. Oxford: Oxford University Press, 142-60
- Sen, Amartya. 2003. "Democracy and its Global Roots." *New Republic* 229 (14): 28-35.
- Sen, Amartya. 2009. *The Idea of Justice*. London: Allen Lane.
- Tan, Sor-Hoon. 2014. "Early Confucian Concept of Yi and Deliberative Democracy." *Political Theory* 42 (1): 82-105.
- Waldron, Jeremy. 2002. "Is the Rule of Law an Essentially Contested Concept (in Florida)?" *Law and Philosophy* 21 (2): 137-64.

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