Globalizing Democracy
and Human Rights

CAROL C. GOULD
George Mason University
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Introduction

Between the Personal and the Global

This book attempts to bring philosophy to bear on a set of crucial practical problems: How can increasingly globalized political and economic institutions, as well as emerging transborder communities, be opened to democratic participation by those widely affected by their decisions? In view of the inequalities attendant on globalization and the corporate aggrandizement it entails, how can people’s rights to the fundamental conditions that make for an adequate standard of living be fulfilled? And given the increases we have seen in global interconnectedness, is there a way to retain cultural and social differentiation at the level of local communities, while protecting against violations of human rights in the name of the diversity of cultures?

In the face of these challenges, it is clear that new modes of thought are required. We need to clarify how far broader reaches of people can take part in the decisions of powerful global institutions and what the limits of such participation might be. Thus, in addition to long-standing demands for a greater say in decisions in local contexts, there are growing discussions about democratic participation across regions (as with the European Union), about instituting democratic accountability in the supranational bodies that play an important role in steering the course of economic globalization (e.g., the International Monetary Fund and the World Trade Organization), and about possible uses of the Internet and other technologies to facilitate democratic decision making. Clearly, too, the reach and meaning of human rights have to be more coherently and forcefully articulated, including the question of establishing a global rights structure to which people can appeal, even against decisions by their own governments. And it is evident that, beyond these questions
about making politics and institutions more responsive, new modes of feeling and intercultural understanding are now necessary. It seems that if we are to function in increasingly cosmopolitan ways, we also need to feel empathy and even solidarity with those at a distance. We would have to show that such feelings of concern can be extended more globally, instead of applying only to those close to us.

What sort of theoretical framework, then, can help to guide these globalization processes – economic, political, and technological, as well as cultural and personal – in more humanistic and justice-regarding ways? How should democracy and human rights be specifically conceived so as to facilitate increased cooperation in economic, ecological, and security matters? This book proposes a way to address these questions by focusing on the key issue of interpreting and interrelating democracy and human rights. It draws on the traditions of political philosophy and critical social theory, and on more recent feminist theorizing, to delineate a new perspective on these pressing contemporary issues. From this perspective, the sort of globalization that is required entails an expansion of democratic modes of decision making and of human rights themselves, not only internationally but also beneath the level of politics, so to speak, in social, economic, and even personal life. Also needed is an increased attention to differences, especially as concerns the diversity of cultural groups and their interaction. It is apparent, too, that democracy and human rights, viewed as global norms, cannot be interpreted simply along the conventional Western lines with which we have long been comfortable, if they are to win more universal assent and measure up to their universal aims.

In this work, I start from the principles introduced in my earlier book Rethinking Democracy. The view of democracy proposed there was rather distinctive among contemporary approaches in putting a conception of human rights at the core of democratic theory, and I develop this aspect further in what follows. Globalizing Democracy and Human Rights thus proposes that to guide current practice we need an enlarged conception of democracy taken within a strengthened framework of human rights. It suggests how the implementation of these norms demands changes in both personal relations and at a more global level, and not only an intensified realization of traditional political democracy operating with a limited set of rights protected by a national constitution.

In this view, democracy is seen to be based on reciprocal and empathic personal relations and extends through plural social and cultural contexts to a transnational and indeed global level. I call such a conception intersocietal democracy, to emphasize crossborder decision making and the need for transborder solidarity, along with new intercultural associations. In each of its contexts of application, such democratic decision making is conceived to be grounded in a strengthened conception of human rights, going beyond customarily emphasized civil and political ones to economic, social, and cultural rights, where these merit increased recognition in emerging international law. Moreover, when democratic decision making and human rights are considered from the perspective of a multiplicity of cultures, we will see that they require rights for minority groups, although these can be understood as based on a set of cultural human rights rather than as intrinsically group-based rights.

A philosophical approach of this sort can, I trust, play a helpful clarifying role in regard to social movements that seek to make globalization more people-centered and democratic, in place of the perpetuation of its current modes of functioning, which, despite the claims of its exponents, largely benefit powerful economic interests and wealthy nation-states at the expense of less-well-off groups and developing countries. It is apparent that globalization has shown positive dimensions as well, especially in the technological facilitation of increased communications worldwide, in the political and legal internationalization so far achieved between and across nation-states, and incipiently in new forms of economic cooperation across borders. Yet it has also proceeded in the absence of democratic forms of organization at transnational levels and with attention to a bare subset of human rights, without adequate regard for the economic and social well-being of large segments of the world’s population, perhaps especially women and children.

In this problematic situation, it is suggested that the proposed conception of democracy, based on justice, can apply in new ways to decision making in emerging transnational communities and organizations. Questions of the scope of such decision making – in particular, who has a right to participate in which decisions – play an important role in this work. Clearly, too, by globalizing democracy, I mean more than extending current forms of rather emaciated political democracy to other nation-states. Rather, the activity of globalizing calls for new intersocietal democratic relationships to develop along with the growth of transborder interdependence, not limited to those close to us or to political societies as such. I introduce the concept of democratic networks in this connection. The more cosmopolitan outlook required for such a globalization of democracy, in which we are attuned to the needs of those at a distance, is also articulated in what follows.
A key concern here is to investigate the nature of the deep relation between democracy and human rights, beyond the truism that democracy is one of the human rights or that "liberal democracies" are committed to both democratization and a set of civil and political rights. Instead of simply conceiving human rights as incorporated within a given country's constitution, I provide an argument supporting their expanded regional and global implementation and for the legitimate constraint that they can pose on democratic decision making. Interestingly, the potential impact on people's human rights will also be seen to provide an important criterion for deciding when democratic participation in global institutions is required. I also propose that the fulfillment of human rights, including access to means of subsistence, sets relevant goals for democratic societies and for their economic functioning. Finally, an exploration of the complex dialectical relations between democracy and human rights confirms the idea that democratic participation provides one of the main ways in which people can protect their human rights, while conversely the protection of such rights is itself a condition for widespread democratic participation. I consider some of the problematic philosophical issues raised by the interrelation of these norms.

In this work, as in Rethinking Democracy, I draw on what I have named social ontology, as a theory of the nature of social reality. Specifically, this approach gives priority to a conception of human freedom and to socially understood individuals-in-relations as the basis for the extension of democratic decision making to all contexts of common activity, whether political, economic, or social. Human rights have a fundamental place here, inasmuch as they reflect the basic claims people can validly make on each other for the conditions that make each one's freedom achievable. Thus, although this work stresses the centrality of democratic and cooperative forms of decision making, it does not see this as the genesis of human rights and of justice themselves, norms that are, rather, at its foundation. In addition, feminist approaches to the idea of care and empathy as important values, to women's equal rights and the corollary critique of domination, and to the idea of embodiment importantly suggest ways to personalize and, in this sense, to transform both democratic politics and human rights doctrine, and these possibilities are developed here. The proposed theoretical basis is also seen to have substantial implications for some issues in applied ethics, including democratic management in firms, the potential uses of the Internet for democratic participation, and current matters of international concern, including the analysis of terrorism and the response to it.

The approach in this book thus aims to hold together and indeed to integrate certain strains in political theory that have most often been developed separately — for example, justice and care, or again, individual freedom and extensive social cooperation. It does so from the standpoint of a rather systematic political philosophy, in the conviction that such theorizing is necessary, and indeed beneficial, if we are to make our way through unjust social practices. In this respect, this approach contrasts with efforts to devise purely "political," or "consensual," approaches to political principles, which propose minimalist approaches to such principles as a way of gaining widespread agreement about norms. Yet the social ontology at work here is evidently not "metaphysical" either, in that it avoids appeal to religious or natural foundations and is anti-essentialist in its rejection of the older idea of a fixed human nature. Although this view grounds political norms in human agency and interaction, it sees these latter as marked by change and sociocultural differentiation, and as transforming themselves historically. Furthermore, such an approach leaves room for multiple (and sometimes conflicting) values in political philosophy, while aiming for a degree of coherence in the overall account. Yet, as understood here, philosophical approaches have to be closely linked with social critique and developed with an eye to the emerging possibilities of practical change.

In several ways, then, this book goes against the grain of much current political theorizing. But because its methodology is dialectical, it attempts to retain the strengths of the prevailing views. This method involves beginning from a critical consideration of leading approaches to key concepts for politics and then attempting to preserve crucial insights of these alternative approaches, while avoiding their defects, within a new and consistent synthesis. This way of proceeding also draws on both continental and Anglo-American approaches in philosophy without endorsing one at the expense of the other, while facilitating further revision from non-Western perspectives. Because of this synthetic character, the framework should be judged, I think, not only in terms of the effectiveness of the individual arguments given but also by the degree to which it succeeds in providing an original, coherent, and illuminating approach to the substantial range of issues it addresses.

The structure of the work is as follows: Part I presents much of the theoretical basis for the process of extending democracy and human rights, to be elaborated in novel ways in subsequent chapters. (Important elements of this theory are also developed in Chapters 3, 5, 8, and 9 as well as implicitly throughout the work.) Chapter 1 addresses rather
systematically some of the hard normative issues concerning the concepts of democracy, human rights, and care. The chapter begins by taking up three main models, or "ideal types," of the (sometimes conflictual) relation between democracy and justice, as exemplified to various degrees in the well-known and highly developed approaches of John Rawls, Robert Dahl, and Jürgen Habermas. I offer a critique of procedural and discursive approaches to democracy and justice, while appreciating their emphasis on deliberation, and then go on to argue that an alternative sense of democracy, grounded on a conception of justice as equal positive freedom, is better able to take account of the centrality and, indeed, the priority, of human rights. I also introduce other features of this theoretical framework that refine it in various ways — specifically, the ideas of reciprocity, empathy, and attention to differences.

Chapter 2 examines how human rights themselves can be regarded in more pluralistic ways, given the diversity of cultures and the treatment of women within them. A conception of universality is introduced that differs from the abstract one normally used to discuss human rights; I call this alternative "concrete universality." I also discuss some of the difficulties that attend the determinate lists of human functioning that have been proposed — by, for example, Martha Nussbaum — and attempt to chart a path between such determinateness, on the one hand, and cultural relativism, on the other. This requires a new and more social account of value creation and brings into play considerations of empathy and solidarity.

Part II, "Democracy and Rights, Personalized and Pluralized," addresses the important issues of extending these basic conceptions to interpersonal contexts beneath and beyond the political and of interpreting them in more diversified ways than is usual. Thus, Chapter 3 begins by taking up a central conception that has emerged mainly from feminist theory as it pertains to politics — namely, the idea of embodiment — and I situate the approach adopted here in relation to alternative interpretations of the role of the body in politics. I focus especially on the concept of need and the function of meeting differentiated needs as being among the aims of political and economic cooperation. This chapter, along with others in this part, pursues the connection, introduced earlier, of politics to reciprocal and empathic modes of personal interaction, through which differences between individuals and groups can be adequately recognized and effectively taken into account in the public domain.

Although it is by now commonplace to criticize traditional liberal democracy for its abstract individualism, in which differences other than those of political opinion are ignored or overridden and assigned to the private sphere, the alternative approach that would take differences seriously requires further development. Some basic questions arise here: What differences should be recognized, and why these rather than others? Which differences should be ignored, and which would it be pernicious to recognize? Does the emphasis on the recognition and representation of differences violate equal rights as a norm of justice? Clearly, in addition to recognizing the diversity of existing social and political communities — along the lines of individual and group differences, including sex, race, ethnicity, and so forth — we need to extend democratic theory to the variety of such communities worldwide.

Part II goes on to address these issues by, in the first instance, analyzing the conceptual relations between the understanding of race and cultural identity, in which a social constructivist approach plays a prominent role, and between the critique of racism and the normative requirement for democracy. I then proceed to delineate a model of cultural identity and intercultural democracy, in which certain group rights of minority cultures can be recognized, while seeing them as derived from individual human rights to cultural self-development. Here, I rely on a social-ontological conception of groups as constituted entities. I lay out alternative relations that the public sphere can take to the cultures within it, and I also briefly consider the interpretation of the concept of a nation in this connection.

The issue of the pluralization and personalization of rights is pursued further in Chapter 6, the final chapter of this part, on women's human rights. In personal terms, taking human rights to apply to the private sphere and generally to the concerns of women, as recent feminist theory has suggested, leads to a reconceptualization of them in several important respects. In this context, I also propose that such a reformulation reveals how human rights are based on relations of care and concern for others, extending to those at a distance, as much as they are on more conventional considerations of justice.

In Part III the book turns to the crucial topic of globalizing democracy and puts the earlier theoretical discussion of democracy and human rights, conceived now in more pluralistic ways, into contemporary applied contexts of decision making in regional, multilateral, and global institutions. In fact, readers who are strongly interested in questions of relating democracy and human rights to the conditions of globalization may want
to read this part first. In Chapter 7, I begin with a descriptive characterization of economic and political globalization and with the correlate emergence of supranational and multilateral bodies such as the International Monetary Fund (IMF) and the World Trade Organization (WTO), and I discuss the problem of the lack of democratic participation in the workings of these bodies. The various models of global democracy advanced by David Held and several other contemporary political theorists are then categorized and evaluated, followed by an analysis of various possible criteria that can be used to demarcate the proper scope of a democratic community. This analysis provides the basis for discussing the increased role—and modalities—of transnational and cross-border decision making, the place for fully global democratic communities, and the difficult issue of ways to democratize the supranational bodies that so affect contemporary economic and political globalization.

Such processes of globalization are increasingly recognized to require a normative framework of human rights, and we see the beginnings of what has been called a "global human rights regime." As is already the case in Europe, citizens worldwide would be able to appeal to regional and international rights bodies for protection of their human rights (even of their economic, social, and cultural rights) against actions of their own nation-states. This poses for us the interesting and difficult problem of possible constraint by this rights regime not only on sovereignty but also on democratic decision making at national and local levels. The legitimacy of this constraint, and the issue of the compatibility of such an extensive human rights regime with decision making within democratic communities, is the topic of analysis in Chapter 8. It is suggested there that the approach put forward in earlier chapters—particularly concerning the philosophical relation between the concepts of democracy and of human rights, and the more substantive model of democracy used in this work—helps to resolve the question of this compatibility in the affirmative.

In light of these considerations, I turn in Chapter 9 to the project of democratizing globalization and approach the democratic deficit in multilateral institutions such as the WTO and the IMF in relation to what I call the "justice deficit," or the discrepancy in the realization of economic and social human rights in different societies. I consider some of the proposals for increasing democratic input into decisions by such organizations as well as in the new cross-border contexts. I also take up recent pragmatic proposals, along with the territorially based and functional approaches to such democratization considered in Chapter 7, the first chapter of this part. A closer analysis and interpretation of the idea of being importantly affected by decisions is advanced as a supplement to the idea that those engaged in common projects or networks of interdependence should have opportunities to provide input into these more global decisions. The chapter goes on to consider several of the essential and complex interrelations between human rights, particularly the economic and social ones, and such democratic decision making.

Part IV addresses three issues in applied ethics that can helpfully be approached using the framework introduced in the earlier sections; the discussion of these current applications also helps to concretize it in various ways. In Chapter 10, I take up the issue of democratic management in firms and show how it is implied both by the normative requirement to extend democratic decision making to economic life, as proposed earlier in the book, and by the dominant approach in current business ethics, namely, stakeholder theory. This latter approach holds that managers ought to take into account not only the interests of stockholders but also the interests of all those groups who are affected by and affect the corporation, including employees, customers, suppliers, the local community, and so on. I examine the stakeholder criterion of "those affected" by corporate decisions and consider the normative justifications advanced for this approach, as for the older view that calls for workplace participation. On this basis, I attempt to specify the sense in which stakeholder theory requires some form of participative, or what I call democratic, management, and to consider which stakeholders in fact have a right to such participation.

Chapter 11, on democratic networks, addresses the question of the degree to which, and the ways in which, democratic decision making can be enhanced by the Net (or the global information infrastructure). Keeping in view the normative principles for computer networking introduced in my earlier work The Information Web, I consider the increasing rate of globalization in the scope and uses of information and communication technologies and their role in facilitating transnational communities of certain sorts, and I ask what new issues have to be taken into account in developing democratic uses of these media. The pronounced "digital divide," along with "cyberimperialism," necessarily qualifies our optimism about the power of information networks to facilitate such cyberdemocracy. I introduce a distinction among three types of online communities and suggest that the Net is especially well suited to expanding the participation of crossborder or regional groups in political decisions.

Finally, I turn to a central issue in current international ethics—namely, the normative understanding of terrorism and appropriate responses to
it — and consider this difficult issue from the standpoint of the book’s earlier account of empathy and its interpretation of democracy. After briefly discussing the definition of terrorism, I take as my focus certain recent terrorist acts directed against noncombatants or civilians. Given that these acts manifest not only injustice and the violation of human rights, but also a wholesale lack of human fellow feeling, I consider how the concept of empathy as developed in feminist ethical theory can further illuminate this sort of case. In this connection, I make use of Hannah Arendt’s account of thinking and judging — and specifically, the role of imaginatively presenting to oneself the situation and perspective of the other — and suggest that inasmuch as they do not identify with the common human needs of their victims, such terrorists cannot properly be understood as altruists, as is implied by some theories of terrorism. I go on to suggest that empathy and transborder solidarity can also play a role in responding to terrorism, by helping us to understand and address the conditions that may contribute to its emergence. Finally, opportunities for democratic participation can be seen to provide important means for effectively addressing these conditions, and the book closes with a consideration of the import of democracy in this very contemporary context.

By way of conclusion, we can see that the “between” in the title of this introduction — “Between the Personal and the Global” — is not intended to demarcate a delimited region between the two extremes in which democracy and human rights are rightly bounded. Rather, the “between” is meant in an active sense, in which it includes both extremes and connotes a going back and forth between the various levels of the personal, the plural, and the global. It suggests that if we are to succeed in re-envisioning democracy at national or more global levels, we need to focus on personal relations of reciprocity, care, and empathy, while, conversely, these latter are fostered only by a social and political environment — within a recognized human rights framework — organized inclusively and cooperatively.
I want to begin by considering some hard questions in the theory of democracy that center on this issue: When is it legitimate to constrain democratic decision making in the interest of justice? If democracy is a central value in political and social life, what can justify limiting or overriding the decisions arrived at by the democratic process? Wouldn’t any constraint undercut the very essence of democracy? On the other hand, justice is also a central value for politics, economics, and society. Can our commitment to democratic process allow for decisions or laws democratically arrived at that violate the requirements of justice? Where these two values conflict, what is the basis for judgment as to which will prevail? Even if we agree that in certain cases democracy should be constrained in the interest of justice, who has the right or the authority to determine this? Worse yet, if democracy is itself understood as that procedure that most fully realizes the principle of justice (by recognizing equal rights of participation in decision making), how can it in turn need to be constrained by the requirements of justice? In short, how can democracy as a just procedure itself violate justice?

Liberal theorists, most notably John Rawls and Robert Dahl, have discussed these issues principally in the context of political democracy. The primary constraint on democratic decision making has typically been seen as a constitutional framework that sets the boundaries of legitimacy for democratic decisions by protecting the rights or basic liberties of individuals and by specifying, limiting, and balancing the powers of government. Even in this political context, however, the issue of legitimate constraint on democratic decisions is not settled, and it raises significant conceptual questions. It becomes still more problematic if democracy is
taken to extend to social and economic life (as I have previously argued it should be¹). For in these contexts, there is only an informal structure of decision making, not defined by the making of laws and usually not governed by a formal constitution. Moreover, norms of economic and social justice that could possibly serve to limit the scope of democratic decisions in these areas are not usually the subject of general agreement in the way in which the norms of political and legal justice more often are. Therefore, what may be in contention is not whether the demands of social justice should override democratic process, but rather what exactly the demands of social justice are.

In contemporary political theory, we can observe that there have been two relatively separate conversations: one about justice and one about democracy. On the one hand, there has been an extended philosophical discussion about theories of justice that makes passing reference to democracy and its place within such theories. On the other hand, there has been a major, renewed interest in democratic theory, but often without explicit reflection on the relation of democracy to justice.² There has, of course, been recognition of the relation between these two concepts in traditional theories of political democracy and in their contemporary versions. Thus, the protection of individual rights as a requirement of justice and the protection of minority rights against the potential injustices of majority rule are seen to be essential constraints on democratic decision making, constraints embodied in a constitutional framework and in the process of judicial review. Likewise, it is recognized that democratic procedures may evenuate in unjust laws despite these constitutional protections, because of the limitations of human knowledge and judgments and because of conflicts of interest between majorities and minorities. Nonetheless, it is often argued that there is an obligation to obey even unjust laws if they are duly instituted, in the interest of preserving social stability and out of respect for the abiding institutions of democracy.

Another conceptual difficulty or hard question arises here: While different theories of justice have grounded individual liberties and rights in various ways, it has remained less than clear whether the introduction of constitutional guarantees by a democratic or consensual procedure is what legitimizes these rights, in which case they would be grounded in the value of democracy; or whether these rights have a normative claim that is independent of, or external to, such procedures. That is, are such rights constituted as rights by their democratic or consensual recognition, or is the imperative to institute them based on their prior and autonomous status as rights? In other terms, are such rights procedural or substantive? This question is further complicated by the fact that several theories of justice have themselves framed the principles of justice in terms of some consensus (e.g., Rawls, Habermas), which may seem to put these principles themselves in the context of a quasi-democratic decision procedure. If that is the case, then rights entailed by or derived from these principles of justice might themselves ultimately be social constructs internal to, or constituted by, a democratic or quasi-democratic process and thus not independent of such procedures. It would not be clear, then, why the results of one democratic procedure would have the normative authority to constrain another.

This question, like the previous one, is what I have characterized as a hard question – namely, one that presents a conceptual bind or else a conflict between two equally justified values, a conflict that appears to be difficult or impossible to resolve. In this work, where I am concerned to analyze the relation between democracy and human rights, it is especially important to consider how democratic decision making is related to a framework of rights, not only as a set of rights pertaining to citizens within a given state but also to human rights more generally. In the second part of this chapter, I delineate a view that gives these rights a fundamental role, and indeed a stronger one, I think, than in the alternative conceptions I consider in the first part. I also analyze their basis in action and reciprocal modes of social interaction, and suggest an interpretation of rights that takes differences seriously.

The relation between justice and democracy remains deeply problematic and needs greater attention than it has thus far received. That is not to say that it has not been discussed at all. In fact, there are significant approaches to this question from the one side and the other, especially by Rawls from the standpoint of his theory of justice and by Dahl from the standpoint of his elaboration of his democratic theory. There is also an interesting perspective on this question in the work of Habermas in the development of his theory of communicative action, as well as in his more recent writing on law and democracy, and in the work of Joshua Cohen, Iris Young, and others. Although I discuss some of these views specifically, I analyze the theoretical alternatives principally in terms of three ideal types, which these views exemplify in varying degrees.

² There are of course exceptions – for example, the book by Ian Shapiro, Democratic Justice (New Haven, CT: Yale University Press, 1999).
Concerning the relation between the norms of democracy and justice, then, some theorists (1) take the requirement for democratic decision making to follow from a conception of justice, that is, as realizing one of its basic desiderata. Others, conversely, (2) see justice as required for the sake of democracy, namely, as a set of rights necessary for the protection and viability of democratic processes. Still others (3) see the value of democracy instrumentally as the best way to achieve just outcomes, where such outcomes are understood either as (a) in conformity with standards of justice independently defined or as (b) whatever is produced by some ideal democratic or consensual procedure itself. In the latter case, I propose, democracy and justice are assimilated to each other.

In what follows, I review these theoretical alternatives as background for the articulation of my own argument concerning the relation of justice and democracy. This permits a response to the hard question concerning the respects in which the demands of justice, including, in my view, human rights themselves, can legitimately delimit democratic decision making. Hopefully it also resolves the apparent paradox in which democracy as a requirement of justice would need to be constrained in the interests of justice. Within this framework, I go on to consider the second hard question, namely, what legitimates the constitutional protection of rights and therefore the constraints on democratic processes if the authority of the constitution itself derives from a democratic process of adoption. This is what I call the “constitutional circle.” Here, too, my approach sees the rights that constrain democratic processes as including not only civil and political rights within a nation-state but also the more general set of human rights that extend beyond borders. This aspect of my view, introduced here, is developed more fully in later chapters of this book.

Alternative Conceptions of the Relation of Justice and Democracy

As suggested earlier, theoretical formulations of the relation of justice and democracy can be divided into three main views. The first sees democracy as required by justice. In such an account, justice is taken to be the prior value from which follow democratic rights of participation in political processes or self-governance. Justice is understood here as entailing either equal liberty or equal consideration of interests. Equal liberty can be defined as freedom of choice protected against external interference (negative freedom) or, again, as the equal freedom of self-development (equal positive freedom). On these views, equal liberty is seen to entail certain basic rights of self-determination or self-rule. Thus the legitimation of democracy is that it is required as the expression of the equal freedom of individuals, which constitutes an essential part of the norm of justice. Rawls’s early discussion of his first principle of justice in A Theory of Justice— that is, the principle of equal liberty— suggests an account of this sort, insofar as it requires the right to vote and to stand for elective office.3 Dahl, in one formulation, also proposes grounding democracy in the prior value of equal personal autonomy and the equal consideration of interests.4

The second theoretical approach, by contrast, takes democracy to be the prior or basic value and sees civil liberties and equal rights as necessary for the preservation and viability of democracy. On such a view, even the requirements of social and economic justice are seen as means for preserving or enhancing democracy. In this type of approach, the unalienable and primary right is that of democratic self-governance itself. Dahl most often seems to favor this sort of position. Thus he speaks of “fundamental political rights as comprising all the rights necessary to the democratic process.”5 Or again he writes,

What interest, then, can be justifiably claimed to be inviolable by the democratic process, or, for that matter, any other process for making collective decisions? It seems to me highly reasonable to argue that no interest should be inviolable beyond those integral or essential to the democratic process.6

The third conception of the relation between justice and democracy sees democracy as the best means for arriving at just outcomes in decision making or legislation. Thus democracy is legitimated instrumentally in this view. In contrast to the first case, where equal liberty requires equal opportunities to participate in decision making independent of the outcome of the decisions, here it is the fact that democracy concedes to just legislation or to just outcomes of decision making that recommends it. Rawls presents such a view in arguing that the institutions of a constitutional democracy satisfy the principles of justice and they do so because “[i]deally, a just constitution would be a just procedure arranged to insure a just outcome.”7 Iris Young has given a different version of this view in

6 Dahl, Democracy and Its Critics, 182.
7 Rawls, A Theory of Justice, 197.
suggesting that political democracy modified by procedures of group representation offers the best prospect for arriving at just outcomes, defined in terms of social and economic justice.  

Within this instrumentalist view, there are two readings: On the first, the criterion for the justness of the outcomes of democratic decision making is not merely the appropriateness of the procedure itself, because even with properly democratic procedures, unjust outcomes are possible. But this means that the standard of justice is independent of the procedure. Rawls's conception of constitutional democracy in A Theory of Justice is of this sort. Thus he writes,  

Clearly any feasible political procedure may yield an unjust outcome. In fact, there is no scheme of procedural political rules that guarantees that unjust legislation will not be enacted. In the case of a constitutional regime, or indeed of any political form, the ideal of perfect procedural justice cannot be realized. The best attainable scheme is one of imperfect procedural justice.  

The second reading holds that an outcome is just if it is produced by some ideal democratic decision procedure. That is, there is no appeal to any independent criterion of justice beyond what the ideal democratic procedure would yield. Iris Young has written along these lines:  

A theory of communicative democracy thus claims a strong connection between democratic processes and just outcomes. Because there is no theoretical or socially transcendent ground for claims about justice, just norms and policies are simply those that would be arrived at by members of a polity who freely communicate with one another with the aim of reaching an understanding.  

Along somewhat similar lines, Joshua Cohen has introduced a conception of democracy as an ideal deliberative procedure that legitimizes outcomes, but he does not define outcomes in terms of their justness.  

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10 Young, "Justice and Communicative Democracy," 139.  
12 In his 1996 article, Cohen argues that deliberative democracy requires the "liberties of the moderns"—for example, religious liberty and free expression—as well as the participatory "liberties of the ancients" as conditions for its requirement of citizens being able to give reasons to each other for their collective choices. This view gives central place to democracy itself or to political autonomy as the basis for rights and thus comes closer to the second model of the relation of justice and democracy discussed earlier. See Joshua Cohen, "Procedure and Substance in Deliberative Democracy," 55–109.  
14 Ibid., 1–6.
to each other, and justice would lose its critical force against democratic decisions that we might want to say violate it.

This also holds for Rawls on a certain interpretation. Consider the following argument: According to Rawls, imperfect procedural justice presupposes an independent criterion of justice that a democratic process may fail to meet so that it is possible to arrive at an unjust outcome by democratic procedures. However, this independent criterion, namely, the principles of justice, is itself the outcome of rational consensus or, as subsequently conceived, an overlapping consensus (or again, a "reasonable overlapping consensus"). These principles are then instituted as political constraints by a founding constitution. Although this consensus is not simply a de facto one and is distinguished from a mere "modus vivendi," it nonetheless may suggest that the principles of justice themselves are constituted by a quasi-democratic procedure that gives them their authority and, in Rawls's constructive sense, their objectivity. On this interpretation, then, what was supposed to be an independent criterion distinct from the democratic process that it constrains would seem to derive its own authority from a sort of democratic process.

On the other hand, the original procedure, as Rawls describes it, presupposes that the individuals in the original position are free and equal (or, in a more qualified later version, that they conceive of themselves as free and equal) and thus, in effect, that they share an equal right to participate in the setting up of the principles, as well as an equal rationality. Even if, as Rawls originally put it, a single person could reason to the principles of justice, this would counterfactually entail that any one or more of such persons would reach the same agreement. The principles themselves therefore presuppose a procedure that embodies the very same basic liberties and rights that the principles then come to express. On such a reading, the argument on the independent criterion of justice would beg the question, inasmuch as it presupposes what it sets out to establish. Although this is not a new insight about what might be called Rawls's circle, in the particular case here it suggests that the distinction seems to vanish between a substantive external criterion of justice and a democratic process or procedure that may fail to meet it. If so, we have a situation in which the principles of justice, which are supposed to be independent of the democratic process that they constrain, derive their own authority from a quasi-democratic process of consensus formation; at the same time, the authority of the quasi-democratic process is based on a tacit appeal to the very same principles of justice that emerge from it. To the degree that this in fact characterizes their arguments, both Rawls and Habermas seem to hover between a substantive justification of procedure and a procedural justification of substance.

If, instead, the independent criterion of justice tacitly appealed to in the case of imperfect procedural justice were understood as itself established by some other legitimating procedure, then we would have the constraint on one process—legislative democracy—by another prior and privileged process—the consensual formation of the principles of justice. These principles are given political authority by a founding convention that embodies them in the constitution. This constitution sets out both the forms of legislative democracy and the constraints on unjust decisions arrived at by means of such democracy; and in Rawls's early model, which closely follows the American political structure, it also introduces the process of judicial review, which is authorized to make judgments about the authority of the democratic decisions in terms of the principles of justice articulated in the constitution. In short, the independence of the criterion of justice would then not be the independence of substance over procedure but rather would be the priority of one procedure over another; namely, the procedure of consensus formation of the principles of justice over the subsequent legislative procedures of political democracy. Although this seems intuitively acceptable in the historical sense in which a constitution is taken to have priority over the outcomes of the democratic political process operating within it, such acceptance would seem to beg the question of what gives greater authority to one procedure over the other; namely, the constitutional over the legislative. That it has such authority is a matter of historical and political fact, but that is not itself a normative argument as to whether it ought to have such authority.

Yet Rawls indicates that he has provided such a normative argument in his account of reasonable and overlapping consensus and in the content of this consensus, as agreed-upon principles of justice. The normative force of Rawls's argument in his later work seems to depend in great part on the notion of reasonableness. This reasonableness falls short of the normative force of claims to truth, cognitive or moral. But not only does it suffice as a political norm for Rawls, but it is also the most that a political norm should attain to in a pluralist society where mutually exclusive comprehensive doctrines, if pursued to their limit, would lead to political strife and instability. Thus far, then, this is a norm of a pragmatic

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sort, and in this sense it sets the limits to what the normative content of the principles of justice could reasonably be. But Rawls has sometimes claimed more for it than this. For example, he cites such apparently moral claims as that slavery is unjust or tyranny is unjust as “moral facts” from which general principles of justice can be constructed. But it is more than a little puzzling as to what their status is, or what the normative force is of calling such cases of injustice “facts.” It seems to me that something more needs to be said about this. Furthermore, it certainly doesn’t seem to be a procedural view about justice to take it to be a conception reasonably constructed from such facts.

Beyond this, Rawls does make the claim that the reasonable overlapping consensus is based on substantive, in the sense of comprehensive, views, and one may think that the consensus is therefore not procedural but substantive in content. Rawls sometimes seems to say just that, namely, that “the political conception is affirmed as a moral conception and citizens are ready to act from it on moral grounds.” But in Rawls’s account, these may be, and indeed usually are, different and even mutually exclusive moral grounds. This is a somewhat peculiar appeal to substance over procedure, however, for if the alternative comprehensive views are incompatible with each other, as Rawls agrees they may well be, then as far as substantive grounds go, they cancel each other out and what remains is the consensual agreement on liberal principles of justice. These principles seem to constitute a second-level sort of political substance, a set of values endorsed by “public reason,” which is at the very least compatible with the alternative comprehensive doctrines. This “secondary substance,” if one may borrow the Aristotelian usage, then has a strange mode of existence, somewhere between the full-blown substance of comprehensive doctrines – moral, metaphysical, or religious – and the more shadowy status of merely procedural justice.

Robert Dahl, in his Democracy and Its Critics, is quite happy to reject the distinction between substantive rights and interests, on the one hand, and “merely” procedural democratic processes, on the other. In considering “the possibility that the democratic process may impair important substantive rights or other requirements of justice,” he argues that “any alternative to a perfect or imperfect democratic process for making collective decisions will require some other process for making collective decisions... What began as substance versus process turns out to be process versus process.” To the question of whether there are any inviolable substantive rights or interests that should be protected by constraints on the democratic process, he says in effect that only those rights or interests that are integral to or necessary for the democratic process itself are inviolable. But they are inviolable only because were they to be violated the process would not be democratic. Thus he writes, It seems to me highly reasonable to argue that no interests should be inviolable beyond those integral or essential to the democratic process. A democratic people would not invade this extensive domain except by mistake and such a people might also choose to create institutional safeguards designed to keep mistakes from occurring.

In short, Dahl argues that unjust outcomes of democratic process either are failures of democracy, in which case they are not the outcomes of democratic process at all, or else they are “mistakes.” The latter should not be protected against by any external constraints (e.g., constitutional or judicial protections – what he calls “quasi-guardianship”) but rather by “improving the operation of the democratic process: to make it more truly democratic.” But this might suggest to us a magical disappearing act, in which the problem of the conflict between democracy and justice seems to disappear with the wave of a wand. On such a reading, there is no conflict because if it is not just, it is not democratic by definition, in that the basic rights and liberties are simply those essential to or necessary for democracy. Democracy cannot violate them and still be democracy. To complicate matters further, there are “mistakes” in democratic decision making. In that case, it is still democracy in spite of an unjust outcome, but improvement is necessary so that the mistakes will not happen next time. The thrust of Dahl’s argument here is that a democratic people will learn from its mistakes in the long run and will institute protections and improvements to safeguard the basic rights needed for democracy. He is thus highly optimistic about the prospects for the evolution of democracy as a self-correcting system.

It is clear that for Dahl, democracy as the right to self-governance is the fundamental value and that the only requirements of justice that can be held inviolable are those required by democracy itself. But even these cannot be protected by any means other than the democratic process.

17 Ibid., 168.
18 Ibid., 174.
19 Ibid., 176.
20 Ibid., 182.
Thus Dahl expands the concept of democracy to include not only the so-called formal or procedural requirements but also "all the general and specific rights—moral, legal, constitutional—that are necessary to it," as well as "all the resources and institutions necessary to it," presumably including social and economic conditions. Not only does the problem of the relation of justice to democracy dissolve because all these matters are assimilated to democracy, but also there is no way to protect any rights apart from the procedures of majoritarian democracy itself. This is indeed a design for radical democracy, dependent on the judgment and good will of majorities.

A similar problem emerges in some accounts of the relation between justice and democracy that are influenced by Habermas's model of communicative action and discursive ethics. I have already noted Iris Young's claim to the effect that justice is whatever an ideally democratic body decides after due discussion. She has argued that there is no independent criterion of justice apart from such a decision procedure, but in effect this would mean that there can be no appeal against the injustice of any decision, since "injustice" would remain undefined here. What we have in this case is what Rawls has called pure procedural justice. In her more recent book *Inclusion and Democracy*, Young analogously claims that: "[w]hat counts as a just result is what participants would arrive at under ideal conditions of inclusion, equality, reasonableness, and publicity."

At other points in that work, however, she suggests that justice can be defined in a more independent way in terms of "the institutional conditions for self-development and self-determination of a society's members."

In the more purely deliberative or procedural view that Young seems most inclined to, the justness of outcomes in a deliberative decision procedure derives in large part from the proper constitution of the *demos*—the body politic. To achieve such an adequately democratic body, she has proposed including in the political process a sort of compensatory representation of groups that have been previously discriminated against. Like Dahl, Young here appears to build the normative principles of justice—namely, the basic liberties and rights, as well as fair decision procedures—into both the character of the decision-making body and its deliberative or communicative procedure. And this presumptively guarantees that the outcomes are just. In effect, the justice in the consequent is already contained in the antecedent of this political proposition, so that the just outcome follows analytically, so to speak. But suppose one were to object to a particular decision of such an ideal democratic body that it is unjust. This would seem to be meaningless, inasmuch as there could be no appeal beyond the correctly constituted and functioning procedure.

We can generalize this difficulty, inasmuch as it seems to apply to Habermas's own earlier discourse theory, on a certain interpretation. As suggested, the preconditions for coming to an agreement about norms or generalizable interests by means of discourse or argumentation include the reciprocal recognition by the participants of their equal roles and of their equal freedom to enter into the discussion. But this again builds norms of justice into the very discursive activity that generates and validates the norms. If so, it would not be surprising that the norms of a communicative ethics or of justice that emerge from this procedure should be precisely the norms that characterize the procedure in the first place. On such a reading, what we have here would seem to be a circle.

Habermas's intention, at least in his earlier theory, was in fact to find some ground in human practices for the emergence of moral norms. Yet he does not want to presuppose what these norms themselves would be substantively but rather wants to consider what would motivate the process of arriving at some consensus on "generalizable interests" in order to coordinate actions. In earlier work, he had sought what he called "quasi-transcendental" grounds for various norms in characteristic modes of human action and interaction. Subsequently, his main focus has been on norms implicit in discursive or linguistic practices and in particular what he calls "communicative action," which is the domain in which moral norms emerge. The aim of this sort of action, according to Habermas, is that of reaching an understanding or coming to agreement about what ought to be done.

Although a certain ambiguity has been noted between the weaker sense of "understanding" as grammatical or linguistic comprehension of an utterance and a stronger sense of a common understanding that reaches agreement, Habermas's notion of communication or of "communicative

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21 Ibid., 175.
22 Ibid., 175.
24 Or again, "The theory says that justice is nothing other than what the members of an inclusive public of equal and reasonable citizens would agree to under these ideal circumstances" (33).
25 Ibid., 33.
26 Young discusses the circularity between justice and democracy in the deliberative view in her *Inclusion and Democracy*, 34–36, but she does not address the theoretical problem here directly.
can say that it nonetheless remains what I earlier characterized as quasi-
democratic, as was Rawls's procedure for reasoning to the principles of
justice, and this poses the various issues for us that I have presented.

Habermas's early approach looks to human action and interaction as
a basis for norms and therefore seems to appeal to something beyond
the mere procedure as its ground. However, the interaction turns out to
be understood as itself procedural, that is, in terms of discursive modes
of coming to agreement. Manifestations of reciprocity or of reciprocal
recognition are taken as forms of discourse or linguistic interaction. In
this context, the freedom and equality of the participants pertain only to
their dialogue roles and in this way are defined relative to the procedure,
and these individuals have no independently characterized status beyond
this that could provide a ground for rights. The implication for social
norms of such an exclusive emphasis on discursive practices is that the
whole domain of nondiscursive activity that is also norm-governed plays
no significant role in the understanding of freedom and equality or as a
basis for rights. Such nondiscursive activities, which may involve discourse
but are not themselves activities of discourse, include individual action
and joint action oriented to the realization of goals, such as at work;
expressive or creative activity, such as in the arts; scientific activities of
discovery and invention; as well as the range of caring relations among
family, friends, and citizens, and even across borders. Furthermore, the
requirement for rational argumentation as definitive of communicative
action in its norm-generating aspects seems a narrow account of such
communication and of rationality, one that excludes emotion from its
purview. Moreover, such an account raises serious questions about the
representation of the interests of those who are unable or unwilling to
measure up to this standard. It is at this point that Habermas's approach
seems most culturally relative.

I would also suggest that in its emphasis on agreement as the goal
of discourse and the arriving at generalizable interests, Habermas offers
to exclusively social an account of interests. This view does not leave
enough room for the recognition of individual differences in contexts
of social and political interaction and in the norms themselves. It seems
to regard individual difference primarily as an obstacle to be overcome
on the way to consensus rather than as something that is normatively
significant.

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66 In his 1996 essay, Joshua Cohen suggests that "even an ideal deliberative procedure
will not, in general, produce consensus." See "Procedure and Substance in Deliberative
Democracy," 414. For a critique of reliance on consensus, see Thomas Christiano, The

67 See the discussion in Chapter 9. A related point is made in Young, Inclusion and Democracy,
39.
In his more recent work on law and democracy, Habermas sharply distinguishes between the domain of morality, on the one hand, and that of law and democracy, on the other, discussing justice in connection with the first of these. He regards the principle of discourse as underlying both of them, such that both moral principles and democratic procedures can in a sense be regarded as specifications of that more general and more abstract "discourse-theoretic" perspective. The discourse principle is a so-called freestanding principle of "communicative reason" that lays out the requirement of "procedural rationality" or that "excludes the point of view from which norms of action can be impartially justified." Habermas states the principle as follows: "D: Just those action norms are valid to which all possibly affected persons could agree as participants in rational discourses." Although this still seems to have a democratic resonance, it is no longer possible to regard it as a democratic principle (which is instead one specification of it). Hence, any assimilation or interdefinition of justice and democracy is ruled out. Furthermore, Habermas now holds that moral principles, although they rightly can have an effect on the domain of politics, are not the foundation of the legal nor of the political, where the latter is also to be understood as legally constituted. On his view, law and politics, although susceptible of being organized normatively in terms of democracy and a set of rights, are taken to constitute a separate domain from that of morality.

The import for us primarily concerns Habermas's development of the conceptions of democracy and the fundamental civil liberties and political rights of citizens, which he refers to as human rights. Since rights, on his view, emerge in a domain of law rather than morality, they are not to be understood in the sense given to them by the traditions of natural law or natural rights. Human rights do not have a claim on us prior to the institution of such a legal domain. Instead, the classic rights of life, liberty, and property, as Habermas refers to them, are to be understood as coming into being along with the idea of popular sovereignty itself, but not simply as requirements for it. As he suggestively puts it, the ideas of personal autonomy and public autonomy are posited together and mutually presuppose each other.

In this conception, democracy arises as a procedure for a legally constituted political domain of citizens. According to Habermas, "the principle of democracy should establish a procedure of legitimate lawmaking. Specifically, the democratic principle states that only those statutes may claim legitimacy that can meet with the assent (Zustimmung) of all citizens in a discursive process of legislation that in turn has been legally constituted." It cannot be said to pertain to extralegal relations, in, say, economic or social life, nor does it even rightly characterize all of politics, which consists of administrative power as well. Extralegal social life, while not itself susceptible of democratic organization, contributes to a public sphere in which the multifarious associations of civil society can generate ideas and opinions that influence political representatives, as they do to a degree at present.

Thus, for Habermas, democracy itself arises when the discourse principle is given a legally institutionalized form, and this in turn can be seen as a "logical genesis of rights," as he puts it, where rights themselves arise as this sphere of law. He further explains that such rights result from applying the discourse principle to the general right to liberties -- a right constitutive of the legal form as such -- and ends by legally institutionalizing the conditions for a discursive exercise of political autonomy. Or again, "This system of rights must confer on one another if they want to legitimately regulate their interactions and life contexts by means of positive law." Note, then, that, for Habermas, private and public autonomy are brought into reciprocal relation within this domain of law.

But there remain some questions that we can ask about Habermas's newer approach. It is not clear whether the changes he has introduced eliminate the circularity described earlier that seems to lie at the heart of discursive proceduralism, or instead whether separating an abstract discourse principle from both morality and legality simply reduplicates it in both domains. Whereas, originally, conceptions of freedom and equality of participants, presumably already normative in some sense, are presupposed in the discursive genesis of norms for action, we find a similar presupposition in the spheres of law and democracy. The question is, what is the basis for attributing this freedom and equality to participants? Why, in turn, does it apply to all members? Habermas aims for a "subjectless," "postmetaphysical," and fully intersubjective justificatory point of view, and he eschews any natural foundation for rights, which would

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29 Ibid., 107.
presumably also bar appeals to the nature of human action itself. In that case, though, it is not yet clear what the basis is for the human rights that “must be presupposed.”

Habermas further indicates that these human rights extend to citizens or members of a polity, thereby contravening the original idea of “the rights of man.” Despite other criticisms we might want to make of this latter idea, the notion that human rights are claims that people can make on each other independent of their nation-state is lost in his account (although he would insist on certain moral claims that people can make in this more general social context). As we have seen, because of the relatively sharp separation that he makes between morality and legality, rights – including human rights – now distinguished from justice, can apply only in the domain of legality and institutions. It thus remains unclear on his view how human rights can be completely general and universal, which many have appealed to as the source of their strength. The implication, instead, is that their extension beyond given nation-states is based not in any universality that they entail but only through international agreements that would newly constitutionalize them on such a global level.

Moreover, these human rights remain narrowly defined in Habermas’s account. As noted, they center on rights of life, liberty, and property for citizens and extend to political rights of participation. But “basic rights to the provision of living conditions” are required only contingently, that is, “insofar as current circumstances make this necessary if citizens are to have equal opportunities to utilize” their basic civil rights.33 This would seem to leave the economic, social, and cultural rights in present declarations of human rights in a somewhat precarious theoretical position.

Habermas’s account of democracy is also problematic from my standpoint in its restriction in principle to only a part (although an important part) of the political domain; it is of necessity legally constituted. The sense in which democratic decision making can apply to institutions in social and economic life, as well as the sense in which democratic modes of decision can be informally applicable in our daily lives, is blocked in his account. Rather, his conception of democracy remains tied exclusively to the recognizable and familiar forms of legislation and political representation, although he proposes that these need to be more genuinely implemented and rendered fully legitimate, especially in regard to becoming more open to rational considerations. Finally, we can question whether democracy should be understood wholly procedurally as in his account, where it is taken as a specification of the more general procedural requirements of a discursive conception of communicative reason, or whether it needs to be given a more substantive interpretation as well. This question, along with the central ones concerning the relation of democracy to justice and to human rights, is considered in the next part of this chapter.

More generally, we have observed how, emphasizing the fact that democracy as the form of self-governance always involves discussion, deliberation, or communication among the participants in this self-governance, deliberative theorists of democracy have focused on the discursive element and have tended to downplay the element of joint decision making and of the self-governance that it enables. However, while free and equal participation in public discourse in an ideal model may well help to shape public opinion (although in practice public opinion is often shaped by other means), public opinion by itself does not govern. Since governance in a democracy is self-government by means of participation and representation in contexts of decision making, an important issue that remains to be addressed is how to make these forms themselves more fully democratic.

The Requirements of Justice and the Limitation of Democracy

Our review of the approaches to conceiving the relation of justice and democracy shows them to be, in the main, procedural. I have suggested that they do not provide an independent basis for the existence of human rights of individuals that a strong conception of justice would demand. In the remainder of this chapter and in other parts of this work, I want to argue for a conception of democracy that allows for a more secure basis for human rights than is provided by discourse theory, deliberative democracy, or Rawlsian theory. Furthermore, as will be evident, even though the conception of democracy here values deliberation, it sees it as part of a democratic process and not as norm-constituting nor as the source of justice, but rather as subject to human rights themselves. Later sections of the book, particularly Part III, which concerns the globalization of democracy, go on to consider some of the other complex interrelations between these ideas of democracy and human rights.

In the views analyzed in the first part of this chapter, then, rights are seen largely as being authorized by one or another procedure; or they are presupposed as necessary for discursive or democratic procedures, or

33 Ibid., 129.
by appeal to our particular moral or social intuitions. But if we grant that a democratic procedure, however justified, may still arrive at an unjust outcome, then there must be some independent criterion of justice, the appeal to which cannot be, circularly, to a democratic or quasi-democratic procedure in turn. Instead, it must be grounded in some substantive features of human practice or of human existence if it is to have the normative force required. This then proposes a quasi-fundamental approach to the grounding of rights, liberties, and entitlements, and this is what I have developed in my previous work. I have designated this approach social ontology. The reason I call it quasi-fundamentalist is that it is distinguished from traditional foundationalism, which appeal to some systematic metaphysical grounds and are essentialistic in their commitment to natural kinds. By contrast, a social ontology makes no appeal to a transcendental or transmaterial moral reality but rather is based on what I believe to be experientially or phenomenologically well-evidenced features of the action and interaction of human beings. Moreover, this is a regional ontology, which does not make claims about the nature of being or reality as such but rather addresses itself exclusively to the domain of individuals in their social relations. Furthermore, my suggestion is that every social and political theory has an ontological commitment of this sort, whether recognized or not.

The claim, then, is that rights involve the recognition of features of human action and interaction and that therefore an argument for or a justification of such rights can be made on these grounds. Thus it is not based simply on what people like us would agree to nor on an appeal to our moral intuitions. Such an approach does not, however, deny that procedures themselves are necessary and normatively justified in giving rights an institutional existence, as I discuss later in connection with the constitutional circle.

Here I want to bring in the normative framework that I developed in Rethinking Democracy insofar as it relates to the specific issues discussed in this chapter. This framework also serves as a basis for subsequent arguments in this book, which, however, will expand that construction in novel ways, particularly in integrating it conceptions of "concrete universality," care, empathy, and solidarity. As elaborated in the earlier work, the common root or the common foundation that normatively grounds the conceptions of both justice and democracy is freedom, understood as the criterial or distinguishing feature of human action. Freedom has a complex sense here: it is, on the one hand, a bare capacity for choice among alternatives; on the other, it is the exercise of this capacity individually or together with others in the realization of long-term projects and the development of abilities. In this sense, freedom is an activity of self-development or self-transformation as a process over time, and I interpret this as the characteristic mode of human agency or life activity.

Although it is necessarily the self-development of individuals, which I take to be the ontologically primary entities in social life, this transformative process both requires social interaction and is often expressed in common or joint activities oriented toward shared goals. Thus these individuals are to be understood ontologically as individuals-in-relations or as social individuals. In this view, the characteristic mode of being of these individuals, that is, their activity, essentially involves their relations with others. Individuals are who they are, or become who they are, through such social relations, and in this sense these relations can be said to constitute them as being who they are. However, this does not mean that individuals are wholly constituted by their relations. As agents, they choose and can also transform many of these relations, either individually or jointly with others, and they can be said to have a capacity for purposeful activity that is not a function of these relations. Furthermore, as concretely existing beings who are the bearers of their relational properties, they cannot be reduced to their relations, which, moreover, do not exist independently of the individuals who have them. In earlier work, I have suggested how such a social ontology avoids the defects of one-sided views that emphasize either agreements among externally related individuals or else holistic accounts of society as determinative of individuals within it. This approach thus attempts to integrate an account of free individuality with one that recognizes the central role of sociality in self-development and in the account of rights and democracy.

Central to this approach is the observation that self-transforming activity requires not only the making of choices but also the availability of the means or access to the conditions necessary for making these choices effective. Thus the freedom of individuals to develop, as what has been called positive freedom, requires access to the material and social conditions of such activity. Among the material conditions are means of subsistence and the means for carrying out the activities, and among the
equal right to participate in decision making concerning the common activities in which individuals are engaged. For engaging in such common activities involving shared goals is itself one of the main conditions for individuals’ self-development, the opportunity for which requires that they be self-determining in this activity. If, instead, an individual’s actions were determined by others in such contexts, it would not be an exercise of the agency that is required for self-transformation. However, since such common or joint activity necessarily involves acting with other individuals, the exercise of individuals’ agency in this context must take the form of codetermination of the activity, that is, rights to participate in decision making about it.

Although such democratic decision making characteristically involves procedures of majority vote, it need not be defined so narrowly but may encompass other forms of deliberation and decision and a range of procedures that allow for equal participation by those engaged in common activities. Such an open concept of democracy is particularly important in order for us to avoid a cultural bias restraining it to the most familiar Western forms of representative democracy.

One obvious alternative case here is consensus or near-consensus decision making, found in many traditional African communities and in indigenous populations in the Americas and elsewhere, as well as in resident movements today within larger liberal democracies. In these diverse cases, democracy is often direct and, although it sometimes involves representation, is neither electoral nor majoritarian. For example, among the Bugandans in Uganda, the Zulu in South Africa, and the Akans in Ghana, participation at lower levels may be combined with representatives at a council level, who consult with community members to solicit their views on the issues under discussion; these representatives then strive for consensus within the council on what is to be done, a consensus that often involves compromise by all concerned. Similarly, the autonomous communities characteristic of many indigenous peoples of the Americas, in which they exercise control over their own affairs, whether political, economic, or cultural, can exemplify democracy in the crucial sense of codetermination of joint activity. Such communities would need to adopt an inclusive understanding that grants full rights of participation to its members—an understanding that in some cases appears rooted in past indigenous practices. Among the examples offered

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36 For this argument, see Gould, Rethinking Democracy, especially 129–130.
38 For fuller development of this argument, see Gould, Rethinking Democracy, 60–71.
39 Equal rights are qualified as prima facie inasmuch as there are other principles that potentially conflict with them and may qualify them in certain ways. See Gould, Rethinking Democracy, 60, 153–155, 166–170, and 190–214.
of inclusive autonomous communities are the Aymara, with its ayllu system of government, developed before the Inca and Spanish conquests in what is presently Bolivia, and currently undergoing a resurgence;41 and the Haudenosaunee, or the Iroquois Confederacy, with its own democratic model and its Great Law of Peace, predating the period of colonization.42 On the grounds of this concept of democracy, it also follows that such autonomous communities have a right to be free from domination or control by outside communities or states. Needless to say, such inclusive autonomous communities are an ideal, probably nowhere fully realized in practice today; yet it must be granted that they are not necessarily more elusive than are fully representative liberal nation-states, which accord with the dominant Western model of democracy.

Alongside its openness to diverse cultural forms, then, the conception of democracy advanced here remains normatively quite demanding, in taking democracy to require equal rights of deliberation and participation and, optimally, equally effective rights rather than purely nominal ones.43 In addition, such a view of democracy does not imply that the particular procedures chosen are indifferent. Clearly, some procedures may be more suited to realizing the equal participative rights than others, in both familiar national contexts and the newer global ones. In Part III, I consider some of the transformations in the conception of democracy required for crossborder and global associations, and I analyze how to incorporate within it the idea of democratic input into decisions by people who may not be members of a given institution or political society (and thus may not have fully equal rights of participation) but who may be crucially affected by its decisions.

In the philosophical construction advanced here, we have seen that the principle of democracy is derived from the principle of justice, understood as prima facie equal rights to the conditions of self-development, where it is taken to apply to common or joint activities. This principle of justice is ultimately based on the primacy of freedom as a value and,

44 Specifically, on the equal freedom of each agent.44 Understood in this way, justice therefore has normative priority over the requirement of democracy. In this sense, justice may legitimately constrain the democratic process when it leads to outcomes that violate the equal freedom of individuals. It is clear, then, that this account falls under the first model of the relation of justice and democracy sketched earlier, namely, the model that takes democracy to be required by justice.

The particular theory of positive freedom and justice delineated here gives rise to a conception of certain rights that need to be recognized as human rights – that is, as rights that people possess simply by virtue of being human and, therefore, equally and universally. These are the valid claims, which all individuals make on all others, to the conditions necessary for freedom, understood as self-development or self-transformation. What perhaps needs to be made clear here is that this conception of rights does not reduce to some atomistic distribution of rights to individuals considered as isolates – a charge sometimes brought against rights conceptions in general.45 Human rights are always rights of individuals, based on their valid claims to conditions for their activity, but individuals bear these rights only in relation to other individuals and to social institutions. Right is in this sense an intrinsically relational concept. Furthermore, although these rights are in principle claims by each on all the others, yet since most of these rights cannot be satisfied by each human being acting separately, and since the conditions for the self-transformation of any individual are most often social ones that can be met only by a community or society, then it can be said that individuals hold these rights against society in general. Later in this work, I consider the question of the scope and implementation of these rights in the more applied contemporary contexts of globalization.

44 This suggests also that it is a mistake to separate freedom from equality in the justification of democracy, as Christians do, and to derive it from only one of these, specifically in his case "equal considerations of interests" and the related equality of resources. In fact, I would argue that his own account tactically appeals to a conception of freedom in his claim that a collective decision-making procedure is "what makes the pursuit of private aims in a just environment possible" (The Rule of the Many, 79). Likewise, his idea of equality of resources (including in politics) – in a way somewhat analogous to the conception of equal positive freedom as equal rights to the conditions of freedom that I have introduced – takes these resources "as tools, instruments, or means for pursuing our aims" (85).
45 See the discussion of this issue in Mary Ann Glendon, Rights Talk: The Impeachment of Political Discourse (New York: The Free Press, 1991), which is oriented primarily to the context of American discourse about rights.
One can distinguish among human rights between rights to the conditions that are minimally necessary for any human action whatever—these can be referred to as basic rights—and rights to those conditions that are required for the free and self-developing activity beyond this minimum; these we can call nonbasic rights. Thus, for example, life and liberty are basic rights, whereas high levels of education or training may be nonbasic, although they may well still be human rights. Human rights generally, as the expression of equal freedom, should not be violated by any democratic procedure, and serve to specify the constraints on democracy. We can say that they constitute rights against majorities in contrast to the majority rights inherent in democratic decision making.

It might appear from this that the authority of democratic decision making is so delimited by such constraints that it makes democracy a marginal thing indeed. For if the latitude of choice is so narrow because of the prescriptions set by human rights, it would seem that democratic decision procedures, properly exercised, would be primarily a ratification of what is normatively predetermined. Likewise, if democratic decisions are overturned by the courts to protect these rights when they are constitutionally guaranteed, then the democratic process would again seem to be an exercise in freedom of choice only when it is “correct.” Yet if democracy, as the right to participate in decision making, is required by justice and in fact constitutes one of the human rights, then it cannot be so reduced as to become trivial.

One might try to answer this claim, about the marginalization of democracy by constraints in the name of justice, in two ways. The response requires the introduction of the distinction between formal and substantive democracy. The first part of the argument might go something like this: Formal democracy—namely, the actual procedures of democratic decision making and the act of participation—remains unaffected when a particular outcome of this decision procedure is overridden by the courts in the interests of justice. For example, when the U.S. Supreme Court declares a piece of legislation unconstitutional, it does not thereby delimit Congress’s formal power to make laws. But it delimits those laws that are taken to be in violation of the Constitution. Formal democracy, then—for example, civil liberties and political rights—is not subject to constraint.

One may object to this that if many or most decisions came to be knocked down in this way, this formal freedom would tend to be a quite empty exercise. In answer to this objection, the counterargument might be that the exercise of democracy deserves to remain empty when its outcome is such that it violates the very rights and liberties for the sake of which democracy itself has been instituted. For if democracy is a requirement of justice, its outcomes cannot be permitted to undercut its own foundation.

But this second part of the argument now makes appeal to what one may call a conception of substantive democracy. This refers to the practice of democracy as an activity of self-development on the part of the participants in which agents reciprocally recognize each other’s freedom and equality in the process of making collective decisions. A democratic decision that violates these very conditions in effect is inconsistent with democracy itself in this sense and undermines it. For the function and justification of democracy as we have seen are that it serves freedom, understood as self-development. Hence, democracy cannot in principle undermine its own function with any normative justification. Therefore, the constraints that arise from the demands of justice do not delimit democracy in this substantive sense.

Between the danger of the marginalization of democracy by overzealous judicial constraints and the danger of democratic abuse of the freedom of decision making to violate the rights of certain individuals or groups, there is a fine line of good judgment, a balancing act, for which the principles of justice and constitutional protections of rights and liberties can only be a guide. For there is nothing either in the formal procedures of democracy or in the substantive constraints of a constitutional framework and judicial review that will guarantee that the outcomes of democratic practice will be just.

The Constitutional Circle

We can now consider how this analysis of the relation of justice and democracy bears on the second hard question raised at the outset, which I have called the constitutional circle. This concerns the justification of the constitutional guarantees of rights that delimit or constrain democratic decisions. The process by means of which these constitutional guarantees are to be instituted is some kind of constitutional convention or an equivalent decision procedure. Short of the authoritarian or dictatorial determination of these guarantees by fiat on the part of a ruler, the constitution-making decision must itself involve some democratic or consensual procedure. But if these rights are instituted to limit or to constrain any democratic decision that would violate them—that is, if these rights have normative priority over the democratic process

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The question arises as to whether there are also rights that limit the very democratic or consensual process that determines the constitutional guarantees in the first place. Wouldn't there then have to be a prior determination of the rights that delimit the initial democratic process of constitution making, in order to introduce constitutional guarantees of rights? In short, is there an infinite regress here?

Alternatively, isn't there a circularity involved in the establishment of constitutional guarantees of rights by means of a consensual or democratic procedure that in turn itself presupposes some of the very rights to be institutionalized? For the very idea of consensus implies the free and equal status of those who entered into the agreement, and it is this freedom and equality that give the consensus its authority. Without this free and equal agreement to accept as binding what is agreed upon, the consensus has no force and is merely verbal. Thus it would seem to presuppose the very rights that it would authorize.

There would indeed be a regress if it were supposed that the rights established by the agreement were constituted as rights only in the agreement and had no prior status, and therefore that there had to be a prior authorization by a preconstitutional convention of the rights that apply to the constitution-making decision process itself. It would be circular if the rights that were instituted by the constitutional convention were the same rights that authorize the process of constitution making. The regress ends and the circularity is avoided, however, if we take the democratic or consensual determination of constitutionally guaranteed rights as a recognition of those rights that are ingredient in human action and, more specifically here, as a recognition that it is these rights that are at the basis both of the authority of the democratic or consensual procedure that sets constitutional guarantees and of the democratic structures of self-governance that the constitution itself establishes. This is not simply a presupposition of rights that are presumed to have their basis in the constitution-making process itself. For here, the constitution (or the law) is understood as articulating and formalizing what is already recognized in social life (although it also has a role in advancing or helping to promulgate such recognition).

This then is an argument for the normative priority of these rights vis-à-vis the democracy that exercises and protects them. On this view, then, these rights as valid claims exist whether or not they are explicitly recognized; and they are recognized as rights prior to their institutionalization. It is this recognition that is brought to the consensual determination of these rights as constitutional. So, for example, in a society where slavery is legal, as in ancient Rome or in the American South prior to the Civil War, the rights of the slaves to be free and to be treated as equals existed whether or not such freedom and equality were fully recognized, and these certainly were recognized as rights by those who undertook to institutionalize them and to end slavery. The alternative view would be to argue that slaves had no rights of freedom and equality until these were institutionalized and that rights therefore are brought into being by some decision procedure.

Rights and Reciprocity

What I propose here is an account of rights and of the principle of justice based on a social-ontological characterization of human action and of human beings. I have suggested that the evidence for such a claim is experiential or phenomenological; that is, it presents itself to us in the structures of everyday action and social interaction. What reveals these rights, practically speaking, is the daily and recurrent recognition by individuals of others as being like themselves, namely, as agents with claims to the conditions for their self-developing or self-transformative activity. This recognition characteristically takes place in several ways: first, in the basic reciprocity in which individuals make claims on one another to be free from harm and from constraints on their actions; and in exchange grant this same recognition of negative freedom and equality to the others; or else expect a benefit in return for benefit done. This level of instrumental or tit-for-tat reciprocity acknowledges the right of the other by virtue of an assertion of the reciprocal validity of one's own claim; that is, in asserting one's own right, one acknowledges the validity of the other's claim as a right by virtue of reciprocally recognizing it as like one's own.

Beyond this minimal reciprocity, a more socialized recognition of the other as having rights develops in the context of shared activity with others in pursuit of commonly agreed-upon ends. Where there is social agency or cooperation required in joint activity oriented toward common goals, the reciprocity is one of mutual recognition of those common rights that apply to such cooperative activity—notably, rights of participation in the determination of common goals and of the process of achieving them. When such informal modes of social interaction become more formalized and institutionalized, then these rights can come to be articulated explicitly in codes of conduct or in laws—for example, as equal rights or as voting rights. It is thus by the elaboration of such contexts of
social activity, in both political and economic life, that the elements of the democratic process begin to emerge.

Third, still another context in which the recognition of rights proceeds in everyday experience is our ubiquitous personal relations with other individuals as selves, or as persons worthy of respect, and this is incoherently or explicitly a recognition of the worth or needs of the other. It expresses at the same time the worth or self-respect that we take ourselves to command as persons. This type of reciprocity among individuals goes beyond the instrumental recognition of the first type and applies to the domain of affective personal and moral life.

It can be added that these contexts of reciprocity are not presented here as a scheme of fixed stages nor as a historical account of the development of reciprocity. Still, as ingredient in action and social practices, these modes of reciprocal interaction provide a basis for the emergence of a full-fledged norm of reciprocity that supplements the norm of equal rights, where both can be seen as prerequisites for equal positive freedom. Reciprocity here is understood as an intentional relation of reciprocal recognition in which each person recognizes the other as free and self-developing. In this sense, it is most obviously applicable to face-to-face relations among individuals and in direct democratic participation and deliberation. But in representative contexts as well, a tacit, if not explicit, recognition by each citizen of the other's equal rights is required in regard to political rights and liberties, such as voting, eligibility for office, and free speech.

Care and Democratic Community

In the account of forms of reciprocity, I have not included that mode of reciprocity that can be called mutuality, which goes beyond the recognition of the equal freedom, needs, and worth of others to an active concern with enhancing their well-being. Such mutuality is usually thought to fall outside the domain of politics and is probably not a requirement of democracy. However, the related concept of care, which has been discussed extensively in feminist moral and political theory, does in fact have implications for democracy and a conception of democratic community.

These implications are noted here and enter in various ways later in this work.

Care – an idea originally articulated on the basis of women's experiences in the practice of mothering but clearly of more general application – encompasses a range of characteristic dispositions, such as concern for the other not out of duty, but out of empathy; attentiveness and sensitivity to the needs of others, and, more strongly, taking the others' interests as equal to or more important than one's own; attention to the growth of the other; and an orientation to the common interests of the family or of those who are close or related to one. These feelings and dispositions are directed, at least initially, to particular others rather than universally, and so they tend to contrast with traditional notions of universal and impartial principles and obligations.

There is a presumption that these experiences and dispositions lend support to notions of community and to a richer conception of democracy. The question is how to interpret caring, attentiveness, and concern for common interests in the family, for the case of democracy. In one sense this seems obvious: The ways of expressing concern for others and for their needs that characterize the relation of care in intimate personal relations and in certain familial relations would seem to match a democratic community's requirement for relations of reciprocity and especially for reciprocal respect, although not all relations of care are reciprocal. Furthermore, the notion of common interests seems to be capable of extrapolation from the commonality of family feeling to a larger community or polity. In principle, at least, a shared or common interest both provides the context for democratic decision making and is elaborated in the process of deliberation that is supposed to lead to decisions. Likewise, the typical emphasis on providing for the specific needs of others associated with mothering or parenting, or with family relations more


generally, can usefully be imported into the larger democratic community in terms of a focus on meeting the differentiated needs of individuals and not simply protecting their negative liberties, as is discussed in the concluding part of this chapter. In this way, care translates into a responsiveness to the particular needs and interests of individuals or groups at the social level. It also has a political parallel in the concern for providing the economic and social means for the development of individuals and not only in refraining from impeding their choices.

A second source for modeling care theory, beyond the experience of mothering or parenting, has been relations of love or intimate personal relations more generally. Whereas mothering involves nurturance of the vulnerable child and thus in many ways is not a reciprocal relation, love relations are quintessentially reciprocal. However, to the extent that these and other personal relations such as friendship manifest mutuality, as a relation in which each individual consciously undertakes to enhance the other, they go beyond the less demanding sense of care and empathy involved in social reciprocity or the reciprocity of respect, where these are properly applicable to relations among members of a community who are neither lovers nor friends.48 In the case of the family, characterized by common concern or common interest in the well-being of the family unit, we may also find what I have called cooperative reciprocity, as a relation among individuals engaged in activities toward common ends. It is therefore easy to see how the family metaphor came to be commonplace in the history of political thought, although historically it has been mostly given a patriarchal interpretation, with the king or the state as father.

Yet, the limitations on the extension of the concept of care to political or institutional contexts of democratic communities are also apparent in this account of its various models. As noted, even though the maternal or parental model includes important elements of reciprocity, parenting is in some central respects a nonreciprocal relation; by contrast, a democratic community is based (at least in principle) on reciprocal relations among equals who share authority by virtue of their equal rights to participate in decision making. Another limitation of the parental model, as of the model of love or friendship, is the particularism and exclusivity that are characteristic of such relationships. Presumably, fairness in politics requires equal rights and equal consideration of interests, independent of any particular feelings of care for given individuals. In fact, it

a common interest in the common activity, as well as in the process of decision making about that activity.49

The idea of democracy, in itself, therefore presupposes community in a minimal sense, namely, that people in a democratically operating institution have a common interest in shared ends, in pursuit of which their cooperation is voluntary and not merely constrained by law or habit or effected by coercion. Such a community is constituted by the decisions of agents to engage in the determination of these ends and by free cooperation toward attaining them. But we need to maintain a distinction between a democratic community in this sense and the more organic and tradition- or culture-defined notions of community implied by Tonnies’s concept of Gemeinschaft or by some contemporary communitarian ideas. As used here, a democratic community is also to be understood as an internally differentiated community, along individual and cultural lines, as is explicated in Chapters 4 and 5. And the complexities introduced into the ideas of both democracy and community, both by increasing globalization and by the networking it facilitates among multiple communities, are explored in Parts III and IV of this work.

Justice, Rights, and Difference

In view of this analysis of reciprocity and care, we can see that recognition of differences plays a key role in the principle of equal positive freedom and in the correlate account of rights. Whereas classical liberal theory was for the most part difference-blind in that principles of equal rights mandate a sameness of treatment, the principle of equal positive freedom as a principle of justice builds a recognition of difference and responsiveness to individuated needs, as well as the protection of the rights of difference, into its basic conception.50 Thus, if there are to be equal rights to the conditions of self-development, justice requires not the same conditions for each one but instead equivalent ones determined by diverse needs. Thus, instead of merely adding a conception of nonstandard interests – for example, of the vulnerable – to the standard interests that the liberal theory of justice acknowledges, this principle introduces differentiation into the basic requirement of just treatment.


50 Gould, *Rethinking Democracy*, especially Chapters 1, 4, and 5.

Needless to say, this principle of justice as equal positive freedom presents a number of difficulties in its application: First is the necessity of a criterion of relevant versus irrelevant differences; not every need has an equal claim in the context of self-development. Second, at the policy level, it is difficult to make or implement policy that is radically individuated. Practically speaking, people often have to be treated in terms of their group characteristics. Still, as a regulative principle, such a conception of justice leads to efforts to accommodate differences both in distributive contexts and at the level of rights. Its import for group rights and women’s rights is elaborated in Chapters 5 and 6.

Taking difference seriously in public life requires more than a reformulated principle of justice. The suggestion here is that it requires a radical increase in opportunities for democratic participation in all contexts of common activity, including not only in the discourse and associations of the public sphere but also in the institutions of economic, social, and political life. (The especially challenging proposal for participation in decision making in firms is considered in Chapter 10.) In this range of smaller-scale contexts for participation, difference can be directly expressed by individuals or groups and concretely recognized in their social interactions. Here, difference is directly presented and not simply talked about. In these cases, too, effective action can be taken on behalf of the specific needs and interests among members. Furthermore, participation can contribute to individuals’ and groups’ recognition and articulation of their own concerns. A multiplicity of contexts for such participation can also facilitate the elaboration of a range of individual capacities.

The value of such a diversity of contexts and its contribution to the development of individuals was recognized by some earlier pluralist theorists of democracy and of culture, notably by John Dewey. As Dewey puts it in *The Public and Its Problems*, democracy as a way of life is “a wider and fuller idea than can be exemplified in the state even at its best. To be realized it must affect all modes of human association, the family, the school, industry, religion. And even as far as political arrangements are concerned, governmental institutions are but a mechanism for securing to an idea channels of effective operation.”51 In consonance with his view, I have proposed an interpretation of democracy that extends

it beyond politics or government and beyond its role as a procedure for setting policy or settling disputes. It is also, as Dewey held, a form of social organization that permits the expression of individuality in contexts of "associated individuals, in which each by intercourse with others somehow makes the life of each more distinctive." Yet the view here does not follow Dewey’s linkage of democracy to metaphysics in the context of an inclusive philosophy, in which he sought a resonance between human association and nature. The view here necessarily remains agnostic on this issue.

These pragmatist emphases on democracy as a form of society and on the self-development of individuals within it are themes pursued by C. B. Macpherson—for example, in his Democratic Theory: Essays in Retrieval—and the conception of democracy developed in my earlier work and in this book owes much to his approach. I appreciate and pursue his focus on people’s activity in developing their capacities, which in turn requires equal effective access to the means for such activity. Macpherson also points to the fact that the exercise of capacities has to be under an individual’s conscious control and not under the direction of another. This recognition supports a requirement for democratic participation, in a way that I have attempted to articulate in my own arguments for the justification of democracy.

However, Macpherson suggests that one needs a conception of essential human capacities in order to spell out what equal effective development of powers amounts to, and this is not a direction I choose to take, for reasons that will be elaborated in Chapter 2, in connection with alternative conceptions of universality. In addition, Macpherson seems to build in the requirements of adequate provision of means of life and other of what we would now regard as human rights into the conception of democracy itself. While this may be acceptable for the broadest use of the term “democracy” as characteristic of a form of society or, in Dewey’s terms, “a way of life,” I am hesitant to conflate democracy and human rights for more ordinary uses of the terms, where democracy refers to decision making concerning common activities. It is evident that effective democracy requires considerably more equal access to resources than is available at present, but to build the conception of human rights into that of democracy does not preserve the possibility of appealing to human rights where democratic decisions may violate one or another of them, as I have discussed in this chapter. The account here thus seeks to preserve a certain separation among the concepts of freedom, human rights, and democracy, yet holds that democratic participation is based on a fundamental conception of positive freedom and on the equal claims people can make to it and to the conditions that make it realizable.

To summarize the thrust of this chapter, then: After considering leading theories of the relation of justice and democracy, I argue for the priority of justice and human rights in principle over the authority of democratic decisions. Yet, inasmuch as the argument for democracy is based on the requirements of justice as equal freedom, itself one of the human rights, it follows that interventions on behalf of justice should be carefully delimited, and specifically to cases where fundamental rights have been violated. Rights in turn are understood in a relational context and are tied to conceptions of reciprocity evident in interaction. An account of care and attention to differentiated needs concludes the account.

In Chapter 2, I take up this concept of needs in connection with the idea of an embodied politics and elaborate the idea of a pluralization of both democracy and rights. But first, I want to turn to the important theoretical issue of how to conceive of the universality of the normative perspective introduced, especially in the face of the diversity of cultural practices and norms. I am also concerned to develop a new conception of universality in this context, drawing in part on the ideas of care as well as empathy and solidarity.

55 Macpherson, Democratic Theory: Essays in Retrieval, 51.
54 Ibid., especially Chapters 1–3.
55 Ibid., 56.
56 Ibid., 54.
57 See, for example, ibid., 51.
Two Concepts of Universality and the Problem of Cultural Relativism

In Chapter 1, I sketched a conception of democratic participation framed by human rights, deriving from a fundamental notion of equal positive freedom. I pointed to the need to see democracy and human rights themselves as open to multiple interpretations from diverse cultural perspectives, but I suggested as well that the conceptions of equal freedom and human rights have universalistic aspects. The potential conflict between such universalist norms and the multiplicity of varying and sometimes conflicting cultural traditions and practices has generated considerable discussion among philosophers in recent years. It is of course desirable to avoid a relativism of fundamental norms to cultures, but it is also important to see these values as drawing strength not only from our own but also from other, sometimes quite different, people, cultures, and traditions. In this chapter, I analyze the idea of universality that is ingredient in the conception of equal freedom and human rights and consider two of its possible meanings.

Universalist norms have recently been appealed to in order to come to grips with the existence of cultural practices that violate human rights or that oppress women or minorities, or again; in order to deal with the problems of persistent poverty and disregard of basic needs in less developed countries. Several philosophers have argued that we have to return to a fundamental conception of human beings and their functioning, in place of prevailing views that emphasize differences in cultures, genders, and so forth. This universalism has been advanced in a particularly clear way by Martha Nussbaum and Amartya Sen, Nussbaum using it primarily to provide a way to criticize the oppression of women (e.g., in opportunities for work, in dress, or even in regard to female genital mutilation), and Sen using a capabilities approach to human functioning to criticize the unequal treatment of women as well as the existence of widespread poverty and the lack of adequate levels of well-being in societies such as India.

Here, I begin with some questions about this move to return to — as I characterized it in earlier work — an abstractly universalist conception of human beings, where this remains essentialist in specifying a determinate list of human characteristics shared by all and only humans. Despite the helpful nuances and qualifications that Nussbaum has recently emphasized to the effect that such universals are open-ended and subject to consensus and historical interpretation, I suggest that this approach remains subject to the older critique that has been made of essentialist approaches by feminist theorists and theorists of race and class, especially concerning the historically and culturally biased inclinations of such lists and their basis in characteristics of dominant groups, whether they be male, or white, or class-based. These criticisms are even more telling, I argue, when such essentialist conceptions are put forward as a basis for development and for human rights, because they may import Western liberal conceptions of norms of development and rights under the guise of the universally human. Indeed, this can in turn permit cultural relativists to correctly object that other cultures have very different conceptions of human characteristics and functioning and of the claims humans make on each other, and that these conceptions are systematically excluded by such universalist approaches.

In the second part of this chapter, I go on to contrast this understanding of universality with an alternative conception of concrete universality, which, I argue, can also make room for universal norms such as equal freedom and human rights. In that section, I go on to propose a more social approach to value creation and analyze the concepts of empathy and solidarity to which it appeals.

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5 This universalist perspective can be found, for example, in their essays in the collection Women, Culture, and Development, eds. Martha Nussbaum and Jonathan Glover (New York: Oxford University Press, 1995), 61–104, 259–279.


Abstract Universality, Human Beings, and Development

Martha Nussbaum, Amartya Sen, Susan Okin, and other feminist theorists have criticized the postmodernist emphasis on multicultural differences and its apparent lack of a basis for objecting to oppressive cultural practices. From the feminist side, practices common in certain cultures—such as clitoridectomy, the requirement that rape victims marry their rapists, or wife battery as a penalty for committing adultery—have struck these theorists (rightly, I would say) as deeply oppressive to women. Given the commitment to women's equality, such practices cannot be tolerated on the grounds of respect for diverse cultures. Again, in the area of development, theorists such as Sen have argued for the need for common standards in assessing development and for establishing priorities among its aspects—for example, regarding the importance of the provision of adequate nutrition and health care. From this standpoint, cultural relativist views—which may even be critical of the concept of development itself insofar as it connotes a Western notion of modernization, or which recognize irresolvable diversity in standards of development—are held to be inadequate.

Consider a few examples of these criticisms: In the context of a critique of the concept of group rights, Susan Okin writes as follows in Is Multiculturalism Bad for Women?

Most cultures are suffused with practices and ideologies concerning gender. Suppose, then, that a culture endorses and facilitates the control of men over women in various ways (even if informally, in the private sphere of domestic life). Suppose, too, that there are fairly clear disparities of power between the sexes, such that the more powerful, male members are those who are generally in a position to determine and articulate the group's beliefs, practices, and interests. Under such conditions, group rights are potentially, and in many cases actually, antifeminist. They substantially limit the capacities of women and girls of that culture to live with human dignity equal to that of men and boys, and to live as freely chosen lives as they can.4

Because of this, Okin concludes that respect for cultural practices must be subordinated to the requirement of women's equality. Her objection, we might add, is primarily from the standpoint of liberal theory, suitably modified by feminist concerns, rather than from a concern with a universalist perspective, say, one of human rights.

The objection to cultural practices oppressive to women has also been made from the standpoint of universality itself. Thus Nussbaum provides examples of views of which she is critical: an American economist who urges the preservation of traditional ways of life in a rural area of India. Nussbaum explains:

[Whereas we Westerners experience a sharp split between the values that prevail in the workplace and the values that prevail in the home, here, by contrast, there exist what the economist calls "the embedded way of life"; the same values obtaining in both places. His example: just as in the home a menstruating woman is thought to pollute the kitchen and therefore may not enter it, so too in the workplace a menstruating woman is taken to pollute the loom and may not enter the room where looms are kept.5]

Another interesting example that Nussbaum provides is that of a French anthropologist who "expresses regret that the introduction of smallpox vaccination to India by the British eradicated the cult of Sittala Devi, the goddess to whom one used to pray in order to avert smallpox."6 Assuming that the anthropologist was actually bemoaning the vaccine, this would indeed be a case of cultural relativism run wild. "Would the residents of India feel this way?" we might be prompted to ask. In any case, we soon turn to the question of whether cases of this sort require Nussbaum's essentialist/universalist response, that is, Nussbaum's specific version of an appeal to universal characteristics and norms.

A third example of pernicious cultural practices is provided by Amartya Sen, who focuses on women's status in developing countries as part of an argument for working out standards or bases for assessing and comparing levels of development worldwide. In the positive freedom tradition, Sen articulates a conception of "freedom to achieve" as the basis of this standard and proposes to represent this idea in terms of capabilities to function in various ways, which in turn anchors his approach to justice (which he thinks involves aggregative considerations as well).7 His leading example of pernicious cultural practices is the phenomenon of missing women, according to him more than 44 million in China, 37 million in India, and a total exceeding 100 million worldwide.8 Who

5 Ibid., 26.
6 Ibid., 26.
7 See Amartya Sen, "Gender Inequality and Theories of Justice," in Women, Culture, and Development, especially 266-267.
8 Ibid., 259.
are these missing women? They are the women lost to morbidity and mortality, mainly in Asia and North Africa, by comparison with the ratio of women to men that reflects their biological advantage (as high as 1.05 to 1 in Europe and North America). Sen observes that this severe relative inequality of women worldwide is unjust and leads him to criticize any culturally relativist perspective that shies away from bluntly saying so.

Nussbaum’s alternative to a cultural relativist perspective draws on Sen’s positive freedom account of capabilities in her treatment of development; but she synthesizes it with her own Aristotelian theory of the general characteristics of human beings and their virtues, or good human functioning. The result is a challenging account of universality and of its relevance to the debates about development. Of course, universalistic perspectives are not new where development and intercultural comparisons are concerned. It is standard to appeal to universal human rights as a basis for criticizing unacceptable actions and practices in cultures worldwide. But before reconsidering these rights in a more expansive view, we can consider how Nussbaum’s Aristotelian version of universality fares as an alternative to the postmodernist or cultural relativist positions that she roundly rejects. I focus especially on her initial presentation of this position in her article “Human Capabilities, Female Human Beings,” and I take brief note of the revision and reinterpretation she gives to these ideas in *Sex and Social Justice*.

As Nussbaum and others have argued, it is necessary to avoid cultural relativism, which may be ingredient in certain postmodernist accounts of differences; but is the move we need to make that of a straightforward humanism or even essentialism? Do we need a conception of universality in the Aristotelian tradition of the sort Nussbaum proposes? This is how she puts it in her article: “My proposal is frankly universalist and ‘essentialist’. That is, it asks us to focus on what is common to all, rather than on differences (although, as we shall see, it does not neglect these), and to see some capabilities and functions as more central, more at the core of human life, than others.”9 In her account of “the most important functions and capabilities of the human being, in terms of which human life is defined,” she puts the question this way: “The basic idea is that we ask ourselves, ‘What are the characteristic activities of the human being? What does the human being do, characteristically, as such — and not, say, as a member of a particular group, or particular local community?’”10 (In passing, we are reminded of Marx’s question in the *Grundrisse*: Does the human being exist as such apart from his or her community?)

Nussbaum daringly answers this question with a list of basic functions and capabilities that define the human form of life — from mortality, to the body with its needs for food, drink, shelter, sex, and mobility; to the capacity for pleasure and pain; the cognitive capabilities of perceiving, imagining, and thinking; early infant development; practical reason; affiliation with other human beings; relatedness to other species and to nature; humor and play; and to what she calls “separateness” (each of us feels our own pain, and so forth) and “strong separateness” (each life has his or her own peculiar context and surroundings and, as Heidegger put it, is in each case mine). This list represents what Nussbaum calls the first threshold, a level of capability to function “beneath which a life will be so impoverished that it will not be human at all.”

There are some obvious questions here, already raised by others: Is a developmentally delayed child or a profoundly malnourished child who cannot play not human? These characteristics cannot really be denominational or criterial for the human, for then someone lacking some important sort of perception or mobility would not be human. Surely this would be too strong (what about Helen Keller, for example?), and Nussbaum would have to clarify the interpretation of these functions to rule out this implication. But let us presume that this can be done.

The second threshold is the higher one, which she claims is the main concern of public policy (but, we might object here in passing, such policy must also be concerned with the basics), namely, the level “beneath which those characteristic functions are available in such a reduced way that, though we may judge the form of life a human one, we will not think it a good human life.”12 This second threshold is then specified by a list of ten basic capabilities to function, at which societies should aim for their citizens. These range from being able to live to the end of a life of normal range to having good health and being adequately nourished to having adequate shelter, and so on (all, by the way, grouped as one point of the ten); to having pleasurable and not painful experiences; being able to perceive, think, and reason (again, one number); being able to have attachments to things and other persons; being able to form a conception of the good; being able to live for others, also with concern for nature; being able to laugh and play (very important to Nussbaum, seemingly

9 Nussbaum, “Human Capabilities,” 63.
10 Ibid., 72.
equal to food, clothing, shelter, and reproduction put together); being able to live one’s own life and no one else’s (which refers to the possibility of free choice); and finally, along with this, being able to live one’s own life in one’s own surroundings and context, with free associations and personal property.\(^{13}\)

This is a very rich theory indeed, but too rich perhaps for those who may find this approach to be culturally relative – that is, expressive of a Western, indeed U.S., late-twentieth-century view. While this objection does not yet amount to much, it gives us pause. Somehow, such lists or specifications of the essential – from Aristotle to Locke and Kant (with rationality as central, but in different senses) or Rousseau, or in a different tradition Fichte (with freedom as central) to, in yet another tradition, Marx and Engels (with productive activity as central), to Nussbaum (whose list is fuller than most of these but crucially highlights separateness and strong separateness, at least in the initial presentation of the approach) – inevitably strike us as culturally biased in an important way, if not ideologically one-sided or distorted (and this is not even to speak of the gender, racial, or class perspectives often evident in such views). Why is this the case, and can it be remedied within this sort of essentialist theory? Is the problem simply that we have not gotten the essential properties correct, or is there a difficulty with this very enterprise of the construction of a universal characterization of human beings?

In my 1974 article “The Woman Question: Philosophy of Liberation and the Liberation of Philosophy,” I argued that it is precisely the conception of what I called “abstract universality” at work here that is the source of the problem. (I return shortly to the question of whether Nussbaum herself employs such a conception.) Such a criterion of universality attempts to characterize what is common to all human beings or to all societies at all times and abstracts from differences between them; in this way, it does not attend to merely local or accidental aspects of the human or social. In the classical view, it studies the human qua human, or human nature as such. Furthermore, in strong versions of this essentialist position, the universal properties must also be necessary – those without which the individuals would not be members of the given class – and therefore are properties that make them the kinds of things they are. On this view, in which differences are taken to be accidental, it would follow that, in considering the human, all historical and social differentiation drops out and only those abstracted properties that remain invariant for

all humans and in all societies count as essential. These characteristics are seen as fixed instead of as historically changing. In my use, the term “abstract” is contrasted with its opposite, “concrete,” where “concrete” denotes those properties that individuate human beings or societies or that differentiate them, that is, make them the particular individuals or societies they are.

Aside from the many well-known philosophical critiques that can be made of the abstract universalist position,\(^{14}\) the more practical criticism in this context is that the use of this criterion to determine essential or general human properties is apparently not a value-free, but rather a value-laden one, that it tends to reflect the interests, needs, and prejudices of particular social groups. (Moreover, the rank order of essential traits tends to be determined by the relative roles and priorities that these properties have in a given social system.) This is problematic especially because essentialism tends to mask the particular interests under the guise of universality and therefore is deceptive. On my view, it is the very abstractness of the criterion that in fact opens it to such distortion, by way of its exclusion of concrete social and historical differences as accidental and therefore philosophically irrelevant. In the earlier critique, I showed that various great philosophers chose those properties as universal only that the philosophers themselves either explicitly identified as male properties, or that were associated with roles and functions in which males predominated.\(^{15}\)

In establishing global standards for conduct and for development, it seems possible that contemporary theories may similarly be introducing local characteristics from a particular social context under the guise of general human ones. When one hears of strong separateness as a basic human good, or play as a basic capability (a concept owing a great deal to Schiller, Freud, and other relatively recent thinkers), one is led to reflect on the apparently inevitable selectivity and perspectival character of such lists. This is not to say that Nussbaum is wrong about the importance of strong separateness or play, only to put in question the universality of the list. We could ask, why isn’t it also characteristic of human beings to want love or security or to live in a community? These are presumably covered under other headings – love and community under affiliation, security under the need for shelter or early infant development or perhaps

\(^{13}\) Ibid., 89–89.

\(^{14}\) This was also a focus in my article “The Woman Question: Philosophy of Liberation and the Liberation of Philosophy.”

\(^{15}\) Ibid., especially 5–25.
property — but this raises the issue of the level and description of the characteristics. Why these and not others? And if we are simply looking for general characteristics and not only good characteristics, perhaps we should add some negative capabilities that are characteristic capabilities of many, if not most, people, such as jealousy or selfishness or even violence. According to TV talk show host Jerry Springer, everyone is a voyeur; perhaps this trait should count. Isn’t the list in fact socially, historically, and culturally very deeply variable? And, as both Marxists and postmodernists would point out, such lists tend to miss the connection to power and the powerful in a given social context. If so, do not such attempts to characterize the human, particularly as a basis for public policy (and not only as a philosophical theory), end up being coercive, to the degree that they impose the standards of one particular culture on others? This might be especially so in the area of development policy. Would it not be better, we might suggest, to see both development and the self-understanding of the human from the other’s point of view? Indeed, we might further ask, shouldn’t development policy be decided democratically by each affected country or, at least, by equal participation of all countries?

One additional set of questions presents itself. Inasmuch as the list appears to presuppose a rich philosophical theory concerning the human and concerning the good, is it plausible to suppose that agreement on the contents of such an articulated and controversial philosophical perspective is required in order to guide public policy? Is this a case of philosophical hubris? And, if we decide that we do need global agreement on universal principles or guidelines, shouldn’t they be kept somewhat less voluminous, not necessarily minimal, of course, but perhaps more open and clear? In her later version especially, Nussbaum emphasizes that the list she offers is open and flexible, but in fact it seems quite determinate and drawn from a fundamentally classical philosophical perspective.

Nussbaum is well aware of most of these and other criticisms of her view and attempts to meet them in various ways. It is helpful now to briefly examine the transformations in the view that she introduces, especially in her later book, to see whether they go far enough or whether, as I suggest, a newer conception of universality is necessary. We can leave aside the transformations in the older essentialism that are introduced by Nussbaum’s interpretation of the universal characteristics in terms of a positive freedom conception of capabilities to function, an interpretation that in her case is specifically derived from Sen’s work. I believe this is a salutary move, and I share the view that a conception of positive freedom is required. My own elaboration of this, here and in my previous work, has been in terms of a conception of the development of capacities as self-development or self-transformation over time,16 and I would additionally propose that this version of positive freedom is inherently more open to emergent capacities and functionings than the “capabilities” approach that Nussbaum and Sen present.

More to the point here are the other qualifications that Nussbaum introduces (some presented in the earlier article and some in the revised version in her book). Importantly, she states that “universal ideas of the human do arise within history and from human experience, and they can ground themselves in experience.”17 This is certainly a significant point, but what is its cash value in her account? This move toward historicity and experience primarily permits the specification or interpretation from diverse cultural perspectives of each of the items on Nussbaum’s list. But, at least in the earlier version, she does not hold that the choice of which items should make up the list is itself historically or culturally emergent. Thus she writes, “The list claims to have identified in a very general way components that are fundamental to any human life. But it allows in its very design for the possibility of multiple specifications of each of the components.”18 There is the idea that we have a common conversation concerning the interpretation of these basic capabilities. The second threshold list — of good functioning — is more open; it is subject to plural and local specification. But, at least in the original presentation, Nussbaum seems to resist the idea that there can be multiple fundamental conceptions of human functioning that emerge and change historically, culturally, and socially, recognizing only variability in the interpretation of these essential functionings.9

It seems problematic to me, however, to propose that we can have a conversation on the interpretation of the essential properties but not on which properties are essential. Why can’t these too be understood as varying historically? If, as Nussbaum seems to be suggesting, we suppose that there is already consensus on the list itself, then this observation might be in bad faith, inasmuch as it turns out that the consensus is for clearly Western, late-twentieth-century views that we prefer. If the claim is, even more stringently, that there needs to be worldwide consensus

18 Ibid., 93.
on a philosophical theory (and not just a contemporary outlook more loosely), then this is prima facie implausible. How will we get people worldwide to agree to a detailed and contestable philosophical position?

If, on the other hand, Nussbaum means only to rule out subjecting the choice of fundamental properties to consensus (or to be the object of a "common conversation"), which is the most plausible interpretation of her claims, then we may still wonder whether this is really an alternative type of essentialism at all. Such an approach would seem to reintroduce a perspective that is ahistorical at its core, retaining openness to the interpretation only of the details of the theory in each cultural and historical context.

In the revised version of her views, Nussbaum proposes only one list, that of "human functional capabilities" that are required for a "good human life." It no longer includes separateness or strong separateness. And significantly, it is now claimed that the procedure through which the account of the human is derived "is the attempt to summarize empirical findings of a broad and ongoing cross-cultural inquiry" and as such is open-ended and "can always be contested and remade." This revision certainly represents a plausible direction for theory, but it is not clear to me, for the reasons given earlier, that such a cross-cultural and empirical approach would issue in an "account of the central human capacities and functions... which can be given in a fully universal manner, at least at a high level of generality."

Finally, to the important objection that conceptions of universally human properties exclude the powerless, Nussbaum rightly points to the role that the conception of the human has played in countering prejudice and exclusion in the long term. Thus, in response to the claim that the basic human capacity to develop various capabilities to function has frequently been denied to women, she says, "If we examine the history of these denial we see, I believe, the great power of the conception of the human as a source of moral claims." Indeed, such universal norms do play an important role in revealing when an injustice has been done, simply by showing that some human being has not been treated equally. We can know that a violation of universality has occurred, but we will not know why or on what grounds. Knowing the sources of a case of

injustice, in terms of the specific context of oppression that gives rise to it, is required if one is concerned not only with rectifying the specific case but also with eliminating the conditions that give rise to the injustice in the first place. Thus abstract norms permit us to deal with the effects of injustice, but not with its causes. An alternative conception of universality, in one of its aspects, may be superior in this regard.

Concrete Universality and Human Rights

If we want to avoid cultural relativism but still wish to give due weight to the claims and strengths of other cultures, should we replace the conception of abstract universality and the norms based on it with another conception of universality? The answer, I think, is yes and no. I believe that two moves are needed: first, the introduction of a conception of concrete universality, both as a characterization and as a norm; and second, a more refined and less philosophically demanding conception of an abstractly universal norm, such that it can be more fully cross-cultural and less biased. Ideally, we would also be able to show the relation of these two conceptions - namely, the abstract and the concrete - to each other and establish their mutual coherence. In this small frame, I wish to set out the parameters and basic characteristics of each of these in order to suggest possible directions for understanding this alternative conception.

Let me start with the more unusual notion of concrete universality. I want to depart from one aspect of the characterization that I gave of this in my article "The Woman Question," where it is understood to arise from the totality of interrelations within a society. The conception of concrete universality in Hegel's use, and to some degree Marx's as well, regards society as made up of internal relations among individuals who are mutually interconstituting. However, if this were extended beyond a given society to a global context of interrelating individuals and societies, it would seem to pose a requirement for some sort of unity, which is unimaginable and thus quite empty. Furthermore, in Marx if not in Hegel, there is little discussion of the universal norm or norms that might emerge from this description of society as a totality of interrelations, so the import of this interactive understanding of individuals, however attractive it may be, remains unclear in the value context. Certainly, there is the important recognition that the interrelations among individuals or groups often have been characterized not by equality among participants but instead by one-sided relations of domination, superiority, or oppression, and this necessitates a social critique of the conditions that contribute to

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10 Nussbaum, Sex and Social Justice, 41–42.
20 Ibid., 40.
21 Ibid., 8.
22 Nussbaum, "Human Capabilities," 98.
this one-sidedness. I would like to retain this emphasis in the conception proposed here.

This new view conceives of society as constructed by individuals in concrete and differentiated social relations, but there is no presumption of totality — only networks of relationships and what I would call networks of engagement; by which I mean that what I am calling network interconnections. (We can think of the Internet — less commercialized, of course — as an analogy here.) In an increasingly globalized context of interacting people and cultures, we might suppose that diverse cultural groups contribute to an increasing interdependence, within shared and overlapping contexts at a given historical period. I call this interdependence cosmopolitan association or intersociation. In one sense, this globalization can be seen as a sort of universalization, inasmuch as it is marked by increasing interconnections at a distance, certainly from economic and environmental standpoints, and to some extent from social or personal ones as well. The idea of a shared world comes to have a global interpretation, where previously it may have had more local ones. In this way, perhaps, the notion of one world may have some place, not in a Hegelian sense of totality, of course, but rather as a potential framework or horizon for interaction.

In this context of globalization, individuals also become more universalized and less localized, as Marx already observed, in the distinctive sense of becoming many-sided, subject to culturally and socially diverse influences, and open to a wide variety of interactions in many spheres. This does not, however, necessitate a wholly cosmopolitan conception of the individual, as purely a world citizen, for we can suppose that this person remains rooted in one or two cultures and societies but is newly receptive to many of them and their influence.

From an analytical standpoint, a conception of concrete universality, that emphasizes networks of social relationships and engagements, where these may involve relations of domination or oppression, is an important supplement to any abstract characterization we may be able to give of all human beings. It suggests not that "affiliation" (to use Nussbaum's word) is simply one among many other human traits but rather that social interaction frames all of them in profound ways. Even basic bodily needs and functions take on their shape and significance within social, historical, and cultural frameworks. Examples might be found in the mundane uses "I need a slice of pizza" or "I need a Ben & Jerry's ice cream cone"; or again, in the more general fact that my body is experienced by me in part as others perceive it; or yet again, in the experience of hugging my child, in which I become part of him for the moment; and in many other cases.

This view has by now become almost a truism in social philosophy, but it requires that we characterize the human not only as a singularity but also as a social being. This involves the recognition that characteristics are not only interpreted but also constructed through the concrete interactions of particular caring and choosing individuals, who are often concerned for each other and make choices together with others with whom they are engaged in common projects and interdependent networks (economic, technological, social, cultural, or personal).

I have proposed that the characterization of this sort of interdependence requires a distinctive social ontology, in which the basic entities that make up society are understood as individuals-in-relations or social individuals, in place of the externally related individuals characteristic of traditional liberal theory. The specific interrelations of these individuals or groups, whether they are relations of oppression or of reciprocity, play a central role in our understanding of who they are and of the conditions for their activity, as do the opportunities that they have for participation in and control over common or joint activities.

What would this interactive account signify for the norm of universality? Should it too be thought of as relationally constructed through the concrete interactions, contributions, and communications of historically situated individuals who would approach it from different cultural perspectives? And what would this mean?

For our purposes in this chapter, conceiving of universal norms, values, or obligations as intersociative norms emerging from such an interaction of cultures — or, better, of people in diverse cultures — has much appeal. If such a conception is true, it would allow us to claim that in bringing to bear a universal norm, we are respecting these cultures and not merely privileging our own; yet it also would not see the norms as simply relative to a given cultural context. One version of this view sees the values as emerging from a consensus or conversation posed to be fully open (not one limited to current Western-influenced views). However, most theorists are understandably reluctant to posit this sort of actual consensus, since without built-in liberal constraints, the results would probably not be acceptable; yet with these constraints, it would seem that no genuine consensus could be achieved.
Theoretical Considerations

If we can give some purchase to the view that norms emerge from interactive multicultural contexts or from communication across cultures, at least to a degree, then this would go part of the way toward specifying the conception of concrete universality. Let us consider the crucial concept of human rights themselves, which are central to our discussion here and so are particularly significant. Contrary to the idea that it is simply a Western conception, the contemporary notion of human rights is distinctively pluralistic. And this is so even leaving aside the as yet not fully developed claims to the effect that human rights, either as a general conception or in regard to some specific rights, can be found in the Koran or in Chinese Confucianism, or other texts, although some of these claims undoubtedly have merit, even if they mainly arise retrospectively, as a reconstruction of possible origins after the fact. More to the point, it can be noted that the content of the United Nations list of human rights (in the Universal Declaration of Human Rights and related documents) in fact reflects the conceptions of developing countries as much as those of North America and Western Europe in its extensive list of rights tied to basic needs, such as means of subsistence, health care, and employment, as well as certain group rights, such as that concerning development. The coalition of Eastern Europe – with its Marxist views at the time – and the Third World countries ensured the adoption of documents that did not much privilege Western liberal conceptions of the priority of liberty and security of the person, or private property and democratic forms of political participation.

But what of the concept of human rights itself? This seems much less multicultural in origin, obviously deriving from the modern Western rights tradition. Yet if we wanted to see a cross-cultural aspect here, we could stress both the political interpretation of such human rights – where they more loosely concern the claims that people and societies can make on each other as well as the protection they give for oppressed individuals worldwide – and the fact that from their own diverse perspectives, a wide variety of countries did sign on to them (although admittedly not necessarily as natural expressions of their own cultural perspectives). However, it might be more straightforward to grant that the concept itself is in fact Western in origin, although it now appeals to people in various cultures, perhaps because of so-called modernization in these cultures or

because it provides a critical edge to those seeking progressive changes there. After all, as Benhabib and others correctly point out, we must not underestimate the importance of evolution or debate within cultures worldwide, partly in reaction to external influences. Yet, despite the Western framework of rights discourse itself, which conceives of rights as inhering in individuals the aspect of rights that I have stressed here, that they are claims we make on each other as inherently social individuals, is a more communitarian notion that goes beyond the liberal tradition in Western thought and certainly has resonances, if not also roots, in other cultural traditions.

The Genesis of Intersociative Norms

Does it make sense, then, to speak of values or norms generally – and not only the specifically universal ones – as emerging from concrete interactions or communications among individuals or among cultures? Leaving aside the "ought" from "is" issue, since my emphasis is on the social interactive context for norms, and without attempting to introduce a new theory of value here, we can identify several aspects to such value emergence. There are three to note here: (1) values generated in relationships of care, concern, empathy, and solidarity; (2) those posited through common choices or coagency, whether based on common goals and projects or on shared needs or interests; and (3) norms generated through consensus or a common conversation. Although talk, or more elegantly, communication, permeates the first two that is, care and choices, I believe these are not reducible to communicative discourse, but rather are practical, lived features of our interaction itself.

Care and concern, introduced in Chapter 1, as well as empathy for others, have been widely discussed by feminist philosophers and some others in the philosophical tradition. Such caring or empathic relationships – often but not always personal – give rise to particular values that people or sometimes things may have for us, as well as (on reflection) to the value of care itself. These caring relationships, or those expressing concern or empathy for others, permeate ordinary life, from love and family, to neighborhood, work, voluntary groups, clubs, and associations of all sorts, but they are also extensible to possible others at some remove.

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87 I discuss this term in Chapter 5, along with "multicultural" and "intercultural."
90 Ibid.
from us. In this context, others may be present as potential objects of our care, concern, or empathic understanding, as beings like ourselves, with needs and interests, or as individuals who stand in mutual emotional relations with us.

A social correlate to this sort of empathic relation to individual others has traditionally been considered under the heading of solidarity, and it is perhaps time to bring this conception back into discussions of political philosophy. Feeling solidarity with others normally applies between people in different social groups and is a sort of standing with others based on an empathic understanding of their concrete social situation. Through much of the twentieth century its connotation was tied to labor movement contexts or to socialism, but there is no inherent reason to limit solidarity narrowly to such contexts, and, indeed, it has recently been used to refer to international solidarity of various sorts, such as in the anti-apartheid movement. Solidarity may also involve the performance of an action that expresses a sympathetic understanding at a distance of the situation of oppressed others. It is in any case a feeling of affiliation with them and their cause. We can also distinguish between solidarity with others on the grounds of sharing their particular interest and a more general human solidarity that can be shared with everyone. I return later to this universalistic import.

A second key practical source of value is co-agency in the determination of common goals, that is, common choices. Things are endowed with value not only through our individual efforts to pursue them but also through processes of jointly choosing ends. These common goals are best understood as ingredient in our jointly pursued activities or shared engagements—for example, at the workplace, or in leisure, or in explicitly cooperative ventures of an economic or political sort—rather than necessarily as a subject of deliberation, which often comes after the fact. Shared ends or goals are posited as values for us in our experience. Others, including those from distant cultures, may present themselves here as potential co-actors or co-creators in common projects. This is not to say, however, that they bring the same interests and background to these projects; we may instead appreciate the different interests and points of view that these others bring to these activities.

Shared goals ingredient in common activities may not always represent equal input from all participants but instead may initially reflect particular interests or needs, particularly where oppressive relations hold sway, and may in this way start as one-sided. Yet it is also clear that critical reflection can play an important role in revealing the perspectival, or even in some cases prejudiced, nature of these values. And this emphasis on critique of one-sided needs and interests, both as social critique in terms of the social conditions and institutions that may contribute to them and as self-criticism by individuals or groups, is an advantage, I think, of the concrete understanding of value creation proposed here.31

Efforts to achieve consensus on generalizable interests or norms, as Habermas, for example, has discussed it,32 may indeed be helpful in this process of critique, although it is questionable whether these conversational efforts will lead to universal agreement, even ideally. Such consensus or communication about values does, however, represent a third important source of the genesis of value in practical contexts. We are always talking about what is important, personally and politically, and this discussion often leads to provisional agreements about values and norms. Of course, this communication is frequently about our concerns and our common projects (aspects 1 and 2 enumerated earlier), but it can also introduce values of its own, whether rationally considered or less so. Here, the other may appear to us as a possible interlocutor in the dialogue.

Each of these three practical contexts of the genesis of norms implies a conception of universality. Yet it does so in all three cases as some sort of limit concept or imaginary projection to which we can approximate. In the first case—that of care, concern, or empathy for particular others, or solidarity with another group—it is to all others or solidarity relations with them appear either as a limit notion or by analogy to the empathy or concern we feel for those with whom we directly interact or for whom we specifically care. Certainly, contemporary communications technologies make it possible for us to experience the suffering of famine victims in the Sudan, for example, as powerfully as the suffering of some in the local neighborhood (and sometimes more so). More philosophically, we can say that although there are practical limits to our caring and concern for others, there is no inherent boundary to its extensibility to particular others or groups worldwide.

We can also learn to reason in an imaginative way (and this is the kind of reasoning that Hannah Arendt thought Kant described in his Third Critique) from our understanding of the feelings and needs of those about whom we are immediately concerned to the feelings and needs of everyone, such that we can bring these others close to us in imagination.

32 See the discussion of Habermas in Chapter 1.
and understand matters from their perspective. Developing this line of thought might provide us with a concern-based justification of universal obligations, or at least of potential universal ties. In Chapter 12 of this book I return to the import of this sort of empathic thinking.

A similar sort of extension might be made for the second and third aspects of the practical contexts of value creation. Setting common goals, which we take to be values for us, can involve increasingly large contexts of cooperative activity. It is involved in the small, such as groups of friends deciding to do something together, to intermediate cases such as goal setting for a firm, to the very large: planning by national governments and indeed by international organizations, whether economic or political. Alternatively, the extension of common goals to more universalistic contexts can proceed by way of an interaction of diverse individual or cultural projects, in which their reach and interpretation are made more inclusive. A sort of universalizing of co-agency is thus imaginable, although it is not clear how much of a role it has at the global level beyond the concept of a horizon or limit. Certainly, where common goals are oriented to meeting needs, an extension to the needs of all (perhaps coming to our awareness through a confrontation with the needs of others), as well as measures to meet these more extensive needs, is clearly useful. Furthermore, worldwide cooperation at a general level is increasingly relevant in ecological and economic contexts, as previously noted. Beyond this, a process of universalization at the level of reflection and critique can provide a helpful corrective to the potentially one-sided concern that groups tend to have in the satisfaction of their own needs and interests and the distortion in their outlook that this may entail.

In the third case as well, that of consensus and communication as a source of norms, universalization is often thought to play a role both in ensuring that everyone may enter into the dialogue and in the idea that norms to be adopted should be agreeable to all affected by them. This essentially democratic idea may indeed be ingredient in the speech situation, as I think it also is more generally in the structure of interaction, to the extent that anyone with a reasonable consideration can raise it (we might add that if they have unreasonable considerations, those may be relevant too). This opens up the possibility of cross-cultural and intercultural dialogue, if we are careful not to make the constraints on the communication too one-sidedly liberal.

In all three of these practical contexts for normative activity, then, we can observe that a norm or value of universality of a concrete sort plays a role. These normative interpretations add to the descriptive sense of concrete universality introduced earlier, where people are understood as tied together through their interactions and as transforming themselves through their relations with others. Furthermore, an emergent universalization in practice can be seen in processes of cultural interchange and growing interdependence across cultures. Yet this account still leaves open a number of questions concerning these various senses of universality. For example, is universal relatedness good in itself or good because of its contribution to freedom? To the degree that it entails increasing cooperation among cultures, it might be thought to be valuable as such. Yet it also derives value from its contribution to the self-development of individuals (as expanding the options for choice or possibilities for growth of capacities), and perhaps too, as J. S. Mill would have it, from its contribution to sounder ideas. Furthermore, although universal norms or values are posited in our experience, their status beyond a horizon or imaginary limit in the three cases studied is not yet clear, nor is the relation of the conceptions of universality to each other. Moreover, it remains a question whether we can speak of universality in these normative senses as itself changing historically and socially, although the descriptive sense of it clearly does.

Another important set of issues concerns the feasibility or plausibility of the universalistic extension in each of the three aspects of value just described. Especially in the case of empathy or the extension of care or solidarity in more universalistic ways, we observe what seems to be limits on this extension in the many cases of individual and group hatred that reflect the very absence of such empathic understanding, especially with those demarcated as different or, worse, as deficient or insignificant. Although it is plausible to suppose that no barrier exists in principle to the universalization of empathy or feelings of solidarity, practice reveals what may seem to be insuperable barriers and limits to the requisite extension.

Yet, as the argument in this work suggests, this problem calls for a twofold response. At the level of practice, addressing this situation requires new types of education and media, as well as the development of political and economic institutions that enable people to have more control over the conditions of their lives. In Part III, especially, I develop the view that democratic participation in decisions is needed not only in traditional communities but also in the newer transborder networks of association, giving rise to a conception of intersociative democracy, which has to be based on more equal access to the means for satisfying economic, social, and cultural needs. At the level of norms, as proposed here, the problematic current situation requires cultivating not
only respect for universal human rights but also sensibilities of empathy and transborder solidarity. When applied across borders, these sensibilities support the need for such intersocietal democracies to be open to the
to the impact of their own decisions on nonmembers and on those situated at a
distance.

It is interesting to observe that the value of feelings of empathy and solidarity have been articulated by a wide variety of cultural traditions, in
a way probably more widespread than rights discours itself. For example,
one thinks of the importance of empathy or sympathy in the work of the
followers of Confucius – for example, in the Book of Mencius. Thus, it is plausible to suppose that the cultivation of empathy and solidarity can gain support from a diversity of approaches, although it must be

ganted that its universal extension remains problematic in practice for
all of these traditions.

Universality and Normative Critique

Yet perhaps the most difficult set of questions for the normative understand-
ing of universality proposed in this chapter is different: Even if we can
show that important universal norms, such as human rights, are indeed
cross-cultural in that they draw on the contributions of many cul-
tures, or else that they have arisen through a universalizing consensus,
this would not establish any independent normative status for them; they
would still be culturally relative, albeit now relative to the totality of cul-
tures that contributed to them. Although our account has suggested the
importance of self-criticism and social critique with respect to the genesis
of such norms (to make sure they are not one-sided or ideologically dis-
torted), it has not indicated how these norms can be used critically with
respect to cultural practices in one or another culture. In a related way,
even if we emphasize the role of intercultural interaction in the genesis
of norms, this still does not show how we can criticize oppressive practices
within any given culture, except from the standpoint of others or even of
all the others.

These considerations show the need for a moment of abstract univer-
sality and, in particular, a conception of universal human rights that can
be used normatively to criticize cultural practices that violate them, such
as those centering on the oppression of women that I noted at outset of
this chapter. Such rights could then be understood as setting constraints
on cultural practices, whether in our own society or elsewhere. As rights
pertaining to all humans as such, the abstractly universal norm of hu-
man rights makes a claim to be based on a universal feature or features
of human beings themselves. But as we have seen from the critique of
Nussbaum's earlier conception, we need to avoid an overly rich and highly
determinate list of such features if we are to avoid falling into the trap
of the essentialism of a fixed human nature or into the error of projecting
our own contemporary liberal culture into a general account of the hu-
man. How can we do this? We need a conception of human beings that
supports their equality and the idea that each should recognize all the
others as bearers of human rights.

As I suggested earlier in this work, following the lines introduced in
Rethinking Democracy, I would propose that the basis of a principle of equal
and universal human rights can be found in the transformative power of
human agents itself – that is, their very capacity for social and historical
transformation, or what I have called their equal agency. Given the per-
vasive phenomenon of such change and development by differentiated
and related individuals through time, as in fact is pointed to by the de-
scriptive concept of concrete universality, we can see that the capacity or
power for such transformation and self-transformation is characteristic
of social individuals in all cultures. It is, we might say, ingredient in their
activity, as an activity of growth and development through time. I have
argued that this capacity of humans as agents, which both is constructive
and operates socially, can be referred to in terms of the idea of freedom,
but in a sense beyond the traditional liberal conception of simple free
choice, taken apart from such contexts of social transformation and the
self-development of people through time. (Free choice is in a sense a
specification of this capacity.) As characteristic of each human being as
an agent, this power requires recognition by all the others. This recogni-
tion is at the same time the acknowledgment of the equality of others
with me in respect to having this capacity and, in this sense, of their equal
freedom or equal transformative power.

As I argued in Rethinking Democracy, this bare capacity or agency, which
I there characterized as a capacity for self-development but which I am
here describing a little more broadly, presupposes access to social and
material conditions for it to become concretely realized. If all people
equally possess this capacity and if it requires conditions, then recognizing

83 "The Book of Mencius," in A Source Book in Chinese Philosophy, translated and compiled

84 See also Carol C. Gould, Marx's Social Ontology, especially Chapter 2.
The conception of equal agency as a moment of universality that I have proposed seems to me less culturally relative than Nussbaum's proposal, especially in her earlier formulation, since my conception avoids the interpretation of strong separateness that informs her view there. It does aim to provide something of an independent ground for human rights in suggesting that there is a characteristic of human beings that people recognize and ought to recognize in other people and that this entails a conception of the valid claims that each human being can make on all the others. In focusing on the power of social and personal transformation itself, or agency, as characteristic of humans, it presents a general characterization, which might be thought to be an essential trait. But I would argue that this is distinguished from traditional essentialist views, including that of Nussbaum, in avoiding any idea of fixed human characteristics or traits that could compose a list of any sort. It is largely the fixedness of the characteristics that renders essentialism problematic. On the view presented here, it is the power of change and self-change itself, without a content, that is seized on as a sufficient basis for the recognition of the equality and universality that are needed for an effective human rights principle. This conception of human rights can then provide a crucial ground for criticizing and challenging practices in any culture that violate them. This sort of universalistic conception is indispensable, I think, if we are to avoid cultural relativism.

We can see that this sense of universality is dependent in some ways on the other sense discussed, namely, concrete universalism. This is so both because the actual conception of human rights can be supposed to have emerged from the contributions of various cultural perspectives, as noted earlier, but more so because of the way it is founded in the constructive and interactive power of differentiated individuals in society. I have suggested that it is these individuals acting in relation to each other over time – and, indeed, in increasingly universalistic relations with each other – that supports the recognition of people as having this power or agency. We can in turn abstract the latter from these practical contexts of activity and use it as a basis for a critical principle, inasmuch as it comes to be embodied in the norm of universal human rights. The conception of concrete universality can thus be said to contain as crucial elements the abstract norms of equal freedom or of human rights, inasmuch as the emergent relations and interactions that it refers to are based on the agency of social individuals who have equally valid claims to the recognition of this agency and therefore have equal rights in this sense.
Only by taking such a new double-sided approach to universality can we avoid falling into the opposite traps of cultural relativism on the one hand and essentialism on the other. The conception of universality set forth here provides, I think, important and much needed support for a nonrelativist conception of human rights, which can set limits to what is normatively acceptable in any culture, but which can nonetheless see universality, and to some extent these rights themselves, as constructed from the contributions of different cultural perspectives. Only such a conception of rights can do the necessary critical work of arguing against existent repressive cultural practices as much as against violations of traditionally protected liberties or the lack of provision of adequate means of subsistence.
to consider not only some new modes of representation for all corporate members in governance, and not only those primary stakeholders who directly relate to the corporation, such as customers, suppliers, lenders, and the local community. It would in addition need to hear from representatives of those at a greater distance, not only the political associations, government, public, and environment of its own nation-state, but those in the more far-flung areas affected. As suggested in Chapter 9, this is of particular importance where there is impact on the human rights of these others, including on their possibilities for realizing their economic and social rights. In this respect, newer considerations of the social responsibilities of corporations to respect the full list of human rights and to introduce assessments of wider social and environmental impacts into their management decisions gain special significance. In this way, this analysis of democratic management ties into broader considerations of the relations between democratization and economic globalization.

Democratic Networks

Technological and Political

In previous chapters, I frequently refer to the Internet and other computer technologies as potentially facilitating transborder democratic participation, and I would like now to focus more directly on these possibilities. Our question here will be, can technological networking in fact facilitate political networking and do so in a way that has genuine democratic effects? If so, what principles can helpfully guide this process?

Technology and Politics

To frame these issues adequately, we can begin by reflecting on a little-known but interesting detail about Thomas Edison that Anthony Wilhelm cites in his book *Democracy in the Digital Age*: that the first invention on which Edison was granted a patent was a "revolutionary vote Recorder." As Wilhelm tells it, Edison sent his device in 1869 to Washington, D.C., to demonstrate it to a congressional committee in hopes that the members would appreciate the new efficiency that this innovative voting technology produced. The congressmen would only have to flip a switch at their desks, and their votes would be instantly recorded and counted by the vote recorder machine situated on the clerk’s desk. Needless to say, as it turned out, the congressional leaders strenuously objected to this new device on the grounds that it made it impossible for minorities to gain advantage by changing votes or filibustering legislation. This efficient device, in short, threatened to get in the way of the longer time frame that minority groups required to persuade (or coerce) others to come over to their viewpoint.¹

We might say that the possibilities of the technology were not suitable for the social and political relations of Congress at that time, and hence Edison’s hopes for his invention were inevitably disappointed. Alternatively, perhaps, we might conclude that the overall impact of the technology promised to be negative as far as political deliberation was concerned.

This anecdote raises some interesting questions about the relation between a technology and the society in which it is embedded, but that general question is not my theme here. Rather, for me, as for Wilhelm in his book on digital democracy, it poses the narrower issue of the degree to which and the ways in which democratic decision making can be enhanced (or not) by various technologies, and in particular by the still rather new phenomenon of the Net, or as it is now sometimes put, the GII, or global information infrastructure. Thus in this chapter, I do not focus directly on the broader question of the relation of democracy and technology. To do so would require considering not only how technology may serve our interests in enhancing democracy both nationally and globally, but also the difficult question of how to bring about some democratic input into the design and use of technologies—what used to be called (perhaps unfortunately) the question of the democratic control of technology. Instead, I focus more narrowly on information and computer technologies as they may (or may not) facilitate democratic participation, in what is now coming to be called cyberdemocracy (replacing the earlier “electronic democracy” or “digital democracy”).

Nonetheless, this narrower focus does bear on the broader issue of the relation of technology and democracy, not only as a case study—one that additionally raises concerns about who in fact controls its design and use—but also because technology in this contemporary period is very much entwined with politics. Thus it has been argued that we are now in what could be called the Fourth Revolution in the development of technology, in which increasingly global high technology is bound up with political power, usually still wielded hierarchically, even in democratic societies as well as in highly nationalistic or fundamentalist ones. It can be said to be increasingly politicized, subject to political decisions by elites, and interlinked with economic and military ones (as expressed in Eisenhower’s old but trenchant phrase, “the military-industrial complex”). Crucially, too, inasmuch as technologies increasingly have

regional or global impacts, they seem to require the development of new transnational structures of regulation and direction. Information and communication technologies (what the British, especially, refer to as ICTs) promise to facilitate decision making about such wide-ranging technologies by virtue of their global scope and their openness to multiple and widely dispersed participants. It is hoped that they can be used for this decision making as well as for the regulation of technology itself.

Democracy and Networking Principles

Is it plausible to suppose that the use of computer technologies, and, in particular, networking, in contexts of political deliberation and decision will in fact increase democratic participation overall? The literature on this question has grown exponentially in recent years and unfortunately tends to vacillate between the extremes of overenthusiastic paean to a new world of full and open democratic participation and deliberation online, through which citizens become empowered, and the alternative dystopian vision of a panoptic of constant monitoring, supervision, and manipulation of the citizenry, whether by a hegemonic government or by monopolistic and exclusively profit-seeking corporations in their own interest. More sober and analytical assessments have also begun to appear, and I take note of some of these. But I want to delineate my own approach to these questions by beginning from the early framework for addressing political participation through the Internet proposed in my 1989 volume The Information Web: Ethical and Social Implications of Computer Networking, placing it within the perspective developed in this work.

In an essay titled “Network Ethics: Access, Consent, and the Informed Community,” I discussed certain conflicts of values—most notably, between the right of privacy and the desideratum of free and open communication—that are posed by computer network use in the context of political participation, especially to facilitate citizen-government interaction. In considering such uses as government databanks, electronic polling and referenda, and the interactive applications, such as

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2 Ibid., 16.
Globalization and the New Media

In view of the changes that have taken place since that early Internet period, we can ask whether the early analysis still holds up and also what new issues need to be taken into account in developing democratic uses of these media. Probably the most salient new dimension is the increasing rate of globalization, discussed in previous chapters, both in the scope and uses of information and communication technologies and in the emergence of transborder democratic (or potentially democratic) networks. As noted, these include not only the most obvious case of the European Union but also more delimited networks that cross traditional borders – concerning shared ecological interests (e.g., regarding overfishing or toxic dumping); concerning economic production or trade (e.g., between indigenous peoples and Western consumers, or socially responsible investment); or, in a different way, concerning organization and outreach on the part of global NGOs or activist social movements (e.g., the World Social Forum).

Along with this globalization has come an even more pronounced "digital divide," the term introduced to denote the gulf between the information-rich and the information-poor. In the increasingly global context, this divide pertains not only to disparities of access to the Net between well off and less well off within the postindustrial societies themselves, but also to even more pronounced disparities between these and developing countries. Thus in her book *Digital Divide*, Pippa Norris observes the following:

The evidence indicates that some developing nations such as Malaysia, Brazil, and Taiwan have made substantial progress in the knowledge economy. But average rates of Internet penetration have grown sluggishly, at best, in most developing nations . . . [T]he global divide in Internet access is substantial and expanding: About 87 percent of people online live in postindustrial societies. The contrasts worldwide are sharp: More than half of all Americans now surf the Internet compared with 0.1 percent of Nigerians. There are currently twice as many users in Sweden than across the vast continent of Sub-Saharan Africa. In considering alternative explanations of this phenomenon, the evidence strongly suggests that economic development is the main factor driving access to digital technologies, so that the Internet reflects and reinforces traditional inequalities between rich and poor societies.

Other authors further characterize the relations between the information-rich industrialized states and the information-poor Third World in terms of "cyberimperialism" or even "cybercolonialism." Here what is most often meant is a sort of economic imperialism via the Net, where corporate control over software, specialized information, and access to the Net delimits access to the elites who can afford to pay for it, including especially the "symbolic analysts" in the postindustrial North. Yet another aspect of this "cybercolonialism" is of course the current domination of English as the language of the Net. As Deborah Tong puts it,

What is taken for granted is always apparent to those who are not in its possession. Upon finally connecting to the network, the first thing a member of a developing nation would undoubtedly detect is Cyberia's lingua franca: English. English is the mother tongue of data. It encodes 80 percent of all computer messages and data content even though only slightly more than a tenth of the world's population speaks the language (including both primary and secondary language speakers).

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9 Ibid., 25-31.
10 Ibid., 50.
11 Ibid., 53.
14 Deborah Tong, "Cybercolonialism: Speeding along the Superhighway or Stalling on a Beaten Track?" in *Cyberimperialism*?, 71.
It follows, as she points out, that members of developing countries who want to participate or work on the Net must be bilingual. This analysis suggests that we need to add a conception of cultural imperialism to that of economic imperialism if we are to understand the restrictions on Net access in the present more global context.

It is probably worth pointing out that the problems of access are not exhausted in the raw figures regarding differential connectivity such as those given here. There are also serious discrepancies in speed of access and in the availability of advanced computers, discrepancies that further exacerbate the differences in sheer access itself. Well-off people in well-off countries obviously have advantages because of these faster modalities, which facilitate their connections and the scope of their information gathering. And, as Anthony Wilhelm and others have stressed, access is not only a matter of economic well-being, which permits computer ownership, but is also a matter of literacy and of educational levels sufficient to enable full use of these information modalities. The differences in this regard apply within given nation-states, as well as among them, or more globally.

It is clear, then, that a reflection on the new developments in the globalization of communication and information networks shows that the problem of achieving equal access to information and to networks remains a very serious one, if not entirely intractable. This necessarily qualifies any optimism we might have about the power of such networks to facilitate cyberdemocracy, since without substantially equal access to information, where this information is one of the conditions of meaningful political participation, the equality built into the concept of democracy itself cannot be realized.

Indeed, we might become even more concerned about this accessibility and inequality when we consider the growing commercialization of the Net, as described, for example, by Robert McChesney in his Rich Media, Poor Democracy. In fact, it seems likely that this commercialization has intensified since the date of that book's original publication in 1999. Against the idea that "the Internet, or more broadly, digital communication networks, will set us free," McChesney characterizes the growing dominance of Time Warner, Disney, and other media conglomerates in this domain, along with the new threats from cable and television companies in the provision of broadband services, thereby potentially controlling Internet portals. With the growth of commercial websites, there is the additional possibility of blending commercial and editorial content, so that users may find it hard to distinguish them.

To concretize these issues, perhaps it is worth citing McChesney's description of the case of Time Warner:

In addition to its activities as a cable company, Time Warner produces nearly two hundred websites, all of which are designed to provide what it terms an "advertiser-friendly environment," and it aggressively promotes to its audiences through its existing media. Its CNN website is now available in Swedish and other languages. Time Warner uses its websites to go after the youth market, to attract sports fans, and to provide entertainment content similar to that of its "old" media.... It has a joint website with Procter & Gamble.

We might also take note of McChesney's own proposal for the democratic adoption of public policies to regulate the Internet and its commercial development, and especially to set aside broadband for public interest programming and network use. His argument is that there is no viable alternative to such public policy if the new networks are to serve genuinely public interests.

In the face of the sort of overwhelming commercial power just described, where corporations even more than governments have a strong interest in developing profiles of their customers together with their information and communication preferences, the old recommendation that I made of requiring free and informed consent as a basis for protecting individual privacy rights may seem hopelessly utopian. Nonetheless, the idea has resurfaced in regard to regulating individuals' control of information about themselves. Indeed, people are routinely given some choice in regard to the uses of some of this information, especially in regard to its sale or other distribution from one company to the next, and the limits on the use of "cookies." Nonetheless, there are significant costs to individuals who choose to fully opt out of providing such information in the first place, and there is certainly a lack of transparency in the uses made of this information. Thus the consent, where it exists, is not usually informed and hence is not very free. It remains to be seen whether there will be further moves to seriously implement some sort of control over personal information.

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15 Ibid., 72.
17 Ibid., 176–177.
Does the Net Facilitate Democratic Decision Making?

Let us now turn to the central issue of assessing the possibilities that the Net or the global information infrastructure affords for facilitating democratic decision making, both on and off the Net. I have presented the two extreme views that one encounters in the literature. The more prominent, very positive outlook asserts that the decentralization of the Net and its openness to multiple and direct two-way communications among participants ideally suit it for democratic participation, which is likewise supposed to be open to all, at least to all citizens. Of course, the Net does not normally recognize nation-state boundaries, and this distinctive feature has some interesting implications, to which I will return.

The more negative view of cyberdemocracy by contrast tends to emphasize its isolating features and the relative insularity of participants. Here it is correctly observed that individuals most often choose to communicate online with like-minded others, with those who share their interests and also their biases. The crucial feature of democratic deliberation, in which one opens one’s views to rational discussion with others who often disagree, is clearly missing from many of these online communities. Deborah Johnson puts it this way:

[T]here is the possibility that individuals will become even more isolated from diverse perspectives and people than they are now. Why deal with those with whom you have disagreements? Why deal with your difficult and “different” neighbors, when you can simply avoid them? Why expose yourself to viewpoints that suggest something wrong with the views you presently hold? In the past, shared geographic space has necessitated contact and joint deliberation. It has compelled diverse people to figure out how to live together. That necessity becomes weaker and weaker when the infrastructure of so many activities is global. 18

Yet the fact that the Net can facilitate voluntary communication among like-minded people with shared interests may in fact contribute to the strengthening of what political philosophers have referred to as civil society, or in Arendt’s and Habermas’s terms, the public sphere. Participation in public forums, chat rooms, and email lists can establish bonds between people who share perspectives and clarify their views, and can help them to organize around issues and communicate their perspectives to others, including those holding positions of power. As Norris puts it, “[D]igital technologies have the capacity to strengthen the institutions of civil society mediating between citizens and the state.” 19 In her view, this capacity especially benefits “insurgent organizations,” which possess fewer traditional advantages, and, in this way, digital politics can level the playing field for “transnational advocacy networks, alternative social movements, protest organizations and minor parties, such as those concerned with environmentalism, globalization, human rights,” and so on. 20 Furthermore, Norris holds that “reducing the costs of information and communication minimizes some, although not all, of the significant barriers to effective political participation at an individual level.” 21

Along these lines, we see the beginnings of substantial input into U.S. national politics by means of the Net in such organizations as MoveOn.org, which greatly simplify and thereby facilitate the process of communicating with congressional representatives via online petitions and letter-writing campaigns, and open up the possibilities for large-scale online polling and perhaps also referenda. Even more recently, we have witnessed the first U.S. political campaign—that of Howard Dean—that established itself and initially flourished through Internet organizing and fundraising. The widespread use of email lists, which facilitates large-scale discussions and the passing along of references between friends or strangers, thus presents a networking model with considerable potential power for politics. Such a network model, in which there are only interconnecting nodes with no center, has also been adopted by socially critical groups, not only for the diffusion of information, in which anyone can post messages or add new links, but also for their mobilization for protest. This organizing activity self-consciously attempts to be “horizontal,” that is, nonhierarchical, consensual, and nondominating. Although important decisions are often left to face-to-face meetings among (rotating) representatives, much of the planning and organizing proceeds through the Net, in a way designed to invite the participation of those at a distance and to remain open to the diversity of their contributions to the movement.

We can grant the benefits for the public sphere that may ensue from such increasingly global connections among mostly like-minded people.

19 Norris, Digital Divide, 19.
20 Ibid.
But what can we say about the deliberative and participative aspects of democracy, in which it is supposed to involve reasoned discussion among people who do not share many individual interests, although they share some common ends as members of the same political community, or else share certain defined needs and interests across the borders of communities? The Net has so far not provided conclusive results in such contexts. Even the activist networks just described are still in search of ways to use the Net to delineate shared goals through discussion and to arrive at decisions across the group. So far, the Net seems strong at disseminating information and facilitating communication among widespread individuals but not as strong at establishing substantial agreements, even among like-minded participants. As for connections among diverse groups of people within given political communities, cases do abound of discussions of a political nature on various websites — on message boards, chatrooms, and forums, even on sites oriented to ostensibly nonpolitical matters. Yet these have so far remained without clear ties to political decision making off the Net. We can say that at present, these discussions primarily serve to reflect and sometimes shape public opinion. Although this is hardly insignificant, it misses the key point that deliberation is more than the mere expression of opinion, but a give-and-take in which views are shared and possibly transformed, in such a way that they eventuate in, or at least influence, the actual decision-making process. Perhaps such decision making must remain mainly face-to-face, or perhaps new modalities of conversing, refining opinions, and coming to decisions will soon emerge on the Net itself.

A potentially very positive feature of networked interaction is its global character — that it offers to transcend the limits of fixed and given democratic communities of a geographical sort. Although this aspect is sometimes regarded more negatively, I see it has having the potential to help deal with emerging problems, both ecological and environmental, of a transborder or even global nature. Leaving aside the issue of agreeing on the establishment of new political units of a transnational sort, the more globalized participation that the Net makes possible can in fact facilitate the expression of views by all those affected by a given problem or policy—including those at a distance — even if they are not members of the particular geographically defined community or nation-state and thus are not immediately subject to its jurisdiction. Perhaps it will be possible in

the future to define modes of input and collective decision suitable for these more far-flung people or groups who are impacted at a distance by a nation-state’s or multilateral’s policies and programs.

In discussing the Net’s potential for enhancing democratic participation, the argument here suggests that we need to distinguish three types of network communities:

1. There are voluntary communities or associations of like-minded individuals, which the Net already reinforces and even potentiates; in the political sphere, the communication among these individuals can contribute to activist organizing and transnational advocacy groups (not all of them positive, of course). These networks are often more international or global than heretofore and hence can be classified as a type of intersocietal network, using the concept introduced earlier in this work.

2. There are the more traditional predefined political communities made up of diverse individuals who understand themselves to belong to these communities or nation-states. In this context, new modes of facilitating deliberation and collective decision making are needed, if cyberdemocracy is to be realized.

3. There are the newly emergent transborder and regional communities or networks that share some of the features of each of the first two but have certain distinctive features. The individuals within them are not yet defined as belonging to a given jurisdiction, but these groups may not be made up of individuals all of whom share some particular interest in common in the familiar sense. These networks may be organized around political issues, such as dealing with common ecological problems, or they may be economically based or social in nature. Of particular interest here are those communities or networks made up of people who are aware of being affected similarly by regional or global phenomena. As discussed in the preceding part of this work, these people have certain rights of participating in decisions about these transborder phenomena, even if they are not citizens of the relevant nation-state or members of the given community.

My intuition is that the Net is especially well suited to enhancing the participation of groups of this latter sort in political decisions. How this would work remains to be determined, and it will depend in part on the actual emergence of communities of this sort and their own articulation of their needs, aspirations, and interests. We might suggest that

significant opportunities for democratic participation may be provided by new technologies that provide more full-fledged (and user-friendly) video dimensions, which could model face-to-face interactions, where desired, among participating individuals or groups. The present text-based modes of networking, by contrast, may not be the preferred mode of communication for all those who want to participate. Adding the direct visual representation of others might also help in taking them and their views more seriously and more personally. Yet the problems of setting the agenda and collecting and mediating among divergent views, as well as the difficulties due to dominant personalities and other such factors, would remain despite these new technologies.

We might add that while networking technologies may facilitate less hierarchical modes of decision and open new possibilities for democratic participation among geographically dispersed individuals, they do not, of course, necessitate such a development. Contrary to the optimistic views expressed by commentators such as James Rosenau to the effect that networks introduce horizontal modalities of interaction that contrast with older hierarchical modalities, we can observe that these networks themselves are often used in hierarchical and antidemocratic ways. For example, websites may be controlled by webmasters, or discussion boards by moderators, or email lists by those who select members and post content. In addition, Internet services such as AOL or Yahoo exercise control over content, and employers often use the Net to monitor employees. In such cases, the old problem of control over decision making by technological elites rather than by users again comes to the fore. Thus we can conclude that active and self-conscious efforts are required to develop and use networks in ways that provide equal access to potential participants in discussions and that facilitate democratic interaction by the users. Otherwise, we can expect that networks will continue to be turned primarily to commercial uses or will be utilized with excessively centralized controls that in fact vitiate these increasingly global democratic possibilities.


Terrorism, Empathy, and Democracy

In this final chapter, I want to focus on a key issue for international ethics: the normative understanding of terrorism, which has become increasingly global in its character and impact. More specifically, I consider the relation between terrorism and the concept of empathy, particularly as it emerges from feminist theory and as I have discussed it earlier in this work, and I also place this analysis in the context of the preceding discussion of democracy. I suggest that there is a close connection between the concepts of empathy and democracy, and I make some remarks about the relation of these to both terrorism and the possible responses to it.

Defining Terrorism

To concretize the discussion that follows, it is helpful to begin with a brief review of some definitions of terrorism, a widely used but rather muddy concept. The numerous definitions in the literature seem only to agree that terrorism involves violence or the threat of violence. Beyond that, there are important disagreements as to whether it is limited to the targeting of people who are noncombatants or also extends to combatants, whether it should be limited to violence perpetrated by nonstate actors or also encompass state terrorism, and whether we need to make reference to its purposes as part of the definition.

According to Michael Walzer, “Terrorism is the deliberate killing of innocent people, at random, in order to spread fear through a whole population and force the hand of its political leaders.” For Walzer, it

people is central. Instead, it would entail a competence in the application of laws and principles to particular cases that is sensitive to differences in people's needs and interests. In this sense, it requires the casuistic art of interpreting the general for particular cases, and it endorses a flexibility in dealing with special or exceptional circumstances.

Beyond the administration of law, receptivity also manifests itself in policy making that anticipates the need for differential applications of policies to individuals in order to achieve equal treatment. One standard case, of course, has been the treatment of the disabled, whether by remediation or in other ways. But such receptivity can be applied more widely not simply by a cognitive or cerebral comprehension of differentiated needs but as a matter of support for the concerns and needs of others and what I have previously called solidarity with them. Receptivity could also be as expressed in openness to and support for the variety of cultural and other group differences and for their interaction, within a given society and also extending beyond its borders. In this sense, the inclusive democratic communities described earlier would be intercultural. This theme is pursued further in Chapters 4 and 5.

In light of the previous analysis of embodied politics, I would like now to consider the role that the idea of the social construction of race can play in democratic theory as well as take up certain hard questions that bear on the persistence of racism within democratic societies. I begin with the conceptual connection between the requirement of democracy and the critique of racism. I then turn to the issue of whether racial identity can be interpreted in cultural terms, taking up Anthony Appiah's argument on this point. Concerning the norms of democracy, I want to argue for a reinterpretation that draws on a conception of what I have called in Chapter 2 concrete universality. In this connection, while appreciating Charles Mills's trenchant critique of the "racial contract," I suggest that his appeal to an ideal social contract, with its set of natural and human rights, does not yet provide an adequate normative basis for a fully non-racist democracy. Instead, we need a conception of inclusive, intercultural democratic communities, on a certain interpretation. In terms of this approach to group differences, I then briefly consider the potential impact of economic democracy for reducing racial divisiveness. As background for taking up these difficult questions, however, it is helpful at the outset to briefly review the present situation regarding racism and theories of democracy.

Racism and Existing Democratic Frameworks

Why does racism, as well as the idea of race itself, play almost no role in most democratic theories? As Frank Cunningham has
noted, this is the case even for C. B. Macpherson and, we might add, for some recent theories, too, such as that of Thomas Christiano. In the long view of democratic theory, one answer is obvious: it is for the same reason that feminist theory has only recently come to influence democratic theory—namely, the latter’s tendency to disregard difference (except as individually different opinions or conflicting interest groups), and the liberal conviction that democracy is primarily a matter of ensuring equal rights to vote and majority rule. Additionally, from within this traditional understanding, democratic citizenship itself, with its requirement of equal treatment, should simply disregard an individual’s race. In this approach, while racism is ruled out at the formal level, not much more can be said about it.

In fact, as has been argued by Bernard Boxill and others, the central democratic procedure of majority vote tends to render minority groups invisible. Because of this, formal democracy, especially the procedure of majority vote, not only disregards underlying racism but also exacerbates it in practice, because votes can give enormous power to an absolute majority of one race or culture over cultural minorities, as Boxill points out; it thereby may permit a tyranny of the majority over these minority groups.

Not only has most democratic theory had little to say about racism, but also democracies have coexisted in practice with racism for many centuries, as Charles Mills and others have recently stressed. Beyond insisting on equal voting rights, then, democracy, as a formal and procedural system, offers little basis for the critique of racism. This neglect by democratic theorists and the tolerance of democracies for racism suggest on the face of it that there is something wrong with the traditional understanding of democracy. I argue here that the inadequacy goes beyond the often-observed formality of democracy and its disregard of social and economic inequalities outside the political sphere.

Before proceeding, we should note that racism has in fact been addressed in the United States in certain delimited democratic contexts: first, in the issue of the representation of blacks in Congress, in terms of the legitimacy of creating black majority districts, and I return to this issue later in this chapter. Second, there has been the federal role in instituting affirmative action programs, as required by concepts of justice. To the degree that such programs have been seen as appropriate political decisions by democratic governments, affirmative action provides another tie between democracy and racism. Mention might also be made of the idea that achieving black community control of local governments would increase opportunities for political participation. In general, though, in dealing with racism, the emphasis—even on the left in the United States—has been on overcoming discrimination through affirmative action and achieving greater economic equality; this in turn has been seen as the way to ensure increased political participation. While this is clearly of great importance, there is need for further reflection on the connection between racism and democracy itself.

To sum up the existing situation: From the standpoint of basic norms for political philosophy—namely, the key values of freedom, justice, community, and democracy—we can say that race and racism have been tied primarily to justice (as equality—political, social, and economic) as well as to freedom (from discrimination or oppression or stereotypes), and in this connection race and racism have been tied to the conception of the social construction of racial characteristics. Increasingly, in recent years, the overcoming of racism has been connected to an understanding of community as inclusiveness, where “inclusive community” refers to one that not only tolerates but also encourages differences and supports diverse cultural and ethnic groups by assigning them rights and by enlarging the scope of interpersonal interaction, both within racial groups and among them.

Yet the missing term in these accounts often has been that of democracy. And while the elimination of injustice (freedom from discrimination or oppression—racial and otherwise) and “leveling the playing

4 Ibid., 112-113.
6 The writings of Lani Guinier are especially central here. See her The Tyranny of the Majority (New York: The Free Press, 1994).
7 A notable exception is Iris Marion Young, Inclusion and Democracy (Oxford: Oxford University Press, 2000).
field" surely are presuppositions of full democracy as Thomas Simon shows,\(^8\) this cannot exhaust the account of the relations between the key terms “racism” and “democracy”; nor does the issue — albeit a crucial one — of achieving genuine representation of African-Americans, whether through black majority districts or proportional representation. In what follows, then, I take up some of the other connections that racism (and race more generally) has to democracy.

Conceptual Connections

The first point to note — of great importance, if perhaps obvious — is the intrinsic and deep connection between the critique of racism (and sexism) and the requirement for democracy. The idea of equal positive freedom — or more generally a conception of equal agency, which is at the normative core of democracy as analyzed here — provides a basis for both the critique of discrimination and the justification of democratic participation. In the first case, equal positive freedom, as prima facie equal rights to the conditions for individuals’ self-development, entails (negative) freedom from discrimination and domination — both institutional and personal — inasmuch as these limit or curtail such flourishing, as well as the (positive) availability of social and economic conditions for this self-development. Hence it excludes both racism and sexism and entails an affirmative requirement for reciprocal recognition, as well as some equalization of social and economic resources. At the same time, this very principle of equal positive freedom serves as the justification for equal rights of democratic participation in all contexts of what I have called common activity. As I presented the argument earlier: Since participation in such common or joint activities is among the conditions for self-development, and since in order to be an expression of agency these activities need to be under the control of those engaged in them, it follows that individuals have equal rights to codetermine these activities or to participate in decision making concerning them.

As suggested in Chapter 1, then, democratic decision making emerges as the institutional analogue to relations of reciprocity in face-to-face interactions. In particular, the connection is to that type of reciprocity that can be called social reciprocity, or reciprocity of respect, rather than to lesser forms such as instrumental reciprocity – colloquially, the reciprocity of “tit for tat,” or return for benefit given. The conceptual connection between the critique of racism and the requirement of democracy is as follows, then, mediated through the principle of equal positive freedom: The critique of systemic discrimination entails an emphasis on equal access to conditions of self-development, which also implies the requirement for equal rights of participation in decision making concerning common activities.

On this view, the conception of self-development — presented originally by Marx and Mill and subsequently by Macpherson and others, and which in turn is seen to support the requirement for democratic participation — is not so much to be opposed to consumerism and acquisitiveness, as it primarily was for Macpherson,\(^9\) although it does indeed contrast with that. Instead, the main opposition is with the control by some over the conditions needed by others for their self-development — that is, domination, or in lesser modes, discrimination — one of whose manifestations (although a unique one in various ways) is racism. Equal agency, in the richer sense of the equal right of individuals to be free from domination and free to develop their capacities, gives rise both to an egalitarian critique of racism and other forms of oppression, and to the conception of widely equal rights of participation in democratic decision making. Of course, the question of the scope of such decision making, and the correct delimitation of those who have rights to participate in varying contexts, remains a difficult and important question for democratic theory, a question that is not yet addressed by noting this conceptual connection.

Yet I have already noted a troubling set of difficulties that arises here: Despite these deep and inherent conceptual connections, in practice there is rather often a sharp disconnection between the critique of racism and the support for democracy. Numerous self-proclaimed democrats have in fact been racists, and some of those critical of racism have favored authoritarian rather than democratic forms of government as essential for achieving their goals. In addition, and this often has been noted, there is frequently no tie between the critique of racism and that of sexism, despite the intrinsic theoretical connection between them. In short, some of those most critical of one occasionally turn a blind eye to the other.

It is only partially adequate, I think, to point by way of explanation to misinformed theories that fail to notice the conceptual connection

\(^8\) Thomas Simon, Democracy and Social Injustices, especially Chapter 5.

\(^9\) C. B. Macpherson, Democratic Theory: Essays in Retrieval (Oxford: Oxford University Press, 1977). It should be noted, though, that Macpherson also understands it as "counter-extractive liberty."
between these themes. Again, it is only partially adequate to point to empirical explanations, in terms of the various social background circumstances of the different groups of people involved and differences in their "cultures," or again, to the general fact that people tend to be concerned with their own narrowly defined interests rather than the interests of others. One could suggest, of course, that many do realize that these concepts are related but simply fail to measure up to their own rational standards. But this is surely not always the case and would itself not fully account for the discrepancies. Chapter 2 introduces an additional conceptual factor that I later reflect on -- namely, the weakness of these abstractly universal norms themselves, when taken alone, a weakness that is pointed to by this divergence of theory and practice. Yet it is by now a truism that the bare critique of racism and sexism and the correlative appeal to justice or freedom are inadequate for genuine social change. And this too is only one factor in explaining the puzzling separation between racism and sexism and, more to our purposes here, between the critique of racism and the requirement for democratization.

Democracy and Socially Constructed Characteristics: Racial Versus Cultural Identities

Before we return to this issue in the next section of this chapter, it is useful to consider the outlines of one social constructivist approach to race and racism. It is not an indifferent matter for democratic theory as to whether racial characteristics are inherent or constructed, but the connection between such a constructivist interpretation and democracy needs to be clarified. There are by now several versions of this constructivism. Thus it has been widely argued -- and correctly, I think -- that the account of race and of group differences more generally needs to conceive them as socially constructed -- as initially ascriptive, but changeable, characteristics. Of course, the issue of social construction is in part a factual or empirical one and needs to be independently argued for. The claim simply is that such a view is harmonious with a democratic one. In contrast, a biological or essentialist analysis that regards races as fundamentally different -- or, worse, asserts the superiority of one to another -- at best sits uneasily with democracy, even in its most formal senses, and certainly lends no weight to a fuller, more participatory sense of democracy. The critique of racism also follows more easily from a social constructivist view, although such an approach of course requires independent arguments in its support.

There are numerous versions of such constructivism, and these have been well argued for. On one such social constructivist view that I prefer, one can argue that the basis for membership in a racial group may initially be a matter of objective circumstances, of being put in a particular situation of oppression not by choice. To this degree, it is what has been called an "ascriptive identity," that is, what members of the group are taken to be by others and in particular by the dominant group. Yet this does not commit us to an essentialist account of group differences, closely akin to an abstract universality in which all the individuals of the different group are the same. Instead, what constitutes a relevant difference in social and political terms with regard to race and gender is not one's genetic sex determination or one's skin pigment but rather what has been made of these by social and historical construal, largely by discrimination and oppression. On this view, it is not being black or female that constitutes the group difference but rather being subject to oppression as a black or as a female. This works the other way as well: The positive features of gender, race, or ethnic identity are also historical accomplishments. This is not to say that individuals can always throw off a characteristic or change its significance by themselves. To do so may well require joint action over a period of time.

The goal in this type of social constructivism, then, is to move to self-ascription. On such an approach, skin color as a criterion of group identity understood as a matter of self-interpretation changes the character or meaning of that bodily characteristic and hence of the group in political terms. On this view, which bodily characteristics will be taken to define a group and what significance these characteristics will have is, at least in part, a matter of choice, often of a collective sort. Along these lines, the affirmation of blackness in previous decades as a positive feature of cultural and political group identity transformed a stigmatizing characteristic into one that served as a basis for pride and solidarity. This replaced an earlier reaction to racism that had attempted to eliminate the color line, so to speak, by a wholly color-blind assimilationism, in which group identity based on skin color was rejected. However, both the assimilationist and the affirmationist responses to racism were in part still defined reactively, in opposition to this earlier categorization. More recently, there have been efforts to establish a more fluid group identity associated with the phenomenon of mixed race -- that is, those who have only one African-American parent or only some African-American

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10 See Leonard Harris, ed., Racial Equality (Atlantic Highlands, NJ: Humanities Press, 1999), especially Part II.
The question arises, however, whether it might not be possible to shift the focus of group identity even more radically toward an open and fully constructivist model. Here, there would be the freedom to shape one’s group identity with others and to develop multiple group identities, where the criterial features—bodily or otherwise—are open to continuous interpretation and choice.

A proposal along these constructivist lines can be found in Anthony Appiah’s work. Appiah’s discomfort with any given identities (and his analysis of theories of race from a scientific standpoint) leads him to propose the elimination of the category of race itself and its replacement with a conception of racial identities. These identities are understood as based on a “toolkit” of options given by one’s social and historical context but open to self-identification.

Appiah further argues that such a concept of “racial identity” is superior to using the concept of culture, which would ultimately assimilate racial identities to cultural identities. His argument seems to be that the use of the concept of culture would commit us to a single or common culture for all African-Americans, something that is clearly lacking, and would prevent us from acknowledging that cultures are frequently shared between African-Americans and other (hyphenated) Americans. Clearly some reification would be entailed in attributing a common culture to all members of each of these groups. However, this notion of one single culture for all members of a group does not seem to me to be implicated in the concept of culture. By contrast, cultures are increasingly plural among various “ethnic” and “racial” groups and are also shared in diverse ways across groups.

Indeed, the concept of culture has the advantage of being more open and more fully free than the alternatives of “race,” “ethnicity,” and “nationality” (as discussed further in Chapter 5). This voluntarism is misunderstood, however, if it is taken as the creation of a single individual, another charge that Appiah makes against the concept of culture here. Rather, cultural creation is most often social, joint creation and may proceed through the creation of artifacts and through new discursive interpretations. To accept the relevance of cultural creation and co-creation, and the emergence of new mores and traditions, does not therefore commit us to the idea that an individual constructs his or her own culture in isolation.

However, it can rightly be objected that oppressed groups are in fact identified by discriminatory, exclusionary, or exploitative treatment. They constitute groups within a given society that are excluded from the equal rights and benefits of other members of that society; they are subjected to discriminatory or exploitative treatment severely affecting the freedom or well-being (or both) of the members. An oppressed group is excluded in some systematic and effective way from whatever norms of equality may prevail in the society at large. Here, the basis for membership in a group is not common purposes or shared understandings, but rather the objective circumstance of being put in a particular situation of oppression not by choice; and of ascriptive identity, where, as noted, this refers to the ways in which members of the group are taken by others and in particular by the dominant group.

Thus, in considering the issue of racial identity versus cultural identity, we can say that the concept of racial identities has the distinct advantage of recognizing the current reality of race and its pervasiveness in Western societies (and in other societies, although in different ways). As Mills puts it, race (and, we might add, racial identity as well), although socially constructed, is yet real. Racial identities are clearly central for empirical study and historical and social understanding. Despite their wholly arbitrary basis, they cannot be simply willed away. From the standpoint of social critique, race and racial identity remain crucial categories.

Yet, from a forward-looking normative perspective, the concept of racial identity also brings with it the distinct disadvantage of reifying race and perhaps tacitly lending support to those who take a biological or essentialist approach to race. “Race,” although different in some ways from “ethnicity,” shares with this latter concept an unfortunate indissoluble tie to blood, birth, and descent, and this seems ultimately incompatible with a concept of the free transformation of people in directions that they individually or jointly choose to strive for. While culture has normative

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weight as a set of shared practices and resources for action (individual and social), I don’t yet see that a similar case can be made for race or racial identity, except to the degree that people in fact value it. But unless one argues that blood or descent is inherently valuable (and what would be the argument for that?), what is valuable from a forward-looking perspective in these other concepts is already included in the concept of cultural identities.

This is not to deny the importance of recognizing racism, or oppression on the grounds of race, for purposes of compensatory and distributive justice, as I have noted previously. Oppressed groups have rights to compensation for unequal treatment in the past and to efforts aimed at providing what has been characterized as a level playing field for present members with respect to the rest of society. Here we can observe in passing that a set of group rights — whether in the form of affirmative action, compensatory treatment, the removal of special barriers to participation in political and economic life, and of course desegregation — is justified by reference to the same principle of prima facie equal rights to the conditions of self-development discussed earlier. Yet on the view presented here, these group rights are in fact understood as deriving from the rights of individual members of the oppressed groups, in a way to be considered further in Chapter 5, which discusses group rights and social ontology.

The history of racism and oppression is obviously relevant to the cultural identities of African-Americans, Native-Americans, and other oppressed minority groups (and, we might add, also to the oppressor cultural groups) as obstacles that have been or are yet to be struggled against and overcome. These cultural identities, more than racial identities, seem to me susceptible of the multiplicity, as well as the interactive qualities with other cultures, that Appiah seeks. To speak of African-American cultural identities as group characteristics, then, is to recognize the identification that many make with a set of (changing and changeable) cultural identities, and to preserve the reality of diverse historical heritages, while avoiding the reifications and ascriptive that are inevitably tied to the concept of race or even to “racial identities.” At the same time, it avoids the simplistic and wrong assimilationism of the pure universalism of being “American.” However, the latter, too, is not a neutral assignation involving only the commitment to a set of principles (although these commitments are important) but is also a diversified cultural identity, which includes numerous traditions and practices, historical and changing.

Intercultural Democratic Communities

Based on this analysis of socially constructed racial and cultural identities, we can return to the original set of issues and ask: If democracy, with its equal rights, is antithetical to racism, why does racism persist within it? Abstracting from the empirical causal factors and focusing on this only from the side of the concept of democracy here, we can answer that it is due in part to existing limitations in the understanding of democracy. I want to disagree, then, with Charles Mills’s normative approach, here appreciating his powerful critique of racism as a system of accumulated entrenched privilege or differential racial privilege that is institutionalized and global (or nearly so). Mills suggests that the normative requirement in dealing with this system of white supremacy is to base democratic political organization on a true understanding of social contract and natural or human rights and to bring these Enlightenment ideals to full realization. But I think that more is required, and specifically a rethinking of democracy along several dimensions.

The problems with contemporary liberal democracies have already been well analyzed in terms of their formality and proceduralism, and their disregard of social and economic inequalities that set limits to participation. I would add, too, the factor of their delimitation to the political realm alone. At the basis of this traditional understanding of democracy is a conception of what I have called abstractly universal norms of negative freedom and formal equality, with a social ontology of individuals whose relations to each other are external. An alternative view would adopt these very norms while reinterpreting them, and would also reconceive democracy in relation to the notion of concrete universality introduced earlier, understood as having both empirical and normative aspects.

Descriptively, concrete universality not only adds to the social ontology an understanding of the individuals as internally related to each other, but also sees societies as constituted and interconstituted through these multifaceted relations. While abjuring the holistic interpretations of this universality originally delineated by Hegel, this point of view finds a certain utility in an emphasis on interconstituting relations, including here

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racial relations, and places new weight on the possibilities for intercultural creation (intra- and interracial) that this may open. The latter may even extend to the co-constitution of concepts, procedures, and institutions themselves based on understandings from multiple cultural or racial perspectives.

Within a given society, a concrete universalist approach regards the interconstitution of social relations, including racial interactions, as taking place among individuals and groups who differentiate themselves and are recognized by others through relations that are initially often oppositional or oppressive but perhaps increasingly reciprocal over time. From the normative side as well, the distinctiveness of such a concrete universalist approach consists in its requirement that abstract moral, political, and legal norms, although of great importance, need to be put in the context of actual social conditions to understand critically why they have not been realized. It proposes too that social cooperation and a variety of other social values be integrated with the abstract individual ones that are already well established.

When conceived in relation to the idea of multiple and interactive cultural identities that I posed as the prospective counterpart to historically developed racial identities, what then does such a conception of concrete universality entail? The answer is threefold, I think: Democracy needs to be understood as multi- or pluricultural in a specific sense, it has to be connected to citizenship on a certain interpretation, and it requires a substantive interpretation in terms of democratic communities. These admittedly quite demanding requirements can be summed up in the idea of inclusive intercultural democracy. It seems to me that democratic theory can make a contribution to countering racism when it is reconceived in these ways, yielding certain suggestions for practical change. The additional impact of economic democratization for countering racism is considered in the concluding section of this chapter.

The inclusiveness required by this new conception arises in part from the connection of democracy to citizenship. Thus it has increasingly been recognized that the issue of who counts as a member of a political community is central to political theory as the issue of the degree of participation in the governance of the resulting polity. The inclusiveness required here consists in the idea that all those resident in a given territory need to be recognized as citizens, with rights of democratic participation. Racial exclusions or denigrations are eliminated on this view. Certainly, full civil, social, and economic rights for immigrants are implied, while for illegal immigrants a range of hard issues would center on whether one could show them to be residents within the polity. Yet the question of fully open borders is not yet addressed by such an account, and it seems evident that the inclusiveness of a democratic community does not necessarily require that there exist no borders or that it be extended worldwide. The issue of the scope of political communities and of borders remains a real one; and we need also to accommodate the possibility of overlapping communities. In Part III of this book, I return to these issues of scope and transborder communities. For now, we can observe that the inclusive democratic community called for would also be multi- and intercultural, the topic of Chapter 5. It will be seen that this does not require mere toleration for diverse cultures but rather efforts, including at the public level, to support their self-interpretation and their interaction with other cultures.

Economic Democracy and Racial Divisiveness

Perhaps the most unexplored interrelation between democracy and racism concerns the ways in which economic democracy, and specifically employee participation in management, might constitute a factor in countering racism. In theory at least, having common economic interests in a shared project rather than opposed ones should contribute to the development of modes of cooperation and reciprocity. It would also seem, on the face of it, that in democratically managed firms, opportunities for face-to-face interaction in decision making could engender new, more empathic understandings among coworkers. Aside from the conceptual interconnections here, it is of course an empirical question as to whether such a benefit is observed, and it would be of interest to see whether concrete studies support this supposition of a beneficial effect of economic democracy in this sense for the elimination of racism. However, even if empirical support for the connection is not yet in evidence, it remains possible that changes in existing management structures might yet have such an effect.

A cautionary note in the appeal to economic democracy here is provided by the somewhat analogous critique that has been offered concerning reducing women's issues to economic ones - in this case, that there is an autonomy to racism (or sexism) that transcends merely economic factors and makes use of them. Thus it is clear that a commitment to equality

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17 This interpretation would, of course, contrast with Hegel's rather Eurocentric cultural perspective.
in social relations and the elimination of racial discrimination remains central, including the development of communication and other tools to overcome nefarious distinctions and the exertion of power by some over others. Yet, as suggested, if democracy is interpreted in a fuller sense not only as majority vote but also as involving opportunities for widespread participation in spheres beyond the political, the hypothesis here is that it might well contribute to the melioration of this discrimination. Whereas it is usually claimed that the elimination of discrimination is a condition for democratic participation, here the reverse is also held to apply. In this process, the “democratic personality,” with its qualities of agency, receptivity, flexibility, and openness to differences, would play a role, as would the greater degree of economic egalitarianism potentially entailed by certain systems of economic democratization.

Additionally, the fact that majority rule does not necessarily protect minorities even when they are represented, as Guinier and others have pointed out, points to the need for this conception of democracy to be interpreted along deliberative and discussion-based lines. In this way, developing common interests and building shared concerns in various contexts of social life take center stage, and democracy beyond the political takes on new significance. In such an approach, which is clearly in need of considerably more theoretical attention, participation in democratic decision making in a variety of associations, including the relatively non-voluntary but central context of firms and workplaces, can contribute to changing participants’ understandings and expectations of each other’s differences. Joint participation in decision making fosters reciprocity.

There is, however, no way around actual participation. Guinier and Phillips want to move representation toward “presence,” in the sense of the representation by people who share the experiences of oppressed or excluded groups. This is clearly an important part of the democratic theory of representation. But the argument here suggests that we cannot wholly bypass actual participation, and this is best achievable (sometimes only achievable) in smaller-scale and lower-level multiple contexts of economic firms and various sorts of social associations. In these contexts, difference can be expressed directly by individuals or groups, and concretely recognized; it can be presented rather than simply talked about, and more effective action can perhaps be taken on behalf of the different needs and interests. Yet it must be acknowledged that the presentation of difference may sometimes be (certainly, has often been) antagonistic or even hostile instead of being mutually supportive. The conviction of both participationist and deliberative democrats is, however, that somewhat more positive and individuated forms of recognition will emerge through democratic interaction processes. Here, the positive freedom tradition would additionally note that a condition for this transformation would be an institutional structure providing for more equal access to economic resources among the participants, and, as Mills puts it in radical—although well-founded—terms, the elimination of the economic system of white supremacy.

In conclusion, it may be useful to observe that although recognition of differences—of individuals and cultural groups—and support for these differences is crucial, perhaps the pendulum has swung a little too far toward difference in democratic theory. There is a need to discern shared commonalities and experiences, and set common goals, in addition to drawing on others’ different cultural experiences, appropriating them in new ways. Here, it is not the imposition of common goals but the mutual determination and choosing of them through deliberation that may in turn help to diminish racial divisiveness. In a variety of ways, then, democratic participation in a wide array of contexts presents itself as a significant part of an approach to dealing with racism.


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19 See Guinier, *The Tyranny of the Majority*, especially Chapters 3 and 4.