

Definition and development of human rights and popular sovereignty in Europe

Science and technique of democracy, No. 49



Venice Commission

Council of Europe Publishing

The human right to democracy – a moral defence with a legal nuance

by Samantha Besson⁶²

The principle of all sovereignty resides essentially in the nation. No body or individual may exercise any authority which does not proceed directly from the nation.
(Article 3, *Declaration of the Rights of Man and of the Citizen*)

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

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

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

(Article 21, *Universal Declaration of Human Rights*)

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 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.

(Article 25, *International Covenant on Civil and Political Rights*)

47

Introduction

Needless to say, the relationship between human rights and democratic sovereignty⁶³ – or democracy, as I will refer to it in this paper – is among the most

62. Professor of Public International Law and European Law, University of Fribourg, Switzerland. This is a revised version of the paper I gave at the UniDem seminar on the relationship between popular sovereignty and human rights, organised by the Venice Commission at the University of Frankfurt-am-Main on 15 and 16 May 2009. Many thanks to all participants for their helpful criticism and suggestions, and in particular to Armin von Bogdandy, Hauke Brunkhorst and Günter Frankenberg. I would also like to thank Allen Buchanan and George Letsas for useful discussions about the legitimacy of international human rights in the course of the spring and summer of 2009. A German translation of this chapter was published in a collection of essays edited by Gret Haller and Klaus Günther at Campus Verlag.

63. On the relationship between democratic sovereignty and democracy, see Cohen J. L. (2008), "Rethinking human rights, democracy and sovereignty in the age of globalization", *Political Theory* 36:4, pp. 578-606; Forst R. (2010), "The justification of human rights and the basic right to justification. A reflexive approach", *Ethics* 120:4, pp. 711-740.

classical questions of political and legal theory. Who has not thought at least once about the priority of human rights over democracy or vice versa,⁶⁴ about the democratic legitimacy of the constitutional entrenchment of human rights, or about the human rights-based judicial review of democratic legislation?⁶⁵ The prima facie paradoxical and circular idea of a human right to democracy is just as sadly (in)famous. Should and could democracy be protected *qua* human rights, and if so, would not it be paradoxical to do so without or against the will of the people themselves? Besides that paradox, would not such a human right risk being circular as a right depending on the realisation of the very interests it aims at protecting: how could one benefit from a right to democracy other than through democratic channels?

Among the various reasons one may have to debate this question again, besides the pleasure of engaging with others who have considered it,⁶⁶ one should mention its versatility, depending on how its two constitutive elements, democracy and human rights, are defined. This is particularly striking when the question is understood to refer to an international or universal human right to democratic participation, as it will be in this paper,⁶⁷ and not, as has traditionally been the

64. This is often exemplified by reference to Article 3 of the Declaration of the Rights of Man and of the Citizen, according to which human rights stem from political sovereignty. See also Forst R. (2010), footnote 63.

65. See, e.g. Waldron J. (1999), *Law and disagreement*, Oxford University Press, Oxford; Habermas J. (1998), *Between facts and norms*, MIT, Cambridge, Mass.; Habermas J. (1996), "Ueber den internen Zusammenhang von Rechtsstaat und Demokratie", *Die Einbeziehung des Anderen*, Suhrkamp, Frankfurt-am-Main, p. 301.

66. See, e.g. Menke C. and Pollmann A. (2007), *Philosophie der Menschenrechte*, Junius, Hamburg, Ch. 4; Dworkin R. (2006), *Freedom's law*, Harvard, Cambridge, Mass.; Dworkin R. (2000), *Sovereign virtue, The theory and practice of equality*, Harvard, Cambridge, Mass.; Habermas J. (1996), see footnote 65; Habermas J. (1998), see footnote 65; Alexy R. (1998), "Die Institutionalisierung der Menschenrechte im demokratischen Verfassungsstaat", Gosepath S. and Lohmann G. (eds), *Philosophie der Menschenrechte*, Hartkamp, Frankfurt-am-Main, pp. 244-64; Böckenförde E.-W. (1998), "Ist Demokratie eine notwendige Forderung der Menschenrechte", Gosepath S. and Lohmann G. (eds), *Philosophie der Menschenrechte*, Hartkamp, Frankfurt-am-Main, pp. 222-43; Michelman F. I. (1996), "Parsing a 'right to have rights'", *Constellations* 3:2, pp. 200-8; Brunkhorst H. (1996), "Are human rights self-contradictory? Critical remarks on a hypothesis by Hannah Arendt", *Constellations* 3:2, pp. 190-9; Cohen J. L. (1996), "Rights, citizenship, and the modern form of the social: Dilemmas of Arendtian republicanism", *Constellations* 3:2, pp. 164-89.

67. As a result, I am leaving aside the question of international democracy. On this issue, see e.g. Besson S. (2009a), "Institutionalizing global democracy", Meyer L. (ed.), *Justice, legitimacy and public international law*, Cambridge University Press, Cambridge, pp. 58-91; Besson S. (2009b), "Ubi Ius, Ibi Civitas. A republican account of the international community", Besson S. and Martí J. L. (eds), *Legal republicanism and republican law – national and post-national perspectives*, Oxford University Press, Oxford, pp. 204-37; Besson S. (2009c), "The authority of international law – lifting the state veil", *Sydney Law Review* 31:3, pp. 343-80; Christiano T. (2010), "Democratic legitimacy and international institutions", Besson S. and Tasioulas, J. (eds), *The philosophy of international law*, Oxford University Press, Oxford, pp. 119-37; Pettit P. (2010), "Legitimate international institutions: a neo-republican perspective", Besson S. and Tasioulas J. (eds), *The philosophy of international law*, Oxford University Press, Oxford, pp. 139-60; Buchanan A. and Keohane R. (2006), "The legitimacy of global governance institutions", *Ethics and International Affairs* 20(4), p. 405-37; Gould C. (2004), *Globalizing democracy and human rights*, Cambridge University Press, Cambridge.

case, to a national or local right to democratic participation.⁶⁸ Indeed, when such a right is guaranteed from outside a given political community and is as a result decoupled from that community, it seems both more plausible and more controversial; it is more plausible because the guarantee of a human right takes place from outside the citizenry and is hence less circular, but more controversial because the paradox of protecting democracy through non-democratic means seems even more intractable.

The recent boom in international law theory in general, and in human rights theory in particular, makes it particularly pressing to redefine both concepts in their relationship to one another,⁶⁹ but also in relationship to broader concepts such as global justice and legitimacy. If human rights and/or democracy are commonly advanced criteria for the legitimacy of international law,⁷⁰ their relationship to one another needs to be assessed anew in the international context. Questions such as the democratic legitimacy of international human rights law or of international judicial review have been raised more distinctly in the wake of discussions on the legitimacy of international law in general. Furthermore, recent developments in human rights theory, and especially current discussions pertaining to the so-called political conception (of the function or of the justification) of human rights that explain human rights *qua* external limitations on state sovereignty⁷¹ make the idea of a human right to democracy more controversial

68. It is not decisive for the argument, however, to regard that right as a right to national or international democracy, as the interest protected is largely the same and democracy can no longer be uniquely national, regional or international, but has to include all levels of decision-making that can affect people's fundamental interests whether national or international and at the same time (see Besson (2009a), footnote 67 on "*demosi-cracy*"). For a joint treatment of both issues, see Forst R. (2010), footnote 63; Cohen J. L. (2008), footnote 63; Crawford J. (2000), "Democracy and the body of international law", Fox G. and Roth B. (eds), *Democratic governance and international law*, Cambridge University Press, Cambridge, pp. 91-122.

69. See, e.g. Forst R. (2010), footnote 63; Cohen J. L. (2008), footnote 63; Griffin J. (2008), *On human rights*, Oxford University Press, Oxford, Ch. 14; Beitz C. R. (2007), "Democracy and human rights", *Human Rights and Human Welfare* 7, pp. 100-4; Menke C. (2005), "The 'Aporias of human rights' and the 'one human right': regarding the coherence of Hannah Arendt's argument", New School Research Paper; Cohen J. (2006), "Is there a human right to democracy?", Sypnowich D. (ed.), *The egalitarian conscience*, Oxford University Press, Oxford, pp. 226-48; Talbot W. J. (2005), *Which rights should be universal?*, Oxford University Press, Oxford; Buchanan A. (2004), *Justice, legitimacy, and self-determination: moral foundations for international law*, Oxford University Press, Oxford, pp. 142-7; Gould C. (2004), footnote 67; Beitz C. R. (2001), "Human rights as a common concern", *American Political Science Review* 95:2, pp. 269-82; Sen A. (1999), *Development as freedom*, Anchor Books, New York; Beetham D. (1999), *Democracy and human rights*, Polity Press, Cambridge; Rawls J. (1999), *The law of peoples*, Harvard University Press, Cambridge, Mass.; Shue H. (1996), *Basic rights: subsistence, affluence and US foreign policy* (2nd edn), Princeton University Press, Princeton, pp. 67-78.

70. See, e.g. Buchanan A. (2008), "Human rights and the legitimacy of the international order", *Legal Theory* 14, pp. 39-70; Buchanan A. (2010a) "The legitimacy of international law", Besson S. and Tasioulas J. (eds), *The philosophy of international law*, Oxford University Press, Oxford, pp. 79-96; Tasioulas J. (2010a) "The legitimacy of international law", Besson S. and Tasioulas J. (eds), *The philosophy of international law*, Oxford University Press, Oxford, pp. 97-116; Besson S. (2009c), footnote 67.

71. See, e.g. Rawls J. (1999), footnote 69; Raz J. (2010), "Human rights without foundations", Besson S. and Tasioulas J. (eds), *The philosophy of international law*, Oxford University Press, Oxford,

and the relationship between human rights and democracy a central feature of future human rights theories. Finally, and more practically, the coming of age of international human rights law, and the consolidation of national democracies thanks to those rights in Europe and other regions of the world, justify stepping back to reflect on their impact on the circumstances of national constitutional democracy. This implies in particular developing a constructive critique of the democratic legitimacy of the legal *acquis* in the human rights context.

The question has become even more interesting now that the human right to democracy has become an integral part of positive international law. Since the 1990s and the end of the Cold War, the human right to democratic participation and its various derivative or associated rights such as the right to free elections, freedom of speech, or freedom of association, have clearly been identified among the rights protected by international human rights law.⁷² True, human rights in general were guaranteed and promoted in the post-1945 era also with the indirect aim to enhance national democracies, at a time when international standards for national democracy could not be developed due to fierce sovereignty-based resistance and human rights standards seemed much less intrusive.⁷³ Through the gradual development and enforcement of mainstream human rights guarantees, bits and pieces of a democratic regime started consolidating and confirming the growing interdependence in practice of international human rights protection and democratisation.⁷⁴ But it is only post-1990 that international law and international human rights law in particular have started openly setting and enforcing democratic standards to be respected in national polities. This has been as true in Europe as beyond it. Earlier guarantees such as Article 25 of the International Covenant on Civil and Political Rights (ICCPR) or Article 3 of the first Protocol to the European Convention on Human Rights (ECHR), which had remained dead letter for years, have finally come to be invoked, applied, and interpreted further in practice.⁷⁵ New guarantees have

pp. 321-37. With a slight difference, see also Beitz C. R. (2001), footnote 69, and Beitz C. R. (2007), footnote 69; Cohen J. L. (2008), footnote 63. For a critique, see Tasioulas J. (2009), "Are human rights essentially triggers for intervention?", *Philosophical Compass* 4:6, pp. 938-50; Forst R. (2010), footnote 63; and Cohen J. L. (2008), footnote 63.

72. Steiner H. J. (2008), "Two sides of the same coin? Democracy and international human rights", *Israel Law Review* 41, pp. 445-76; and the essays in Fox G. and Roth B. (eds) (2000), *Democratic governance and international law*, Cambridge University Press, Cambridge; and in particular Fox G. (2000), "The right to political participation in international law", Fox G. and Roth B., op. cit., pp. 48-90; Franck T. (2000), "Legitimacy and the democratic entitlement", Fox G. and Roth B., op. cit., pp. 25-47 and Crawford J. (2000), footnote 68. Compare with early discussions in Steiner H. J. (1988), "Political participation as a human right", *Harvard Human Rights Yearbook* 1, p. 77; or Franck T. (1992), "The emerging right to democratic governance", *American Journal of International Law* 86, pp. 46-91.

73. Steiner H. J. (2008), footnote 72, pp. 447-9; Letsas G. (2007), *A theory of interpretation of the European Convention on Human Rights*, Oxford University Press, Oxford, pp. 18-21; Moravcsik A. (2000), "The origins of human rights regimes: Democratic delegation in postwar Europe", *International Organization* 54:2, pp. 217-52.

74. Steiner H. J. (2008), see footnote 72, p. 460 ff.

75. Fox G. (2000), footnote 72; Steiner H. J. (2008), footnote 72.

been adopted since, in particular, Article 23 of the American Convention on Human Rights (ACHR) and Article 1 of the Inter-American Democratic Charter (IADC).⁷⁶ Nowadays, both kinds of international legal requirements have tended to reinforce each other to an extent that makes them largely indissociable from an international legal perspective.⁷⁷

Faced with these developments in the positive law guarantees of the human right to democracy, some have deplored a conceptual mistake, claiming that human rights are used in this context as a proxy for legitimacy or worse, as a justification for international intervention and not as moral propositions and hence as bases for correlative moral duties.⁷⁸ Others argue that international guarantees of the human right to democratic participation are still too weak or insufficiently explicit.⁷⁹ After all, the term “democracy” is not expressly used in any of the main international law guarantees of the right to democratic participation (Article 21 of the Universal Declaration of Human Rights or UDHR, Article 25 of the ICCPR and Article 3 of the first Protocol to the ECHR), although it is mentioned elsewhere in those instruments (for instance in Article 29 of the UDHR, and Articles 14, 21, and 22 of the ICCPR). Even the Human Rights Committee’s General Comment No. 25 of 1996 does not provide much detailed information as to what a democratic government ought to look like.⁸⁰ However we answer such critiques, it has become clear to most authors that the question is no longer 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.

51

There are two ways of understanding that normative question, however: a legal and a moral one. The question of whether there should be a legal right to democracy is not the same as the question of whether there is a moral right to democracy. Clearly, both questions are related; the existence of a moral right to X can be a reason to recognise a legal right to X. However, they are not identical, and it is important to focus on the existence of a moral right to democracy, as I will in this paper.

Two explanations are in order in this respect. First of all, there could be other reasons to recognise a legal right to X than the existence of a moral right to

76. Article 1 of the Inter-American Democratic Charter actually declares that “peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it.”

77. Steiner H. J. (2008), footnote 72, p. 450 and p. 476.

78. For this distinction, see Letsas G. (2007), footnote 73, pp. 21-9; and Cohen J. L. (2008), footnote 63. See also Marks S. (2000), *The riddle of all constitutions – international law, democracy, and the critique of ideology*, Oxford University Press, Oxford, p. 40.

79. See the debates in Fox G. and Roth B. (eds) (2000), footnote 72; Steiner H. J. (2008), footnote 72, pp. 455-60.

80. 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).

X.⁸¹ This is less likely to be true of human rights, but the possibility cannot be excluded. Allen Buchanan mentions at least two reasons to recognise an international legal right to democracy that do not depend on the existence of a moral right to democracy: the instrumental value of democracy for the realisation of other human rights, and the legitimisation of the role of state consent in international law as democratic state consent.⁸² In this paper, I will not be considering those reasons except as contributing to an argument for the existence of a moral right to democracy, and for the legalisation of such a right independently from a moral right to democracy. Secondly, not all moral rights to X provide a reason to recognise legal rights to X. This is also true of human rights; it is enough to consider the moral human right to health or the right to not be poor and the lack of legal correspondents (at least for a very long time). Various reasons are often put forward for the legalisation of moral rights, such as clarity, security, or effectiveness.⁸³ Importantly, those reasons may differ depending on whether one is thinking of the national or international legalisation of human rights.⁸⁴ I will come back to this point later with respect to the passage from the moral human right to democracy to the international legal right to democracy.

The vast majority of authors who discuss the existence of a human right to democracy provide a positive answer to the question of whether there is a moral right to democracy, or at least to democratic participation.⁸⁵ Most, however, associate human rights and democracy with each other and move very quickly (sometimes too quickly) to a stronger claim: that of the existence of a human right to democracy. That move needs to be carefully scrutinised, however. To assess the existence of a moral human right to democracy, my argument will be four-pronged. First, I will define the two notions in the equation: human rights

81. See, e.g. Raz J. (1984a), "Legal rights", *Oxford Journal of Legal Studies* 4, p. 1; Raz J. (1984b), "On the nature of rights", *Mind* 93, pp. 194-214; Besson S. (2005), *The morality of conflict – reasonable disagreement and the law*, Hart Publishing, Oxford, pp. 421-4. Of course, most legal rights are also moral rights, but the latter need not exist prior to the former and can be created through legal means.

82. Buchanan A. (2004), footnote 69, p. 142 ff.

83. See, e.g. Alexy R. (1998), footnote 66, pp. 244-64; Besson S. (2005), footnote 81; Besson S. (2006), "The European Union and human rights: towards a new kind of post-national human rights institution", *Human Rights Law Review* 6(2), pp. 323-60; Tasioulas J. (2007), "The reality of human rights", Pogge T. (ed.), *The right not to be poor*, UNESCO, Paris, pp. 75-101; and the essays in Meckled-Garcia S. and Cali B. (eds) (2006), *The legalisation of human rights*, Routledge, London.

84. Gardbaum S. (2008), "Human rights as international constitutional rights", *European Journal of International Law* 19:4, pp. 749-68; Buchanan A. and Russell R. (2008), "Constitutional democracy and the rule of international law: are they compatible?", *The Journal of Political Philosophy* 16:3, pp. 326-49.

85. See, e.g. Forst R. (2010), footnote 63; Griffin J. (2008), footnote 69, Ch. 14 (albeit in modern conditions only); Menke C. (2005), footnote 69; Talbot W. J. (2005), footnote 69; Nickel J. (2005), "Gould on democracy and human rights", *Journal of Global Ethics* 1, p. 207 (albeit at the national level only); Buchanan A. (2004), footnote 69; Gould C. (2004), footnote 67, p. 183; Beitz C. R. (2001), footnote 69; Sen A. (1999), footnote 69; Beetham D. (1999), footnote 69; Rawls J. (1999), footnote 69; Shue H. (1996), footnote 69. The exceptions are Cohen J. L. (2008), footnote 63, p. 579; and Cohen J. (2006), footnote 69, although they both seem to argue for a minimal right to political membership. The same applies to Beitz C. R. (2007), footnote 69.

and democracy. I will then turn to the various connections which can be identified between human rights and democracy. Then I will discuss the validity of different arguments for the existence of a moral right to democratic participation, distinguish that right from other connected albeit distinct rights, and respond to three main critiques. Finally, I will assess whether there should be a legal right to democratic participation, at the national or at the international level.

1. The notions of human rights and democracy

1.1. Morality, human rights, and democracy

As noted, the answer to the question raised in this paper will vary greatly depending on how human rights and democracy are defined.⁸⁶ It is essential therefore to start by defining what those terms will be held to mean in the context of the idea of a human right to democracy. The point is not to present an exhaustive account of those two eminently normative and hence essentially contestable concepts, but to provide sufficient elements to be able to turn to their relationship hereafter.

It is important to first distinguish both concepts from two connected albeit broader concepts in morality: justice and legitimacy. While both democracy and human rights are part of what constitutes the value of justice, they should not be identified with it. Thus, it is not because justice requires democracy or because human rights are a requirement of justice, that there is a human right to democracy.⁸⁷ Nor, on the other hand, should the fact that both democracy and human rights may be regarded (together or alternatively) as important elements of the legitimacy of an institutional framework or of the international legal order imply that there is a human right to democracy. This is so even though the recognition of an international legal right to democracy may contribute to enhancing the legitimacy of international law.⁸⁸ In what follows, the two concepts will therefore be isolated and defined separately from each other and from other concepts in morality.

53

1.2. Human rights

Human rights can be understood as moral propositions, and more specifically as moral propositions that ground moral duties. They are part of morality, just as reasons, values, duties, principles, or interests are. They should not, however, be identified with all of the latter, nor should human rights be taken to comprise the totality of morality. In particular, human rights are of value and can be justified on the basis of values, but are not themselves values.

86. This can also be true for the same author (compare Cohen J. L. (2008), footnote 63, who opts for a political conception of human rights with Cohen J. L. (1996), footnote 66, who is ready to defend a universal moral right to political membership).

87. Cohen J. (2006), footnote 69.

88. Buchanan A. (2004), footnote 69, p. 142.

More specifically, human rights are moral rights of a special kind, as they protect fundamental and universal interests.⁸⁹ This definition will now be examined.

A moral right exists when an interest is regarded as a sufficient reason to hold someone else (the duty bearer) under a duty to respect that interest vis-à-vis the rights holder.⁹⁰ For a right to be recognised, a sufficient interest must be established and weighed against other interests and other considerations with which it might conflict in a particular social context.⁹¹ Rights are, in this conception, intermediaries between interests and duties.⁹² It follows, first of all, that a right may be recognised and protected before specifying which duties correspond to it.⁹³ Once a duty is specified, it is correlative to the right, but the right may pre-exist without all its specific duties being identified. The relationship between rights and duties is therefore justificatory and not logical.⁹⁴ A right is, secondly, a sufficient reason for holding other individuals to all the duties necessary to protect the interest rather than in terms of the details of these duties.⁹⁵ It follows that a right might provide for the imposition of many duties and not only one. Besides, rights have a dynamic nature and, as such, successive specific duties can be grounded in a right depending on the circumstances.⁹⁶ As a result, the determination of the duty bearer of a right and its claimability are not conditions of the existence of moral right.⁹⁷

Human rights are also moral rights of a special intensity, in that the interests protected are regarded as fundamental and universal interests. They include individual interests when these constitute part of a person's well-being in an objective sense. That person need not believe that it is the case for his or her interest to require protection as a human right. These interests also extend to others' interests in the community and even to common goods in some cases.⁹⁸ Such external interests can boost the importance of an individual interest and justify the recognition of that interest as a human right.⁹⁹ The fundamental nature of the protected interests will have to be determined by reference to the context and time rather than established once and for all.¹⁰⁰ This is particularly important not only

89. For a detailed presentation of the modified interest-based theory of human rights, see Besson S. (2005), footnote 81, and Besson S. (2006), footnote 83.

90. Raz J. (1984b), footnote 81, p. 195.

91. Raz J. (1984b), footnote 81, p. 200, p. 209.

92. Raz J. (1984b), footnote 81, p. 208.

93. McCormick N. (1977), "Rights in legislation", Hacker P. and Raz J. (eds), *Law, morality and society*, Clarendon, Oxford, p. 201.

94. McCormick N. (1977), footnote 93, p. 199-202; Raz J. (1984b), footnote 81, p. 196, p. 200.

95. Waldron J. (1984), "Introduction", *Theories of rights*, Clarendon, Oxford, pp. 10-11.

96. Raz J. (1984b), footnote 81, pp. 197-9.

97. Tasioulas J. (2007), footnote 83.

98. Raz J. (1992), "Rights and Individual Well-being", *Ratio Juris*, 5:2, pp. 127-42, p. 135.

99. Nickel J. (2005), footnote 85.

100. Tasioulas J. (2002), "Human rights, universality and the values of personhood: retracing Griffin's Steps", *European Journal of Philosophy*, (2002) 10, pp. 79-100; Tasioulas J. (2010a), footnote 70; Contra: Griffin J. (2001), "First steps in an account of human rights", *European Journal of Philosophy* 9, p. 306-27.

from the perspective of value pluralism but also of social pluralism, as human rights may protect a variety of different interests whose specific order may vary depending on the context.¹⁰¹

What makes it the case that a given individual interest is regarded as sufficient to generate a universal duty and that, in other words, the threshold between a mere interest and a human right is reached, may be found, arguably, in the normative status of that individual *qua* equal member of the moral-political community. Those persons' interests merit equal respect in virtue of their status. However, human rights are not merely a consequence of individuals' 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:¹⁰² they both enable political equality and maintain it.

In short, the proposed account and justification of human rights follows a modified interest-based theory, modified by reference to considerations of moral-political status in a given community.¹⁰³ Under a purely status-based or interest-based model, the Manichean opposition between the individual and the group, and between his private and public autonomy, would lead to unjustifiable conclusions.¹⁰⁴ More specifically, the proposed account is moral in the independent justification it provides for human rights, and political in the function it sees them vested with as both shields against the state and guarantees of political inclusion. In terms of justification, its moral-political dimension differs both from accounts based on a purely ethical justification of human rights,¹⁰⁵ and from accounts that seek a political form of minimalist justification of human rights.¹⁰⁶ With respect to the function of human rights, it can salvage their political role without diluting their moral justification.¹⁰⁷

Based on this account of moral human rights, one may gain useful insights into legal human rights. Legal (human) rights are legal propositions and sources of legal duties. More specifically, legal rights are legally protected moral interests.¹⁰⁸

101. Tasioulas J. (2010), footnote 70.

102. For the original idea of mediating duties, see Shue H. (1988), "Mediating duties", *Ethics* 98, pp. 687-704, p. 703.

103. See Besson S. (2005), footnote 81, and Besson S. (2006), footnote 83. See for similar attempts, Buchanan A. (2010b), "The egalitarianism of human rights", *Ethics* 120:4, pp. 679-710, for an egalitarian account of human rights; and possibly Tasioulas J. (2009), footnote 71; Tasioulas J. (2010b), "Taking rights out of human rights", *Ethics*, 120:4, pp. 647-78.

104. See Tasioulas J. (2010b), footnote 103, for a critique of Griffin J. (2008), footnote 69.

105. See Tasioulas J. (2010b), footnote 103, Griffin J. (2008) footnote 69.

106. See Raz J. (2010), footnote 71; Rawls J. (1999), footnote 69; Beitz C. R. (2007), footnote 69; Cohen J. (2006), footnote 69; Cohen J. L. (2008), footnote 63.

107. It comes very close to Forst R. (2010), footnote 63, and Forst R. (2007), *Das Recht auf Rechtfertigung. Elemente einer konstruktivistischen Theorie der Gerechtigkeit*, Suhrkamp, Frankfurt-am-Main, in this respect, but differs ultimately as Forst's account is based on a reflexive right to political justification and hence to political equality, whereas the present account is based on political equality and its mediation through human rights.

108. Raz J. (1984a), footnote 81, p. 12.

It follows that legal rights may also be regarded as moral rights. Of course, not all moral rights are or should be legally recognised. Rights should not therefore necessarily be understood as “moral rights to have legal rights”, after Joel Feinberg.¹⁰⁹ Law does not always ensure better protection of rights-protected interests than other means.¹¹⁰ Nor does this mean that legal rights necessarily pre-exist as independent moral rights. Some do and are legally recognised moral rights, but others are legally created moral rights.¹¹¹ In some cases, law and politics may change a person’s interests, thus in a sense creating the moral interest and its moral-political significance, which are the foundations of the right.

1.3. Democracy

Democracy can be understood as an abstract value of political morality. It relies on the principle of basic moral equality and equal moral consideration or respect. According to the corresponding principle of political equality, all persons have by reasons of their equal status a claim to equal participation in the most important political decisions that concern them.¹¹² By reference to political equality, democracy is the political regime, governance, or scheme of collective decision-making in which all those whose fundamental interests are affected are included in the decision-making process and have an equal claim to participate (directly or indirectly) in making the decisions that affect them.¹¹³

56

Following Buchanan, there are three constitutive elements of democratic governance, namely:

- (i) there are representative majoritarian institutions for making the most general and important laws, such that no competent individual is excluded from participation;
- (ii) the highest government officials are accountable to the people by being subject to removal from office through the workings of these representatives;
- (iii) there is a modicum of institutionally secured freedom of speech, association, and assembly, required for reasonably free deliberation about political decisions and for the formation and functioning of political parties.¹¹⁴

The latter are usually protected through human rights that constitute internal limits to democratic authority, but also its internal pull. Those limits and pulls are grounded in the very same principle as democracy: basic political equality.¹¹⁵

109. See, e.g. Feinberg J. (2003), “In defense of moral rights”, *Problems at the roots of law: Essays in legal and political theory*, Oxford University Press, Oxford. See in the case of human rights, Alexy R. (1998), footnote 66; Habermas J. (1998), footnote 65.

110. See, e.g. Tasioulas J. (2007), footnote 83; Waldron J. (1999), footnote 65.

111. Raz J. (1984a), footnote 81, pp. 16-17.

112. Buchanan A. (2004), footnote 69; Christiano T. (2006), “A democratic theory of territory and some puzzles about global democracy”, *Journal of Social Philosophy* 37:1, pp. 81-107.

113. Besson S. (2005), footnote 81.

114. Buchanan A. (2004), footnote 69, p. 146.

115. Christiano T. (2006), footnote 112, p. 90.

2. The relationship(s) between human rights and democracy

2.1. Moral interdependencies

As moral entities of different kinds, human rights and democracy can enter into various relationships with each other. This can be true independently of the existence of a human right to democracy.

Many authors derive the existence of a human right to democracy from one of those relationships.¹¹⁶ Most of the time, however, they do so without clearly distinguishing having a human right to democracy from democracy being intrinsically or instrumentally valuable to the realisation of human rights.¹¹⁷ It is important therefore to clarify what those relationships can be before assessing in a third section whether those relationships can ground a human right to democracy or whether, independently of one of those relationships, such a right may be recognised.

Relationships between human rights and democracy can be described as being either instrumental or intrinsic, depending on whether democracy is instrumentally related to the protection of human rights or whether they are more closely dependent. Both relationships are compatible and democracy may be both instrumentally and intrinsically connected to human rights. Of course, once the existence of a moral human right to democracy is recognised, another question would be whether that right is itself instrumentally or intrinsically related to other human rights, and in particular whether it is a more basic right in that respect.¹¹⁸ However, as we will see, its connection to other rights cannot provide justification for the right in the first place; it may reinforce its justification by providing further reasons for the right or its implementation, but may not ground the right itself.¹¹⁹

Most of the time, the relationship, whether intrinsic or instrumental, between human rights and democracy reveals the primacy of one over the other. It is important to emphasise moreover that the instrumental or intrinsic relationship

116. See, e.g. Griffin J. (2008), footnote 69; Talbott W. J. (2005), footnote 69; Beitz C. R. (2001), footnote 69; Beitz C. R. (2007), footnote 69; Sen A. (1999), footnote 69.

117. Shue H. (1996), footnote 69, is an exception, as in his account of the human right to democracy, basic rights are defined as rights the recognition of which is necessary (albeit not necessarily sufficient) to respect other human rights. Of course, his argument is about the basic nature of the human right to democracy rather than one about its right's nature in the first place. On Shue's "basic rights", see the recent essays in Beitz C. R. and Goodin R. (eds) (2009), *Global basic rights*, Oxford University Press, Oxford.

118. This question is beyond the scope of this paper, in particular whether the human right to democracy ought to be ranked higher than other human rights in case of conflict. On the various relationships of interdependence and indivisibility among human rights themselves, see Nickel J. (2008), "Rethinking indivisibility: Towards a theory of supporting relations between human rights", *Human Rights Quarterly* 30, pp. 984-1001: my inclination is to agree with the correlation Nickel makes between the greater implementation of human rights and their indivisibility. This means that burdening a developing country with indivisibility and the full implementation of the human right to democracy before the human right to subsistence is realised would not seem correct.

119. See also Nickel J. (2008), footnote 118, p. 999.

between human rights and democracy does not prevent them from entering into conflict in certain cases, and hence one from having to set *ex ante* priorities or from weighing and balancing *ex post*. Even in the absence of any instrumental or intrinsic relationship between human rights and democracy, those two kinds of moral considerations may enter into conflict, requiring a prioritisation.¹²⁰ Unlike the conflict between two values or the conflict between two rights or duties, this kind of conflict between reasons and values has to be solved by reference to other standards of commensurability, if this is at all possible. One may, of course, imagine weighing human rights and democracy by reference to the values that ground some human rights, whether they are the same as those that ground democracy, as is the case with political equality, or whether they are altogether different, as is the case most of the time.

2.2. The instrumental relationship

There are various ways of expressing the instrumental relationship between democracy and human rights. What those different approaches have in common, however, is that they view one as having instrumental value for the other.

Thus, democracy is said to have instrumental value for the protection of certain or even most human rights in that it is deemed to facilitate their realisation and enhance their effectiveness in practice.¹²¹ Evidence for this has been gathered by Amartya Sen, who shows that violations of the right to resources for subsistence, and other human rights as well, are prevented where governments are democratic.¹²² Another example that stems from political science is the “democratic peace” argument, according to which democracies tend not to go to war with each other, thus decreasing the occurrence of the human rights violations that occur during war. It is important to emphasise that democracy need not be effective and its impact on human rights verified for the instrumental value of democracy to be recognised.¹²³ The reverse argument is also made, as human rights may be said to help realise democratic conditions of governance. This is clearly the case for political rights such as freedom of speech, freedom of association, or the right to vote.¹²⁴ While both may be true, it is also possible to consider the instrumental value of democracy for human rights without endorsing

120. No need to rehearse the famous opposition between the liberal critique of democracy based on human rights and the democratic critique of human rights based on community. See on this opposition, Menke C. and Pollmann A. (2007), footnote 66.

121. See e.g. Griffin J. (2008), footnote 69; Talbott W. J. (2005), footnote 69; Buchanan A. (2004), footnote 69; Beitz C. R. (2001), footnote 69; Beitz C. R. (2007), footnote 69; Sen A. (1999), footnote 69.

122. See Sen A. (1999), footnote 69; Sen A. (2001), “Democracy as a universal value”, Diamond L. and Plattner M. (eds), *The global divergence of democracies*, The John Hopkins Press, Baltimore, p. 3. See also Talbott W. J. (2005), footnote 69; and a discussion of the evidence by Beitz C. R. (2007), footnote 69.

123. See Shue H. (1996), footnote 69, pp. 74-8. Contra: Beitz C. R. (2007), footnote 69, pp. 101-2, who argues there is lack of evidence.

124. See, e.g. Christiano T. (2006), footnote 112, p. 90.

the reverse. Most authors do, however, for the contribution of human rights to democracy is generally acknowledged.¹²⁵ When this is the case, the instrumental relationship can be regarded as reciprocal or bidirectional.

2.3. The intrinsic relationship

Alternatively or additionally, human rights and democracy may be said to stand in a relationship of conditionality, necessity, or requirement.¹²⁶

Democracy may be regarded as a requirement of human rights and hence as a condition for the latter. With this approach, being able to determine what affects us, that is, what democracy guarantees, is an essential part of what having human rights is about.¹²⁷ It is usually taken as a necessary condition, albeit not a sufficient one.¹²⁸ Indeed, other conditions are often regarded as necessary for democracy to be effective and for its impact on human rights to be fully realised. The reverse, that is, the requirement of human rights for democracy, may also be held, though not necessarily. However, it is generally regarded as less contested.¹²⁹ One could hardly imagine a functioning democracy without guarantees of free speech, freedom of association, or the right to vote.

Whereas it may be possible for human rights to be intrinsically related to democracy without the reverse being true or vice versa, when both are mutually connected in this way, they are regarded as indivisible.¹³⁰ There may, however, be cases in which the relationship between the two is bidirectional and hence mutual, but where it is not intrinsic on both sides, but intrinsic and instrumental; one may argue, for instance, that human rights are necessary for democracy, and that although the realisation of human rights is facilitated by democracy, it does not absolutely depend on it. In such a case, one may speak of a weaker form of interdependence than indivisibility.

The intrinsic relationship between human rights and democracy, when it is mutual, is also sometimes referred to as co-originality.¹³¹ Co-originality implies something stronger than indivisibility: human rights and democracy are not only mutually necessary in their respective realisation, but they are mutually founded. This can be the case per se. Most of the time, however, co-originality stems from the fact that they are founded in or justified by reference to a third value,

125. See Griffin J. (2008) footnote 69; Steiner H. J. (2008), footnote 72, pp. 460-3.

126. The terminology used varies: see Griffin J. (2008), footnote 69, ("requirement"); Gould C. (2004), footnote 67, ("linkage"); Böckenförde E.-W. (1998), footnote 66, ("Forderung"); Shue H. (1996), footnote 69, ("need"); Beetham D. (1999), footnote 69 ("intrinsic relation").

127. See Waldron J. (1999), footnote 65.

128. See, e.g. Shue H. (1996), footnote 69; Gould C. (2004), footnote 67.

129. See Griffin J. (2008), footnote 69; Crawford J. (2000), footnote 68.

130. See Nickel J. (2008), footnote 118, pp. 988-91, mutatis mutandis in the context of a "human right to human right" relationship.

131. See Habermas J. (1998), footnote 65, Ch. 3; Wellmer A. (1998) "Menschenrechte und Demokratie", Gosepath S. and Lohmann G. (eds), *Philosophie der Menschenrechte*, Suhrkamp, Frankfurt am Main, p. 265-91; Beetham D. (1999), footnote 69.

such as moral equality,¹³² autonomy, or the most fundamental of moral rights, the right to justification.¹³³ Their co-originality may even stem from their being founded in two further values that are themselves co-original, private and public autonomy.¹³⁴

3. The human right to democracy

3.1. Justifying the human right to democracy

Many authors derive the existence of a human right to democracy from the instrumental and/or the intrinsic relationship between human rights and democracy.¹³⁵ Most of the time, however, they do so without clearly distinguishing having a human right to X from X being intrinsically or instrumentally valuable to the realisation of other human rights.¹³⁶ Clearly, something more is needed for a human right to be recognised. The reverse is also true: a human right to democracy may be recognised without there being an instrumental or intrinsic relationship between human rights in general and democracy. Thus, there is a human right to privacy without privacy being in an instrumental or intrinsic relationship to human rights in general.

In what follows, I will assess three kinds of moral arguments for the human right to democracy. I want to examine how one may move, first, from considering democracy as being intrinsically valuable – whether or not it is intrinsically connected to other human rights, to having a right to democracy – and second, from considering it as instrumentally valuable for other human rights: to there being a right to democracy. A third argument I would like to consider is that the human right to democracy is the primary moral right that underlies both human rights and democracy. While assessing each of those arguments, I will also discuss the extent to which they fit the proposed revised interest-based account of human rights presented earlier and how they can as a result help justify a human right to democratic participation in that context.

3.1.1. Human rights and values: the intrinsic justification

The first question one may ask pertains to the relationship between values and human rights. How does a valuable interest or even a value itself justify creating a duty for someone and hence recognising a right? How does the fact that

132. See, e.g. Christiano T. (2006), footnote 112; Buchanan A. (2004), footnote 69; Gosepath S. (2004), *Gleiche Gerechtigkeit. Grundlagen eines liberalen Egalitarismus*, Suhrkamp, Frankfurt-am-Main.

133. See, e.g. Forst R. (2010), footnote 63.

134. See, e.g. Habermas J. (1998), footnote 65, Ch. 3.

135. See, e.g. Griffin J. (2008), footnote 69, p. 242, p. 247; Talbott W. J. (2005), footnote 69; Beitz C. R. (2001), footnote 69; Beitz C. R. (2007), footnote 69; Sen A. (1999), footnote 69.

136. Shue H. (1996), footnote 69, is an exception, as, in his account of the human right to democracy, basic rights are defined as rights whose recognition is necessary (albeit not necessarily sufficient) to respect other human rights.

democracy is a value and that democratic participation a valuable interest help justify the existence of a human right to democracy?

In view of the definition provided above of human rights, it is clear that there cannot be a human right to democracy *stricto sensu*: there cannot be a right to a value and democracy is such a value. A value can justify a right or at least explain why a right exists pertaining to certain interests deemed sufficiently important to ground a duty. However, claiming there is a right to a value would simply get the normative order wrong.

The phrase “human right to democracy” can only be used therefore as shorthand for a human right to a given democratic interest. There could, for instance, be a right to democratic institutions or to democratic participation or governance. This is also how authors writing about the human right to democracy qualify the right,¹³⁷ and where they join the vast majority of political theorists in considering democracy as potential content for human rights,¹³⁸ as opposed to an instrument or a basis for human rights.¹³⁹ This re-qualification of the human right to democracy also makes clear that democracy remains a distinct and autonomous value and principle, which can be used to criticise or provide richer normative guidance in the interpretation of the right to democratic participation.¹⁴⁰

Even when it is re-qualified as suggested, the human right to democratic participation can only exist *qua* human right if it may be said to protect a fundamental interest sufficient to justify creating a duty for someone else. Not all objective interests justify creating duties. Of course, their ability to do so need not necessarily depend on their being justified by reference to a moral value, however fundamental. However, if they are, this can provide an important justification. This is the case, some authors argue, of the justification of the interest to democratic participation grounded in political equality,¹⁴¹ or alternatively in autonomy¹⁴² or fairness.¹⁴³

Given the modified interest-based account presented earlier, and the role of political equality as a threshold criterion in that account, but also given third parties’ interest in democracy and the social benefits of democracy more generally,¹⁴⁴ it is clear that the interest to democratic participation is among the most fundamental interests one ought to recognise as a human right in a democracy. The human

137. See, e.g. Buchanan A. (2004), footnote 69; Cohen J. L. (2008), footnote 63; Griffin J. (2008), footnote 69, p. 242.

138. See, e.g. Dworkin R. (2000), footnote 66, p. 185.

139. Note that Menke C. and Pollmann A. (2007), footnote 66, identify those three approaches to the relationship between human rights and democracy and see them as competitors, whereas I see the former as a consequence of the latter two.

140. This placates the critique of the “right” to democracy as antithetical to a “principle” of democracy made by Marks S. (2000), footnote 78, p. 109.

141. See, e.g. Buchanan A. (2004), footnote 69, p. 143.

142. See, e.g. Gould C. (2004), footnote 67, (“liberty”). Contra: Griffin J. (2008), footnote 69.

143. Contra Beitz C. R. (2007), footnote 69.

144. See Nickel J. (2005), footnote 85.

right to democratic participation turns individuals into actors and protectors of their own equality, which is the ultimate value of political self-determination.

3.1.2. Human rights and basic rights: the instrumental justification

Since democratic participation can be regarded as instrumentally valuable for the enjoyment of human rights, some authors have argued this makes it a human right, albeit of a special kind: an instrumental kind. So doing, they refer to a quality thought of as constitutive of a specific kind of human right: basic rights. Henry Shue's argument about basic rights is the most well-known version of that argument. He considers basic rights, such as the freedom of political participation, as rights the enjoyment of which is essential to the enjoyment of all other human rights, irrespective of the intrinsic value of their own enjoyment.¹⁴⁵

This form of instrumental justification of human rights does not fit the account of human rights provided earlier, at least *prima facie*. The justification of the fundamental interest protected by a human right is not instrumental, but intrinsic. There is a complementary way, however, to justify the human right to democratic participation without referring directly to the fundamental interest that is protected and to its intrinsic justification by reference to political equality. The normative status of an individual in a given community, and in particular his or her basic equality, was invoked earlier as a threshold of justification in the modified interest-based account of human rights. With respect to the human right to democratic participation, basic political equality works as a threshold of justification¹⁴⁶ and builds the contribution to status into the justification of the human right to democracy. If there is a right that contributes to political equality and equal status by excellence and hence indirectly to all human rights, it is the right to democratic participation. An instrumental justification for that right may therefore be provided on top of its intrinsic justification, and one may want to argue, although this is beyond the scope of this paper, that this is what makes it a basic human right. But that instrumental or supporting relationship and the further reasons it provides for the right do not in any case suffice to justify the right to democratic participation in the first place.

3.1.3. Human rights and the right to have rights: the rights-based justification

A third approach one may identify is one that echoes Hannah Arendt's notion of the right to have rights as the only defensible human right.¹⁴⁷ Schematically, rights only make sense for Arendt inside a given polity and *qua* citizen of that polity. The only human right guaranteed outside of such a polity therefore is the right to be a citizen of a polity and hence the right to political membership.

145. Shue H. (1996), footnote 69, p. 67.

146. See also Buchanan A. (2010b), footnote 103, for a similar approach.

147. See Menke C. (2005), footnote 69; Arendt H. (1951), "The Decline of the Nation-State and the End of the Rights of Man", in *The Origins of Totalitarianism*, Penguin, London, pp. 177-8.

Authors such as Rainer Forst and Joshua Cohen have recently revived that idea of a basic right to political membership.¹⁴⁸ Forst clearly founds both democracy and all human rights on one single basic moral right: the right to justification. If the right to justification is regarded as the source of both democracy and human rights, there is no further argument needed to get from that right to the right to democracy that is one of its concretisations. Whereas Forst actually also refers expressly to that basic right to justification as a right to democracy, Cohen is more cautious about the use of the concept of moral rights in this context.¹⁴⁹

While one may share Arendt's intuition, at least from the point of view of the effective protection of human rights in the national context, that right to political membership may be justified along the lines discussed earlier as any other human right, and in particular on the grounds of political equality, without having to see that right as a basic human right anterior to other rights and as the common moral ground of both human rights and democracy. The real question is whether that right to political membership may imply as much as a right to democratic membership and participation,¹⁵⁰ and this is the question I will turn to now.

3.2. Delineating the human right to democracy

Provided a justification of the human right to democratic participation is given, whether through political equality or autonomy and whether through a justified interest or normative status, it is crucial to distinguish that right carefully from connected but distinct moral considerations and claims. As those distinct moral claims are often used to argue against the human right to democracy, keeping them distinct is essential to the clarity of the argument.

There are at least two such claims I would like to address here: first, the human right to self-determination, and second, the right to the institutionalisation of one's human rights. Both rights are connected to the human right to democracy, but should not be identified with it.

The right to collective self-determination, first of all, is the right to political autonomy. It does not in principle entail the right for a given people to become an independent state, but merely to organise oneself autonomously as a political community within a given state.¹⁵¹ It therefore differs from the right to democratic participation in two ways: it is a collective right,¹⁵² whereas the right to democratic participation may be exercised individually even if it also protects

148. See Forst R. (2010), footnote 63; Cohen J. L. (2008), footnote 63.

149. This is true of Cohen J. L. (2008), footnote 63, who explicitly adopts a political account of human rights and argues against the right to democracy.

150. Cohen J. L. (2008), footnote 63, sees that right to political membership as the most we can justify universally. As I will argue, mutual justification of the moral right to democracy ought not to be seen as a requirement of its legitimacy, and hence the lack thereof as a challenge to its justification.

151. See Christiano T. (2006), footnote 112.

152. On the existence and justification of those rights, see Buchanan A. (2004), footnote 69, pp. 408-15.

collective interests; it also does not presume the democratic nature of the political regime that is adopted once the people can organise themselves autonomously. True, the right to self-determination may be considered a part of the right to democracy; democracy implies political autonomy.¹⁵³ But the reverse does not apply, or at least not necessarily. Of course, as full political autonomy does imply political equality, inclusion, and an equal say, the existence of the right to self-determination has the potential to lead to the development of a right to democratic participation and one may even argue that it has that right as an inbuilt claim.¹⁵⁴

A second delineation needs to be made, not so much at the level of specificity of the object of the right, but at that of the duties it can trigger. It is important to distinguish the human right to democracy from the positive duties of institutionalisation and proceduralisation that are part of any human right. An actual human right to democratic institutions implies a corresponding duty to provide such institutions. Moreover, there may be positive duties of that kind stemming from the human right to democracy,¹⁵⁵ but those duties are derivative and do not correspond to interests that lie at the core of the justification of that right.¹⁵⁶ Finally, the human right to democratic institutions is a right to have access to democratic institutions and participate in them, not a right that such institutions simply exist. There can be no such human right.

3.3. Defending the human right to democracy

Three important critiques are usually put forward against the existence of a human right to democracy: first, its unjustifiable consequences in terms of enforcement; second, its incompatibility with the principle of equal sovereignty; and finally, its imperviousness to cultural diversity. All three critiques are related, but I will discuss them as putatively separate challenges to the human right to democracy.

3.3.1. Enforcement and the human right to democracy

The right to democratic participation is usually opposed on the basis that it could justify an international (coercive or not) intervention into the national sphere of sovereignty. While authors who make this critique would be ready to see such an intervention as justified in case of violation of the right to political autonomy, they regard it as illegitimate in the case of the mere absence of democracy in a given state.¹⁵⁷ Destabilising a functional albeit authoritarian regime would not only be counterproductive, it would also violate the right to political autonomy. In any case, government for and by the people should be organised by and for that people only and an international intervention in that process would not be

153. See Beitz C. R. (2007), footnote 69, p. 103.

154. See Forst R. (2010), footnote 63.

155. See Buchanan A. (2004), footnote 69, pp. 142 ff.

156. Both elements are somehow conflated in Alexy R. (1998), footnote 66.

157. See Cohen J. L. (2008), footnote 63; Beitz C. R. (2007), footnote 69, pp. 102-4.

justified. Because the human right to democracy cannot be enforced, it cannot, so the critique goes, be justified.

There are many difficulties with this position, difficulties which undermine the plausibility of its critique of the human right to democracy.

The first has to do with its conception of human rights. This conception was first put forward by John Rawls, and has since been developed by Joseph Raz as the political conception of human rights.¹⁵⁸ It defines human rights as external limits on state sovereignty and as justifications for international intervention. Not only does this approach fail to provide more than an empirical criterion for what human rights are,¹⁵⁹ it also excludes a whole range of human rights which do not justify state intervention, either because they apply only within domestic boundaries or because they have other duty bearers.¹⁶⁰ Neither does it account for the fact that the enforcement of human rights is in principle a domestic responsibility and only secondarily an international one. Even in this last instance, means of enforcement entail periodic reporting, interstate and individual complaint mechanisms, judicial review and, only extremely rarely, coercive measures. Coercive measures themselves are rarely military, ranging generally from individual and collective economic sanctions to international criminal justice.

Another difficulty with the critique is that it is based on a skewed approach of human rights enforcement and its relationship to the existence of a human right. Based on the modified interest-based approach presented earlier, the relationship between human rights and corresponding duties is justificatory and dynamic. Specific duties will be generated according to the circumstances and there is nothing one can deduce from the indeterminacy of the duty bearer or the impracticability of certain duties for the existence or non-existence of the right itself.¹⁶¹ As a result, the lack or difficulty of enforceability of the human right to democracy, whether at the international or at the national level, does not affect the moral existence of the right. This means that the absence of international community and centralised institutions that could be organised democratically and hence of addressees of the right to international democracy¹⁶² cannot be held against the existence of such a right either. It will make the identification of the duty bearers and the attribution of duties more difficult, but it does not undermine the existence or the justification of the right.

158. Rawls J. (1999), footnote 69; Raz J. (2010), footnote 71.

159. Cohen J. L. (2008), footnote 63.

160. Tasioulas J. (2009), footnote 71.

161. Tasioulas J. (2007), footnote 83; Besson S. (2006), footnote 83; contra: Nickel J. (2005), footnote 85.

162. See Nickel J. (2005), footnote 85, for such a critique of the argument for a right to international democracy in Gould C. (2004), footnote 67. The latter cannot be distinguished from national democracy in any case.

3.3.2. Sovereignty and the human right to democracy

Independently of international intervention *qua* mode of enforcement of the human right to democracy, a related critique pertains to the unjustified restriction of the principle of equal sovereignty of states that would result from the enforcement of the right to democracy.¹⁶³ Once enforced internationally, this right would undermine its own object and run against the principle of self-determination.

Again, this is a critique based on the political conception of human rights. There are two ways of responding to this critique: the first is to point to the redefinition of the concept of sovereignty in the post-Westphalian era and its relationship to human rights and state responsibility for the respect of those rights; the second is to show how the human right to democracy is intrinsically connected to political sovereignty so redefined.

First of all, and although the scope of this paper precludes a detailed explanation, state sovereignty has been going through a deep process of redefinition through international law and in particular human rights law in the last 50 years or so. From sovereignty *qua* independence, it has gained a new dimension and has also become sovereignty *qua* responsibility. Sovereignty is a normative concept imbued by the value of political autonomy, but also a result bound by it. A state is only sovereign to the extent that its citizens are and their political autonomy constitutes an internal limit to that state's sovereignty.¹⁶⁴ This is also the case of all human rights. In these conditions, the right to democracy that stems from the principle and value of political equality is one of the internal boundaries to democratic authority and state sovereignty.

Second, even when sovereignty is redefined as proposed, the human right to democracy remains problematic from the perspective of the principle of equal sovereignty, which is a cornerstone of the international legal order.¹⁶⁵ Unlike other human rights that constrain state sovereignty in internal affairs, the human right to democracy is a more incisive limitation on the organisation of the state and also extends to external sovereignty. Again, the account of human rights used in this paper enables us to evade that critique which is pointed towards political accounts of human rights which do not derive those rights from moral considerations, and which have to gather sufficient empirical evidence for a specific right or at least sufficiently broad public justification.¹⁶⁶ If I am right about human rights and democracy being intrinsically connected and co-original because of their common foundation in political equality, human rights

163. See, e.g. Cohen J. L. (2008), footnote 63.

164. See, e.g. Cohen J. L. (2006), "Sovereign equality vs. imperial right: the battle over the 'New World Order'", *Constellations* 13:4, pp. 485-505; Cohen J. L. (2008), footnote 63. See also Waldron J. (2006), "The rule of international law", 30:1 *Harvard Journal of Law and Public Policy* 15; Besson S. (2009c), footnote 67.

165. See, e.g. Cohen J. L. (2008), footnote 63, and Cohen J. L. (2006), footnote 164.

166. The argument in Cohen J. L. (2008), footnote 63, is directed mostly at Raz J. (2010), footnote 71, and Cohen J. (2006), footnote 69.

do not only constitute an internal limitation on political authority, but they also actually require political authority. This is especially true of the right to democracy. As a result, contrasting the right to democracy with state sovereignty is the wrong opposition. It is only when political authority no longer exists as such and power annihilates the right to democracy that that right can stand against the principle of equal sovereignty.¹⁶⁷

3.3.3. Parochialism and the human right to democracy

A third critique that is brought to bear against the human right to democracy is parochialism or, more precisely, the claim that such a right is a parochial right. According to this argument, democracy is a political regime that only exists in a few states in certain wealthy and powerful parts of the world, and recognising the existence of a human right to democracy would contribute to imposing a political model on other weaker and poorer states and peoples. Among human rights, political rights of this kind are the most likely to fall prey to the cultural relativism objection.¹⁶⁸

Parochialism is a well-known challenge to human rights, and it is based on a brand of moral relativism. In this view, human rights are derived from a parochial set of values unjustifiably imposed on people and societies which do not share it. This has as much to do with the values themselves as with their specific ordering. It need not be based on moral scepticism, however, and it is enough to entertain the claim of parochialism that values are plural and their orderings can be many (without a complete and coherent ranking), and hence that, in circumstances of social and cultural pluralism, those orderings and value systems can vary.¹⁶⁹ Nor should one confuse this critique, a serious critique, with unconvincing versions of the cultural relativism challenge that are based on disagreement and the lack of consensus or of mutual justification;¹⁷⁰ not only may people be mistaken and themselves parochial when they disagree or do not consent, but disagreement and lack of consensus is a widespread and persistent phenomenon within Western societies themselves – the very societies accused of being parochial.¹⁷¹

There are two main difficulties facing this critique: first, its moral validity and, second, its defeasibility within its residual ambit.

167. On this minimal and justified infringement of the principle of equal sovereignty, see Cohen J. L. (2008), footnote 63, pp. 595-6.

168. See, e.g. Griffin J. (2008), footnote 69; Beitz C. R. (2007), footnote 69; Cohen J. (2006), footnote 69. For a reaction, see, e.g. Forst R. (2010), footnote 63; Shue H. (1996), footnote 69.

169. See Buchanan A. (2010a), footnote 70. See also Tasioulas J. (2010a), footnote 70, for a discussion of both the pluralism-based and the scepticism-based accounts of the parochialism critique. I agree with him, however, when he considers that the strongest version of the critique is the pluralist one.

170. For a critique of those, see Buchanan A. (2008), footnote 70; Besson S. (2005), footnote 81.

171. See Buchanan A. (2008), footnote 70, on the debunking of alternative accounts of the cultural relativism critique.

First, the moral validity of the parochialism critique can be undermined by reference to an objective albeit pluralist conception of morality and a human rights account that reflects that moral pluralism. Adopting an objective view of morality does not equate with adhering to a monist conception of morality: the background to the following analysis is an objective albeit pluralist account of morality which can accommodate conflicts of values and different orderings among them.¹⁷² The interest-based account of human rights presented earlier fits this pluralist account of morality and can as a result accommodate a plurality of values and orderings thereof, and hence of justifications of the same human right and its corresponding duties.¹⁷³ Further, the separation of the recognition of rights through the identification of fundamental interests and the specification of duties allows for a contextualisation of interests and hence for different orderings among them, but also among them and other considerations before duties are specified.¹⁷⁴

Second, even within its residual ambit, and in particular with respect to the difficulties raised by social and contextual pluralism, the parochialism critique can be defeated. It should be emphasised for a start that holding to moral objectivity does not mean denying the importance of contextualising moral values recognised by international law at the domestic level, nor the possibility of the historical national localisation of objective values recognised by international law and of historical changes in that localisation in the course of time.¹⁷⁵ Further, one may legitimately contend that the intercultural dialogue and mutual adjustment promoted by democratic co-ordination in international lawmaking, and international decision-making generally, pays sufficient attention to the issue of cultural diversity and the need for epistemic inclusion of different cultural perspectives when adopting or applying international law.¹⁷⁶

It is worth noting, however, that this pluralist counterargument seems available only to an account of human rights which regards them not as underived moral norms, but as grounded in a multiplicity of other, non-rights-based considerations, such as universal human interests. So-called traditional ethical accounts of the justification of human rights face a difficulty here and cannot rebut the parochialism challenge as easily; those that do recognise the right to democracy ground the right in a single moral norm, such as autonomy or liberty, and fail for reasons of cultural diversity.¹⁷⁷ At the other end of the spectrum, political accounts of the kind discussed before face a distinct but daunting difficulty; they

172. See Tasioulas J. (2010a), footnote 70.

173. See Tasioulas J. (2002), footnote 100, and Tasioulas J. (2010b), footnote 103.

174. See Besson S. (2005), footnote 81; and Besson S. (2006), footnote 83.

175. This explains how the fact that a decent life was possible prior to the advent of modern democracy does not affect the universality of the human right to democracy.

176. See Buchanan A. (2008), footnote 70.

177. See Griffin J. (2008), footnote 69, pp. 247-55 and the critique by Tasioulas J. (2010b), footnote 103.

cannot avail themselves of universal moral grounds and have to face social and cultural relativism on empirical or at least justificatory grounds.¹⁷⁸

As a result, withdrawing into the right to political membership as the most one may require of decent societies in a liberal framework of mutual justification¹⁷⁹ is both too much for that argument to bear and too little to convince proponents of a modified interest-based argument for the human right to democracy. The right to political membership, advocated by liberal authors such as Cohen, is only distinct from the right to democracy in matter of degree. Collective self-determination, as Forst argues, is “a recursive principle with a built-in dynamic that favours those who criticise exclusions and asymmetries”¹⁸⁰ and implies democracy when brought to its maximal breadth.

4. The legalisation of the international human right to democracy

As stated in the introduction, the existence of a moral right to democracy does not necessarily imply or justify that of a legal right to democracy. There is no moral right to a legal right to democracy one may derive from the mere existence of a moral right to democracy. Nor does recognising such a legal right imply the pre-existence of a moral right to democracy. Of course, once a legal right is created, it also generates a moral right except when the other conditions for the recognition of a moral right, and in particular the existence of fundamental interests sufficient to generate duties, are not provided.¹⁸¹ What we then have is a legal norm that is not a moral right and not accordingly *stricto sensu* a legal right – except in name.

In this section, I would like to assess not so much the additional justifications there may be for recognising a legal right to democracy, such as the legitimacy arguments mentioned in the introduction and in particular the instrumental value of democracy for human rights or that of peaceful consent among democratic states,¹⁸² but the conditions under which the existence of a moral right to democracy may justify the legal recognition of that right. Of course, some of those conditions may also apply to the other reasons to recognise a legal right without a pre-existing moral right. I will proceed in two steps: first, I will assess why there should be a legal right to democracy; second, I will argue that legal right should be an international legal right to democracy.

178. Hence the difficulties faced by Rawls J. (1999), footnote 69, pp. 61 ff.; Beitz C. R. (2007), footnote 69, p. 103; and Cohen J. (2006), footnote 69, as emphasised by Cohen J. L. (2008), footnote 63; Forst R. (2010), footnote 63.

179. See Beitz C. R. (2007), footnote 69; and Cohen J. (2006), footnote 69, trying to correct some of the defects of Rawls J. (1999), footnote 69.

180. Forst R. (2010), footnote 63.

181. See Raz J. (1984a), footnote 81, p. 1; Raz J. (1984b), footnote 81. Note that Buchanan A. (2004), footnote 69, fails to see this in his argument for a legal human right to democracy.

182. See Buchanan A. (2004), footnote 69, pp. 142 ff.

4.1. The legal human right to democracy

One should first ask what the material elements which may provide reasons for the legalisation of a human right are. General reasons put forward for the legal recognition of a moral right are usually the following: security and clarity, intermediary agreement on a contested right or sets of interests, effectiveness, sanctions, or publicity.¹⁸³ In some cases, counter-reasons may be put forward, in particular the non-antagonistic quality of social implementation mechanisms or the destructive individualisation of human rights remedies.¹⁸⁴

In the case of the human right to democracy, the legalisation of the right would enhance its realisation, by both enabling democratic processes through legal directives and protecting such processes against themselves and their own unmaking.¹⁸⁵ Of course, the legalisation of every human right triggers legitimisation issues, especially when it functions as a limit on the outcome of democratic decision-making processes.¹⁸⁶ This is even more so when the right that is legalised and needs to be legitimised is the right to participation in those very processes. This is the famous paradox of democratically guaranteeing democracy and “self-determined self-determination” I alluded to in the introduction. The best we can do in view of that paradox is to understand this process as an iterative one that starts from historical and current practices,¹⁸⁷ and the relationship between democratic procedures of legalisation and the legal right to democracy as one of mutual reinforcement and justification.¹⁸⁸

4.2. The international human right to democracy

The next question to arise is whether the legal recognition of the moral right to democracy should occur through national or international law.

Given the universal scope of the right, an international guarantee (conventional or customary) would seem *prima facie* to constitute the obvious choice. But considerations of territorial scope should not be a priority. Most international human rights guarantees are considered minimal and subsidiary and give rise to duties of reception and enforcement within domestic law. Both levels of protection are usually regarded as complementary, therefore, rather than as providing

183. See Besson S. (2005), footnote 81; and Besson S. (2006), footnote 83.

184. See Tasioulas J. (2007), footnote 83.

185. See Nino C. (1996), *The constitution of deliberative democracy*, Yale University Press, New Haven, p. 184; Benhabib S. (1996), “Toward a deliberative model of democratic legitimacy”, in Benhabib S (ed.), *Democracy and difference: contesting the boundaries of the political*, Princeton University Press, Princeton, p. 67, p. 80 on democratic rights as rules of the game that make the game at all possible.

186. See, e.g. Waldron J. (1999), footnote 65; Besson S. (2005), footnote 81. Note that I am leaving aside the question of the constitutionalisation of human rights.

187. See Buchanan A. (2004), footnote 69, p. 189, for a similar argument in the international legal context.

188. Neither human rights nor democracy on their own can be sufficiently self-reflexive, however; it is their mutual foundation in political equality which makes them constantly seek justification from one another.

competing guarantees. Further, many national constitutions are more advanced than international instruments with respect to their guarantees of certain human rights, including social and economic rights such as the right to health, but also of certain civil and political rights such as the right to protest and, in fact, most political rights. As the experience with the Charter of Fundamental Rights of the European Union and in particular with social and economic rights in the Charter has demonstrated, national guarantees can then fuel later international (or regional, in this case) guarantees of human rights.

Primary reasons for the international legalisation of a moral right relate to various elements in that right such as:¹⁸⁹

- its personal scope, as international human rights have individuals as rights holders, but also other states and international organisations in the international community (through *erga omnes* duties of the state or through conventional duties based on a human rights treaty), first, and have all individuals residing in a given state and not only citizens as rights holders, second;
- its material scope, as international human rights law may fill gaps in national protection or at least provide a minimal safety net in case of human rights relapse in a given state;
- its territorial scope, as international human rights law protects not only individuals within state boundaries, but also all individuals submitted to its extra-territorial jurisdiction.

71

Additional reasons may also be found in the international mechanisms available to enforce international human rights duties, whether political or judicial, coercive or non-coercive, or military or non-military. As Buchanan and Russell have noted, further reasons may be identified and grouped into self-regarding reasons and other-regarding or cosmopolitan reasons.¹⁹⁰

In spite of all these reasons, I would like to submit that national law remains the most legitimate locus for the legalisation of human rights.¹⁹¹ This has to do as much with human rights and the values underlying them as with democracy itself. First, it follows from my discussion of parochialism and social relativism that fundamental interests need to be concretised and contextualised in a given epistemic community to be recognised as human rights. While a lot of that concretisation may be done at the international level, its key contextualisation can only take place at national level.¹⁹² Further, by reference to the intrinsic relationship and co-originality between human rights and democracy as discussed earlier, and as long as international democracy is not only underdeveloped and has

189. For those and other reasons, see Gardbaum S. (2008), footnote 84, pp. 764-8.

190. See Buchanan A. and Russell R. (2008), footnote 84, pp. 330 ff.

191. On the difference between legislative and constitutional legalisation, see Waldron J. (1999), footnote 65; Besson S. (2005), footnote 81.

192. See Buchanan A. (2008), footnote 70, on the need for inter-cultural dialogue and democratic concretisation of international human rights.

not entirely replaced national democracies as the locus of decision-making,¹⁹³ human rights should be incorporated and protected within national legal orders. This is where human rights law can be vested with its democratic legitimacy.¹⁹⁴ This explains why most international human rights guarantees are considered as minimal and subsidiary and give rise to duties of reception and enforcement within domestic law. Both levels of protection are usually regarded as complementary and as serving different functions, therefore, rather than as providing competing guarantees.

All reasons provided for the international legalisation of human rights would seem *prima facie* to apply to the moral right to democratic participation, at least *qua* minimal and general international human rights, following the understanding I have just articulated. Given the interests protected by that right, and their intrinsic relationship to the principle of political equality, however, it is clear that its primary locus of legitimation and hence of legalisation should be domestic. This has to do as much with the contextualisation of democratic interests discussed earlier, as with the legitimacy of an international legal right to democracy.

Of course, the democratic legitimation of international law abides by criteria and refers to subjects very different from that of domestic law.¹⁹⁵ It would be wrong therefore to look for an international state-like political community that iteratively legitimises a right to democratic participation through democratic practices along the lines discussed. Ultimately the regress will have to be curbed and current and historical democratic practices could be used as a bottom-up starting point, to be gradually legitimised through a self-reinforcing relationship between democratic practices at national and international level and the right to democratic participation.¹⁹⁶

It is clear, however, that in the current conditions of international lawmaking, the equal inclusion of all those affected and the granting of an equal say even in an iteratively democratic process are simply not guaranteed, whether from a domestic or international perspective. It would be more paradoxical at the international level than at the domestic level, as a result, to protect the right to democracy but not enable the beneficiaries of the right to exercise it, especially when deciding on that very right and membership in the community of rights holders. The whole idea of self-determination through the human right to democratic participation would be defeated. The absence of democratic mechanisms

193. On “*demosi-cracy*” and its relationship to (national and international) lawmaking, see Besson S. (2009a), footnote 67; Besson S. (2009b), footnote 67.

194. As I have argued elsewhere – Besson S. (2009c), footnote 67 – the legitimate authority of international human rights is different from that of other international law norms.

195. See Besson S. (2009c), footnote 67.

196. See Buchanan A. (2004), footnote 69, pp. 188-9.

and institutions to interpret and apply the right at the international level following adoption exacerbates this problem.¹⁹⁷

It is important to emphasise at this stage that this conclusion should not affect the legal validity of existing guarantees of the right to democracy under current international law.¹⁹⁸ Nor does it affect the moral reasons there may be for states to adopt or recognise international legal guarantees of a given human right in the first place, whether those reasons are self-regarding or cosmopolitan.¹⁹⁹ It only targets their legitimacy, and only one of the main grounds for their legitimacy, that is, democracy. Although democracy is particularly relevant, and one may even argue an inescapable one in the context of the legitimisation of a legal human right to democracy, other justifications for the authority of states may still be available.²⁰⁰ Furthermore, there may be other reasons for states to actually comply with that legal right, some instrumental (such as democratic peace or democratic state consent) and others related to notions of justice or fairness.²⁰¹ While these reasons are not justifications for the authority of the human right to democracy, they are reasons for compliance that co-exist and are important in international law.²⁰² All the same, the absence of (democratic) legitimacy of the international legal right to democratic participation defeats the potential justification of an intervention in the sphere of national sovereignty, and more generally any state liability and sanctions for not respecting that right.

Of course, the more democratic, or rather the more “*demosi*-cratic” international human rights lawmaking and human rights law enforcement become, the more legitimate the international legal right to democracy will be. In a global community of states and individuals,²⁰³ growing interdependencies imply mutually affected interests and hence generate the interest and claim of states and individuals to decide on these issues together rather than work separately or co-operate very indirectly.²⁰⁴ In such circumstances, inclusion and participation at all levels, including the national, become a legitimate individual claim and, at the same time, participation in the decision-making process becomes a common interest. If those conditions pertain, the right to democratic participation will no

197. Of course, the legitimacy of international human rights institutions’ decisions cannot necessarily be identified with that of the international human rights norms applied, the way it would in the domestic context.

198. As I have explained elsewhere, however (Besson (2009c), footnote 67), the claim to legitimate authority that is connected to legal validity needs to be honoured eventually and there should be a drive towards legitimising international legal norms as a result.

199. See Buchanan A. and Russell R. (2008), footnote 84, pp. 330 ff.

200. See Besson S. (2009c), footnote 67.

201. On such reasons to recognise an international legal right to democracy independently from the democratic legitimacy of that right, see Buchanan A. (2004), footnote 69, pp. 142 ff. and pp. 188-9.

202. See Besson S. (2009c), footnote 67, on international law’s *de facto* authority and the other reasons to abide by international law than its justified authority.

203. See Besson S. (2009a), footnote 67, for a discussion of global “*demosi*-cracy” as a middle path between international democracy and the indirect democratisation of international law through national democracies.

204. See Besson S. (2009b), footnote 67, on the “*demosi*-cratic” international community.

longer be an interest over which only national democratic polities can decide, but an interest of the community of communities. It can thus be seen as a right which both states and individuals have to decide on, and which they have to protect together. This also means that that common interest and this new kind of political equality²⁰⁵ could become the object of an international legal right to democracy, provided this can be achieved “*demos*-cratically”. The argument may appear to be circular, but if the relationship between international “*demos*-cracy” and the international legal right to democracy is seen as one of mutual reinforcement rather than one of logical sequence, the circle may come to be seen as virtuous.²⁰⁶

Conclusion

So, is there a human right to democracy? In this chapter, I have argued for a moral right to democracy *qua* international human right to democratic participation. I have distinguished the moral right to democracy from the legal right to democracy, and assessed various reasons to recognise either form of right.

I first separated the question of the instrumental or intrinsic relationship between human rights and democracy from that of the existence and justification of a right to democracy, developed a revised interest-based argument for such a right to democratic participation, and discussed alternative arguments for that right. I focused on the human right to democratic participation, in relation to connected rights, and responded to the three main critiques raised against that right. In a final section, I argued that such a right should be legalised, but that this should first occur at the national level. I also argued that, provided the “*demos*-cratic” credentials of international lawmaking are enhanced, the legal right to democracy could be guaranteed legitimately at the international level as a common interest of states and individuals.

In short, the claim has been that there is a universal moral right to democratic participation and that there should be a national legal right to democratic participation. I have also argued, however, that the international legal right to democratic participation that is currently guaranteed by international law can only be vested with democratic legitimacy provided international lawmaking processes and especially human rights-making processes are made both more democratic

205. On political equality in international circumstances, see Roth B. (1999), *Governmental illegitimacy in international law*, Oxford University Press, Oxford; Christiano T. (2006), footnote 112; Christiano T. (2010), footnote 67; Pettit P. (2010), footnote 67; Besson S. (2009b), footnote 67.

206. This is also the conclusion in Nickel J. (2005), footnote 85, albeit for different reasons. His reasons pertain to the absence of a moral right to international democracy before democratic international processes and institutions are in motion and one can assess the existence of an objective individual interest to taking part in those processes and institutions. Because of the mutually reinforcing relationship between the human right to democratic participation and democratic processes, I do not see those reasons as undermining the justification of the moral right to democratic participation, but that of the authority of the legal right to democratic participation.

and context-sensitive. Of course, this is certainly not something a moral right to democratic participation can trigger on its own. This is because there is much more to democracy than human rights.