Nondiscrimination and the Human Right to Democracy

Abstract

In his recent book, *The Idea of Human Rights*, Charles Beitz claims that we should reject the human right to democracy in favour of the less demanding right to collective self-determination. On this account, citizens are entitled to basic civil and political rights, and their interests are represented by a hierarchical regime that defers to a conception of the common good in decision-making processes. However, this claim undermines his subsequent defense of the human right to nondiscrimination, because systematically enforced political inequalities are fundamentally discriminatory. In this paper, I explore and defend two claims: first, Beitz's rejection of the right to equal political participation is inconsistent with his defense of the human right to nondiscrimination; second, we should reconcile this inconsistency by maintaining that there ought to be a right to both nondiscrimination and political equality. In defending the second claim, I argue that equal political rights may protect a fundamental human interest and thus merit the status of a human right. I then argue that democratic institutions can be instrumentally linked to the effective protection of human rights. Further, without a constitution and political accountability mechanisms, disenfranchised citizens are dependent on the contingent benevolence of the ruling elite for the assurance that their basic liberties will be protected over time. Ultimately, even if hierarchical regimes protect basic liberties in practice, nondemocratic regimes violate the human right to nondiscrimination by systematically denying certain groups equal political rights.

I. Introduction

Article 21 of the 1948 *Universal Declaration of Human Rights* states that all persons have a human right to a certain set of democratic rights. These include equal suffrage, equal access to public service, and the right to vote in periodic and genuine elections. In his recent book, *The Idea of Human Rights*, Charles Beitz suggests that we should reject Article 21 and endorse the less demanding right to 'collective self-determination' which is compatible with membership in a decent consultation hierarchy. The objective of this paper is to explore and defend two claims: first, that Beitz's rejection of the right to equal political participation under a democratic government is inconsistent with his defense of women's human rights to nondiscrimination; and second, that we should reconcile this inconsistency by maintaining that there ought to be a right to both nondiscrimination and democratic political equality.

In section II of this paper, I discuss (1) Beitz's defense of the right to nondiscrimination, and (2) his rejection of the right to democracy. I argue that Beitz is presenting an inconsistent account of human rights because by maintaining (2) he permits the violation of (1). In section III, I suggest that we revise Beitz's account so that it includes both the right to nondiscrimination and the right to equal democratic political participation.
First, I argue that equal political rights may protect a fundamental human interest and thus merit the status of a human right. Then, I defend the right to democracy on instrumental grounds, and I argue that it is required for the secure protection of basic liberties over time. In the final section, I consider the possible objection that a right to collective self-determination provides a sufficient alternative to democracy and includes many of the instrumental benefits I have associated exclusively with democracy. I respond to this objection by arguing that Beitz's conception of collective self-determination, which is modeled on John Rawls' conception of a decent consultation hierarchy, is problematically ambiguous. While it is explicit which standards of justice must be met for a hierarchical society to be decent or collectively self-determining, it is unclear how these standards are enforced and how likely they are to be realized in practice. Thus, I conclude by maintaining that Beitz's account ought to be revised and include a human right to equal political participation.

II. The Incompatibility of (i) Political Inequality (ii) Nondiscrimination

In his discussion on political rights in section 26 of his book, Beitz does not seriously consider that the right to equal political participation might be generally held as protecting a fundamental interest “across a wide range of possible lives”, thereby meeting his first justification criteria for a human right (Beitz 2009, 111). In failing to consider that equal political rights might protect a fundamental interest, he seems to be operating under the assumption that they do not and that, as such, there can be no human right to democracy that isn't justified instrumentally in terms of its relationship to the protection of other human rights. Further, Beitz maintains skepticism toward instrumental arguments for democracy.1 That being said, he does not consider democracy valueless. Following Joshua Cohen and John Rawls, Beitz endorses the view that, although political justice requires democracy, the moral domain of human rights and the domain of political justice are not coextensive (Beitz 2009, 181).2 Beitz is aiming to outline a less demanding, reasonable alternative to democracy and one that can serve as a sufficient standard for meeting human rights requirements. Again, following Rawls and Cohen, Beitz suggests that a decent hierarchical regime, one that satisfies the criteria of collective self-determination, can serve as an acceptable alternative.

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He provides the following definition:

Let us say, following Cohen, that a society is self-determining in a morally significant sense if its political arrangements satisfy three conditions: political decisions result from and are accountable to a process in which everyone's interests are represented, there are rights of dissent for all, and public officials explain their decisions in terms of a widely held conception of the common good (Beitz 2009, 181).

In Bietz's view, this is all that is necessary for a political regime to protect human rights, all things being equal. Further, he maintains that the instrumental argument linking democracy to the protection of human rights is based on a series of particular examples which, when taken together, aren't sufficient to justify the generalization that democracy as such is prima facie more effective than every other political regime at protecting the human rights of its citizens (Beitz 2009, 179-181). This is partly because such generalizations don't take into account the economic characteristics and political culture of a society. Beitz focuses on the transitional stages of democracies, particularly in poor countries, in order to show that it is not always the case that democracies are better than other regimes at protecting rights: rather, he suggests that democracies seem to perform better the higher the level of economic development (Beitz 2009, 177). I want to argue that regardless of whether or not decent hierarchical regimes can protect most human rights as effectively as democracies, it remains the case that decent hierarchical regimes fail to ensure that all human rights, particularly the right to nondiscrimination, are being respected.

In short, Beitz's rejection of the right to democracy contradicts his explicit and powerful defense of women's rights to nondiscrimination. Beitz spends section 27 of his book discussing and then thoroughly defending the 1979 Convention on the Elimination of all forms of Discrimination against Women. Women's equal access to many human rights, such as the right to education, nourishment, political equality, protection from physical violence and sexual abuse, etc., are systematically and disproportionately impeded because of embedded structures of gender-discrimination in legal and political institutions as well as cultural practices around the world. In light of these injustices, Beitz argues that it is a human rights concern that women should not be discriminated against or withheld rights that are routinely granted to men. This same reasoning, of course, extends to the support of nondiscrimination against “ethnic” and religious minorities. Further, Beitz claims that his argument is grounded on a commitment to formal equality.

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3 These principles present a condensed version of Joshua Cohen's account of collective self determination in “Is there a Human Right to Democracy?”, 233.

4 In Women and Human Development (Cambridge: Cambridge University Press, 2001), Martha Nussbaum discusses the fact that inequalities such as these are faced disproportionately by women.
rather than a more liberal or “Western” commitment to status equality (Beitz 2009, 191-192).

But status equality and formal equality cannot be neatly separated in accounts of human rights that are grounded on the equal moral status of persons (or humans). In fact, Allen Buchanan (2010) argues that the idea of equal status is fundamental to a conception of human rights, even though philosophers have continually failed to recognize its prominent role. For example, Buchanan observes that international human rights are egalitarian and promote status equality in the following manner: (1) they are ascribed to all persons; (2) they demand robust equality before the law; (3) they include 'positive' social and economic rights; (4) they include political participation rights for all; and (5) they include strong rights against discrimination on grounds of gender and race (Buchanan 2010, 683-684).

These five features of human rights reflect a broader commitment to the Principle of Moral Equality, which expresses the conviction that “all persons as such are entitled to equal consideration” based on equal moral worth. This principle is not uniquely liberal: it is consistent with many religious and secular converging justifications for human rights (Buchanan 2010, 685). My intention behind this discussion of the role and continuity of status equality as an important feature of a conception of human rights is to show that Beitz's account is not only logically inconsistent but also conceptually and normatively inconsistent insofar as it endorses the right to nondiscrimination while rejecting the right to political equality.

Let me return now to Beitz's discussion on democracy. In his rejection of political equality and defense that human rights can be protected without democracy, Beitz appeals to the example of a decent hierarchy in which there is no right to vote and political offices may be reserved for members of the national religion (Beitz 2009, 182-183). Of course, one can entertain a hypothetical correlate in which political offices are reserved for men and thus discriminate against women. This is clearly incompatible with Beitz's discussion on women's rights to nondiscrimination.

Now, Beitz may offer an objection here. He could argue that women's interests would still be considered under a decent hierarchy. Therefore, it is possible that women won't be seriously discriminated against even if they lack the same political rights that are held by men. This objection, however, is unconvincing. First, it is unclear what is meant by the claim that women's interests will be 'taken into account' in a decent hierarchy - it may be the case

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5 See Buchanan (2010), p.688
6 For a detailed discussion on the role that this principle plays in international human rights, see: Allen Buchanan, *Justice, Legitimacy and Self-Determination* (Oxford: Oxford University Press, 2007): 131-133.
7 We need not even think hypothetically; there are actual cases that illustrate this point. For example, women are still denied suffrage in Saudi Arabia, and many other countries grant women only a conditional right to vote.
that women's interests are considered but not granted equal weight with the interests of men. On the other hand, women's interests could be understood paternalistically. Moreover, to maintain the view that women's interests both can and will be adequately taken into account by some particular group of men under a decent hierarchy effaces the serious concern that women constitute a uniquely vulnerable class in terms of having even their basic human rights met. In any analysis of marginalization and oppression it is important to look at the kinds of political and civil rights that have been institutionally withheld from vulnerable groups, or rendered inaccessible to those groups due to cultural norms. To assume that the interests of vulnerable groups, such as women, can and will be adequately represented when these groups lack equal political rights is a dangerous assumption to make.

Finally, the fact that a right to democracy isn't included as a human right in Beitz's account does not rectify the inconsistency in his defense of women's nondiscrimination rights and his simultaneous justification for the exclusion of women or other minorities from equal political participation. If certain groups are systematically denied equal political participation, their human rights to nondiscrimination are being violated. Beitz cannot maintain, for instance, both that women have a right to nondiscrimination and that sovereign states have a right to systematically deny women equal political participation. This view is both logically and normatively inconsistent.

In light of this inconsistency, we are forced to revise Beitz's conception of human rights. We can either accept that there is no right to equal political participation and, as a result, deny women's rights to nondiscrimination that Beitz argues is a pivotal concern for human rights. Alternately, we can accept that there ought to continue to be a human right to equal political participation, a view that is consistent with the right to nondiscrimination. I do not believe that the first option reflects a normatively desirable conception of human rights, and suggest that the latter revision is preferable.

III. In Defense of a Human Right to Democracy

In order to defend a human right to democracy, it is necessary to clarify what the content of this right is. For the purposes of this paper, I will adopt Allen Buchanan's minimal conception of democracy, whereby a democratic government must meet the following criteria:

(1) There are representative, majoritarian institutions for making the most general and important laws, such that no competent individual is excluded from participation, (2) the highest government officials are accountable to the people by being subject to removal from office through the workings of these

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8 Buchanan (2007) argues that Rawls's definition of a 'consultation hierarchy' is vague and permits a significant amount of room for sexist practices in policy decision making. See p.170-171.
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representative institutions, and (3) 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 (Buchanan 2007, 146).

Although Beitz (2009) does not explicitly define democracy or democratic institutions, his discussion on democratic institutions is consistent with Buchanan's definition. This definition is also consistent with the rights outlined in Article 21 of the 1948 *Universal Declaration of Human Rights* and Article 25 of the *International Covenant on Civil and Political Rights*.

First, I think it is a mistake to assume, as Beitz does, that democracy belongs only to a wider conception of political or global justice. Prima facie, there is no reason to presuppose that democracy is only a concern for broader conceptions of justice, and not for the subset of justice we take to be human rights. If democracy reflects a fundamental, or urgent, general interest then, on Bietz's account, we must at least consider that it is a non-derivative human right. That is to say, we must consider that it is a human right because it protects a fundamental human interest, regardless of whether or not it can be linked to the protection of other human rights. Democratic political equality may very well be an important primary good insofar as it is instrumentally beneficial to nearly every person who would otherwise be disenfranchised, regardless of their particular conception of the good. Further, a global history filled with suffrage movements and peoples' revolutions aimed at securing equal political rights and/or confronting government corruption indicates that political rights are generally held to be important across many different cultures and countries. This claim is also highlighted by the recent popular uprisings in Spain, Greece, and several Middle Eastern and North African countries. It would seem, then, that equal political rights may have global appeal, and the claim that they are a fundamental or urgent general interest may merit serious consideration. At the very least, these uprisings are evidence that, in practice, many hierarchical regimes (1) lack effective accountability processes and (2) fail to track and represent the interests of citizens when creating legislation and implementing policy.

Moreover, I am not convinced that Beitz has succeeded in refuting the instrumental argument for democracy. In several books and articles, Sen has amassed a large amount of empirical evidence linking democracy to the protection of human rights. One among many examples is that there have been no recorded famines in the history of functioning democratic regimes, including *newly* democratic regimes, even though such regimes have faced similar natural disasters as famine-stricken non-democratic regimes (Sen 1999a, 7). One likely reason for this is that democracies have built in accountability mechanisms. If political parties don't protect the well-being of their citizen's during crises, it is unlikely that they will remain in power. The threat of being removed from office motivates political agents to respond to the interests and needs of citizens, which includes reacting effectively to
crises. Sen has also discussed transitional cases of democracy in countries where the political culture does not include an apparent history of democratic values. He cautions that it is a mistake to associate democratic values with the “West” because many different places and cultures in the world have historically valued public deliberation and local democracies (Sen 2006, 29-32). It is a similar mistake, he argues, to assume that people who don't have a history of political equality won't come to recognize and appreciate its value once this form of equality has been acquired (Sen 1999a, 10-13). Finally, contra Beitz, Sen discusses evidence indicating that even in poorer countries, economic and social security may be developed over time more successfully in newly democratic governments than in non-democratic regimes (Sen 1999a, 7). Sen's evidence calls into question Beitz's discussion on newly democratic regimes, particularly because Beitz appeals to very little empirical evidence whereas Sen appeals to a great deal of evidence.

Now, despite Sens' arguments, Beitz has maintained that this evidence is insufficiently conclusive to allow us to generalize about the instrumental benefits of all democracies. Nonetheless, I do think that Sen has provided a significant amount of empirical evidence to suggest otherwise. However, if Beitz wants to maintain this position, then I must conclude that it is even more troubling to generalize – as both Beitz and Cohen do - that decent hierarchical regimes can also be instrumentally linked to the effective protection of human rights (Cohen 2006, 245). It may be hypothetically possible for a decent hierarchy to adequately protect the human rights of its citizens, but neither Cohen nor Beitz have provided empirical evidence that such a link is probable.

Finally, even if it is possible that a decent hierarchy protects individual liberties and human rights, and is significantly responsive to the interests of its citizens, such a possibility rests on either (1) the benevolence and fairness upheld by the ruling elite, or else (2) international pressure faced by the ruling class through the global monitoring and protection of human rights. As James Griffin (2008) argues, under such disenfranchised circumstances, citizens

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9 I am unable to adequately defend against the charge of parochialism here, though I believe it is a mistake to associate democratic values with strictly 'Western' values. Further, I believe that the protection and promotion of the human right to democracy should rarely involve intervention. In section 6, which focuses on the implementation of human rights, Beitz gives a pluralist account of implementation strategies and duty-bearers, including the role of NGO’s, activists, and locally organized domestic contestation and engagement tactics. Beitz suggests that these avenues of implementation might be the most effective when protecting women's rights to nondiscrimination, because they are more plausibly capable of affecting cultural practices over time. I suggest that implementing the human right to democracy may involve similar tactics, as well as, perhaps, foreign monetary aid to support education and the institutional infrastructures required for maintaining democracy.

would not have the stable assurance that liberty requires. Without the effective power of democratic participation and an entrenched constitution protecting basic liberties, there is no guarantee that basic liberties will be secure in the future. Even if liberties are not violated in practice because of contingent circumstances (benevolence, international pressure, etc), liberties nonetheless also require security insofar as they cannot be fully appreciated if citizens are not assured that the realization of their liberties won't incur future punishment, or be revoked at a later time. A substantive right to basic liberties requires not only a right to such liberties but also the assurance that such liberties will remain secure and continue to be protected in the long term. A decent hierarchy cannot meet this security requirement and thus is not adequate for the protection of human rights.

IV. Is a Conception of Collective Self-Determination Sufficient?

I will consider one final possible objection. One could argue that I have not adequately presented Beitz's conception of a decent hierarchy that satisfies the conditions of collective self-determination, including the constraints built into this conception which serve to protect the interests of disenfranchised citizens. According to his criteria, a decent hierarchy is not authoritarian, but is, rather, self-determining “in a morally significant sense” (Beitz 2009, 181). Further, such a regime is accountable to a process in which everyone's interests—including the interests of the disenfranchised—are taken into consideration, even though not everyone's interests will be granted equal weight. Finally, given his criteria, basic civil and political liberties are upheld, and citizens do have some rights to a truncated but sufficient form of political participation, insofar as they can dissent and are entitled to freedom of speech and of association. Let me clarify what bearing this has on my defense of democracy: it problematizes my appeal to Sen’s claim that democracies are uniquely amenable to avoiding famines and other massive human rights violations or crises, because democracies are uniquely constrained by accountability processes. However, it does not affect my claims that (1) political equality may be a fundamental or general interest across a wide range of possible lives and that (2) decent hierarchies do not offer the long-term security required to ensure the substantive protection and realization of basic liberties.

Now, in response to this objection, I must argue that both Cohen and Beitz's definition of collective self-determination is problematically ambiguous. What does it mean for a hierarchy to be self-determining in a morally significant sense, and further, what does it mean for a regime to be informed by a conception of the common good? If the common good refers to a society's collective value system then, as Beitz has shown in his discussion on

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11 See p.251 in Griffin (2008)
women's human rights, such a conception of the common good, informed by cultural norms, may be seriously oppressive to women. Varying degrees of women's oppression may be consistent with this conception of a decent hierarchy. Moreover, neither Cohen nor Beitz clarify what it means to say that a regime is accountable to certain “processes” that take everyone's interests into account. It seems to me that Beitz is sneaking a conception of the political mechanism of accountability – a mechanism that is institutionally entrenched in democratic systems – into his account of decent hierarchies, without doing any of the theoretical or empirical work needed to explain and defend such a view. What does this accountability look like, how does it work, and how is it monitored?

One can imagine that such processes are quite weak, in which case it is unclear to what degree citizen’s interests are being duly considered. Conversely, one can imagine that such processes which hierarchical regimes are accountable to are quite demanding insofar as they are institutionally and constitutionally entrenched, and further, that such regimes are informed by a conception of the common good that reflects a serious commitment and concern for the well-being and self-determination of all individuals within a society. This more robust conception of collective self-determination is quite demanding and not that far, I would argue, from a minimally acceptable form of democracy. In terms of institutional capacity it is not clear that an effective model of collective self-determination is more feasible or that it requires fewer resources than maintaining a minimal democracy.

To put it differently, a weak version of collective self-determination may not sufficiently protect the self-determination and interests of individuals in a society. Conversely, a strong version of collective self-determination may be nearly as demanding - in terms of feasibility - as a democratic government, and thus not worth the moral cost of disenfranchising certain groups. In both cases, I suggest that a right to democracy is more likely to adequately respect the self-determination and protect the human rights of its individual members. However, an adequate assessment of the sufficiency of collective self-determination as an alternative to democracy depends on a more robust and clearly defined conception of a ‘decent hierarchy’, including a discussion on the empirical likelihood that such a regime can be instrumentally linked to protecting human rights as effectively as democracies can. Unfortunately, neither Beitz nor Cohen offers a detailed conception of collective self-determination. Further, no conception of a decent hierarchy, regardless of how demanding it may be, is consistent with Beitz's argument for the human

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12 Buchanan argues that, though Rawls's notion of a decent consultation hierarchy protects against religious and gendered persecution, it permits a large degree of room for religious and gendered discrimination (see Buchanan 2007). I believe that both Bietz and Cohen's accounts of a decent hierarchy are subject to the same criticism, because a significant level of discrimination is already inherent in a conception of systematically enforced political inequality.
right to nondiscrimination. As such, I maintain that we should revise Beitz's account of human rights so it includes the right to equal political participation.

To conclude, I have argued that Beitz's rejection of the human right to democracy is inconsistent with his defense of nondiscrimination rights. I have also claimed that equal political participation is instrumentally linked to the effective protection of human rights. This may be especially true for vulnerable and disenfranchised groups who lack access to equal political rights and to democratic accountability processes which would ensure that their interests are being tracked. As such, I have suggested that Beitz's account of human rights should be revised to include a right to democracy. The less demanding right to collective self-determination does not provide a sufficient alternative to democracy, both because there is insufficient empirical evidence linking it to the effective protection of human rights, and because it cannot provide the security needed for stable access to basic liberties over time. Democracy is preferable to a state that disenfranchises certain groups of people, and rejecting the right to equal democratic participation is incompatible with supporting a right to nondiscrimination. Thus, we should endorse the human right to democracy, as this is the best way to rectify the inconsistency in Beitz's account of human rights.

References
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