

# HUMAN RIGHTS AND DEMOCRACY - UTOPIA OR REALITY?

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## ABSTRACT

The language of and on 'Human rights' has been created within a revolutionary environment that called for a new social order and political governance. New identities were constructed and projected and new ideologies emerged in the context of the American Declaration of Independence and the French Revolution. Progressively one observed the emergence of a 'democratic' spectrum and democratic promise of a (future) society closer to justice, fairness, equality and freedom.

In this paper I will explore the relationship between human rights and democracy contributing to the clarification of concepts and tasks ahead of us. Human rights and Democracy have the potential to go hand-in-hand and use each other's strengths to realize themselves. However, the relationship between democracy and human rights is not so obvious as one may tend to think. In fact, while instinctively one may want to believe that democracies must be committed to respect fundamental human rights, it is not clear *how* this is done.

In this paper I want to address the tension between democracy and human rights. In order to do so I will start with a main question, namely, *what are human rights and what is their role in democracies?*

**KEYWORDS:** Democracy. Human rights. Economy. Participation. Political equality.

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## I. Contextualizing Human Rights Discourse

When we speak about ‘human rights’ we all intuitively know what the discourse is about - there is a claim of universality, of trans-nationality, of moral content which is ultimately translated into legal and political forms or instantiations. Through a ‘human rights’ perspective one is able to condemn, criticize and analyze forms in which societies act and live, and although it is important to do so, as if the ‘human rights discourse’ (supported by hidden premises) would grant a criteria for evaluation of what individuals *and* states shouldn’t do, it becomes more difficult to use this same reference to identify what individuals *and* states *should do*. I.e., while it is quite obvious when we are facing violations of human rights - like Guantanamo Bay or Kadaphi’s war upon his own people - we should also have a set of measures that determine *what should be done* in order for these violations not find a space for insurgence.

This is important for at least two reasons: *on the one hand*, because when talking or living in a ‘historical a priori’ (to use a Foucauldian terminology) framed by a ‘human rights discourse’ it is important, necessary and useful to understand where this discourse comes from, in order to better understand where we are and what can we do with it; *on the other hand*, because only by having done this previous task can one be in a better position to understand and (re)define the relationship between human rights (discourse) and democracy, identifying what is unique and distinct about it; therefore, to be able to answer the question: what are human rights and what is their role in democracies? Do they walk hand in hand or is this relationship more complicated and less linear that one would initially think?

In this section I will, *first*, contextualize the human rights discourse, by looking at its emergence and transformation - from the political motivations to the extension of implications brought by the United Nations. *Second*, I will address the question ‘what are human rights?’. *Third*, I will identify the new premises introduced by the UDHR that support a particular approach to human rights discourse,

namely, the adoption of an orthodox perspective where human rights are essentially defined by their moral nature and moral implications. Having done this, we will move to the following section where the relationship between democracy and human rights will be explored.

### **1. Human rights discourse - emergence, affirmation and transformation**

The expression ‘human rights’, as something analytically distinct from ‘inalienable rights’ or ‘civil liberties’, only started to be widely used after World War II. This was a term that was introduced with a new and stronger connotation with the Universal Declaration of Human Rights in 1948, Declaration which set the framework for all subsequent international and regional human rights treaties.

If one looks at the circumstances that led to the drafting of the Universal Declaration of Human Rights (UDHR), one easily identifies the differences between its compelling motives *versus* the reasons that motivated other historically and politically important Declarations, such as the Enlightenment bills of rights - from the 1689 British Bill of Rights through to the French Declaration and American Bill of Rights. However, despite the differences they might have had - many of them expressing the different ‘historical a priori’ - a common thread can be identified, namely, the concern with defining *and* fulfilling the rights of man by defining conditions for republican government or ‘democracy’.

The Enlightenment movement introduced three new premises in the political discourse. *First*, it introduced a language of ‘natural rights’, associated to the concept of liberty, which would determine the scope of legitimacy of the government. *Second*, derived from the first and reflected in the concept and practice of citizenship within the republic, these natural rights were supported by the rights to free speech and protest. *Third*, by introducing ‘individual rights’ the role and characterization of the State as such needed to be revised - from now on, the State became no longer separated from the social body, as if it was the Hobbesian Leviathan. Instead, by acknowledging

the importance of fair trials and due process, we observe a shift of paradigm where the State becomes an actor among other actors, with its specific rights and duties, accountable and responsible for its actions and therefore, liable to punishment if judged as ‘criminal’ or violator of natural rights of the individuals who belong to the Republic.

The circumstances that led to the drafting of the UDHR were quite different: after assuming that a language of ‘natural rights’ was a given, hypothetically accepted and recognized by citizens of a republican or democratic government as valid and legitimate, these ‘natural rights’ were crushed by genocidal events of World War II. Europe, supposedly an example of civilizational development, couldn’t live up to its own principles and it was victim of its own poison. More recently, with the fall of the Soviet Union we observed many genocidal behaviors in Bosnia, Rwanda and Kosovo; we could even question the (moral) authority of Bush’s attack on Iraq in 2003. We could also question the (moral or) legal authority of Obama’s decision to kill Bin Laden in foreign territory.

Under this light, the drafting of the UDHR accomplished at least two things: first, it acknowledged that ‘natural rights’, ‘individual rights’ or ‘human rights’ could not simply be assumed as existing and being universally recognized by all; second, it spelled out the necessity of developing (and materializing in writing) a set of ethical values that could become standards for action and judgment at a global scale. By doing so, the UDHR translates a duplication of relations: on the one hand, it places the burden at the immanence level of the individual/national state of meeting certain criteria in its relation to its citizens; on the other hand, it extends the boundaries of rights beyond the traditional frontiers of ‘nation-states’, moving to a global sphere where the state is an actor among other actors/states, and where individuals are defined in their relationship to a particular state *as well as* to the world in general, as a (potential and hypothetical) moral agent and legal enforcer.

Having said that, one can now see how the underlying question that both Enlightenment thinkers and drafters of the UDHR tried to answer was not so far away from one another. In fact, both tried to

define and delineate the relationship between state and individuals, assuring that individuals could not destroy the rights of others and that the state could not violate individual freedoms and rights either.

## 2. What are Human Rights?

«Natural rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, nonsense upon stilts».

Bentham, *Anarchical Fallacies* (1791-2)

Are human rights ‘imaginary’ or are they real? What role do they play in democracies? In this moment, I will be concerned with answering the first question. For this I will have as my interlocutors Tasioulas’ paper “What is a human right?” and Joseph Raz’s “Human rights without foundations”.

Tasioulas in his well know article “What is a human right?” says that when speaking of human rights one must have three things in mind: first, a concern with fidelity with history; second, the acknowledgment that there are moral issues and human rights issues, and that they not always overlap; finally, that one should be careful not be be guilty of parochialism, thinking that human rights discourse is another way of promoting liberal western values only. Having said that, Tasioulas proceeds with an analysis of three different approaches to human rights, namely, the Reductive, the Orthodox and the Political View. The first one, the Reductive view, “(...) reduces claims about human rights to claims about universal human interests.” (p.3) Under this light, human rights are treated as a matter of universal human interests. Although one may easily agree on the claim that human rights are human interests which are transversal to all human beings, therefore, universal, by treating human rights via the lens of ‘interests’ two problems emerge: first, if human rights are a matter of evaluating, acknowledging and fighting for interests, what is so special about ‘human rights discourse’? Does it make sense to have parallel terms if one is talking about one and the same thing? There must be something unique in this later in order to justify its existence. Second, by using

a language of interests or of capabilities, like Nussbaum does, one is also creating the space for a virtually endless proliferation of rights and, to that extent, a loss of meaning. Like Tasioulas says:

“The idea of capabilities may well perform important work within a theory of the grounds, scope and normative implications of human rights, but it is not a promising candidate in terms of which to understand the very idea of a human right. Instead, we need to get beyond talk of interests, or any sub-set of interests, and conceive of human rights as an irreducibly moral notion, which in turn requires taking seriously the fact that they are claims of individual *moral rights* of a distinctive sort.” (4)

According to the political view on human rights - a position which is defended by Raz or Rawls - human rights are rights that belong to a more general class of rights, generally equated with the Orthodox view that I will develop next. Common to the existing variations within this approach, Tasioulas claims that there is an immanent problem with this approach, namely, that “(t)hey make the very idea of human rights conceptually parasitic on the idea of a specific kind of political institution, whether it be the state (Beitz, Raz), state-like entities (Rawls’ ‘peoples’), or coercive institutional schemes (Pogge).” What bothers Tasioulas with this account, a discomfort that I share, is that according to this specific approach to human rights one finds a criterion for legitimation of international response. For instance, given that Kadaphi openly violates human rights, international community is morally justified to respond against it - which is actually what happened with NATO intervention and the general moral condemnation of its action by the general public sphere - not only the institutional but also the people across the world. This capacity and legitimization for international response assumes a certain notion of ‘sovereignty’, which is never spelled out as such. Either by analyzing Rawls’ perspective on the necessary conditions for international (i.e. military) response or by analyzing Raz’s position of extending this response to other kinds of intervention (humanitarian, among others), not necessary or exclusively military, there are conceptual and practical problems that need to be addressed. The

question of ‘sovereignty’ is one of them, in its relation to ‘authority’ and ‘legitimacy’. However, this is not our purpose now.

The other approach to the human rights discourse identified by Tasioulas and which is the approach that I share, is the orthodox view. This view embodies the shift of paradigm from a human rights theory grounded on interests to a human rights theory grounded on morals. According to the orthodox view, “human rights are moral rights possessed by all human beings simply in virtue of their humanity.” However, may this definition be deceptive? What does this really mean? First, there is a claim of *morality* - human rights are *one kind* (among others) of moral rights. It is the family to which they belong. Being a *moral right* implies that human rights are sources of duties or obligations: they are categorical, i.e, necessary; second, they are exclusionary; finally, they result in moral responses (like blame or guilt, etc). This is a determinant feature of human rights - they not only relate or refer to ‘goals’ and interests that one should add to one’s life (and here one could analyze the tension between the assumption of necessity of these interests versus the dimension of contingency and arbitrariness implied in the actualization of these same interests); more than that, they *impose* duties on others.

The second part of the definition, namely “(...) possessed by all human beings” means that human rights - as specific moral rights - are fully transversal and global, applied to *all*, i.e., human rights are universal. Of course, one question could be raised (and it is raised by Tasioulas), namely, are human rights applicable in all times of history, even in a ‘pre-political’ state of nature, or not? I believe that the answer to this question is ‘no’, because human rights, regardless of the universal application that derives (or is assumed) from it, are moral rights that are experienced in particular contexts of time and space; therefore, I would be resistant to overlap human rights with natural rights *tout court*. On the other hand, this question could also be seen as a false question insofar if one adopts a Foucauldian position where we are conditioned by the ‘historical a priori’ within which we live in - an historical a priori that produces power relations, knowledge

and proliferation of discourses - it simply doesn't make any sense to look for a transcendent link between different points in time.

Finally, the last expression of the orthodox definition, namely, "simply in virtue of their humanity" ("human rights are rights possessed by all human beings (however properly characterized) in all or certain generally specified socio-historical conditions simply in virtue of being human." (Tasioulas), I assume that this statement can be easily understood and accepted as straight forward - mainly because I don't think that for our particular purpose in this paper, it is relevant to engage in a discussion of meanings and contents of 'humanity'. I prefer to leave the existential approach to other theorists who will probably do a better job than myself in addressing this issue.

In short, along Tasioulas I defend that a theory of human rights must be morally supported and defended. Human rights cannot be a matter of military intervention, or other forms of intervention only - mainly because one should give reasons in order to justify interventions, and these reasons are mostly grounded on same kind of moral argument(s). On the other hand, a theory of human rights that in practice (even if not obviously in theory) equates 'rights' to 'interests' is highly problematic when trying to define the order of priorities between rights. If rights are only a matter of interests, then, not only seems that the human rights discourse falls in redundancy, but also it lacks the substance to make itself a criteria for several forms of action - individually and collectively understood. Only a moral approach to human rights can be strong enough to make itself relevant in considering, evaluating, choosing and promoting certain forms of behavior, at individual, national and global levels. Before giving more reasons for my endorsement of a moral approach to human rights theory and discourse, let us now turn to some of the premises that were introduced with the UDHR and which define the setting of my defense.

### 3. Introducing new premises

The UDHR introduced new premises that re-shaped the human rights discourse and, indirectly, democratic theory and democratic discourse as well. These were the values of dignity, equality and community. After that, the human rights discourse started to work as expressing the articulation and relationship between these values and the traditional principles of liberty, democratic freedoms and justice.

After having set the framework in the prelude and article 1, with “All human beings are born free and equal in dignity and rights” - and equality here refers to a specific kind of equality, namely of dignity and of rights, - article 22, which introduces the economic, social and cultural rights section of the Declaration, defines the relationship between *dignity* and *rights*, describing these rights as “indispensable for [human] dignity.”

Article 22 of UDHR states: “Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”

The premise of **dignity** places a new burden upon the State(s) and redefines the kind of relationship between State(s) and individuals. Not only must the state refrain from abusing individual liberties, but also, the State has the duty to take positive measures to respect individuals’ inherent worth.

The strength of the premise of dignity is reinforced by reading it in accordance to the premise of equality.

With **equality**, the drafters chose not *just* to stick with the Enlightenment formula of ‘equality *before* the law’; instead, they also introduced the modern formulation that everyone is entitled to the rights in the Declaration “without distinction of any kind,” such as race, colour, sex, religion, and so forth (Article 2). “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language,

religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.” Furthermore, “equal protection *before* the law” is reinforced by the “protection against any discrimination” – including “incitement to discrimination”, as stated in Article 7. “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.” Article 7 UDHR.

Once it was accepted that human rights values require states to *proactively* take measures to root out discrimination then the concept of liberty was bound to change. Liberty could no longer mean be free to buy, to rent, to work; from the moment we introduce the premise of universality, where *everyone’s rights* were to be secured, individual liberty had to be redefined and most likely, *restrained*.

The premise of **community** allows us to contextualize how the living of these rights can be accomplished. In article 29 the UDHR introduces the idea that ‘everyone has duties to the community’, with the explanation that it is only through the ‘community’ that “the full development” of an individual’s personality” is possible.

Article 29.(1) Everyone has duties to the community in which alone the free and full development of his personality is possible. (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

From the UDHR onwards any limitations on fundamental rights must be lawful, proportionate and necessary to achieve a prescribed goal “in a democratic society.” However, this ‘democratic

society' was never defined; it is always assumed but it is never spelled out what one means by it.

The introduction of the expression 'democratic society' in the human rights discourse - also in Article 29 - is revealing of something, namely, it provides the framework where one thinks human rights; but also, it announces something that goes much deeper, namely, that while human rights discourse can be analyzed from a functional perspective - and therefore, as providing certain necessary conditions for a democratic society - human rights discourse shape not only the *process* of democracy (and for democratization) as they also set the boundaries to the *outcomes* and *goals* of democracy. I.e., it is not sufficient that democracies translate in their legislation and practices the respect for human rights discourse, for instance, by not creating obstacles to individual liberty, expression, etc; it is also *required* that democracies (if they want to live up to their 'name') act proactively, i.e., by taking measures the uphold and promote the values explicit in the UDHR of dignity, equality and community such as introducing social security or preventing discrimination or, for that matter, protecting victims of violent crime. In other words, in human rights discourse the state is in fact *obliged* to "take preventative ...measures", in the stated view of the European Court of Human Rights "to protect an individual whose life is at risk from the criminal acts of another individual."

A question must be raised at this point: what is the actual relationship between democracies and human rights? And what should it be?

## **II. Human Rights, Democracy and Economy - a delicate balance**

The implications of the previous insight are profound. If human beings do not just need *freedom* to flourish, but also a thriving community on which they depend, then it is inevitable that you have to redefine the *limits* on individual rights as well as the quality of relationship between individuals and community itself. These limits are necessary not only to ensure freedom for *all* (which would be

granted by the principle of *equality*) but also to create the conditions for the ‘common good’, idea which is fully stated in the same Article 29 section 2.

This could also lead us to other levels of discussion, namely, what model of democracy is preferable? Which model should we choose in detriment of others? In order to fulfill human rights do democracies need to meet some previous political and institutional criteria or is it indifferent?

From the moment one assumes ‘community’ as one of the conditions for the fulfillment of human rights, then, the way in which this community is conceived, imagined or experienced is going to matter. Therefore, ‘democracy’ as a vague and all encompassing concept is not sufficient to provide a (more) concrete setting of what this ‘community’ should look like. It is necessary to define with more precision the kind of democratic instantiation(s) that are more favorable to the fulfilling of human rights; and by doing so, it becomes equally clear that some other models of ‘democracy’ do not necessarily entail a (practical) commitment to human rights theory and discourse.

In this section I want to argue that societies which are more likely to meet human rights criteria are those that favor a strong model of democracy, by opposition to other models of democracy - for instance, the minimal or procedural democracy only. Within this approach I take Benjamin Barber as interlocutor.

### **1. Strong *versus* weak democracy? What does it mean?**

Barber’s characterization of several types of democracy is supported by a particular interest about the relationship between the individual and the community. According to his approach, liberal democracy, for instance, is “thin” democracy because its values are “prudential” and “thus provisional, optional, and conditional - means to exclusively individualistic and private ends. From this precarious foundation, no firm theory of citizenship, participation, public goods, or civic virtue can be expected to arise.” (2003:4)

Given that a liberal democracy is more concerned with the individual than the community, it first defends individual rights, and only after community ones. Within the liberal model of democracy, three tendencies can be identified according to Barber: the anarchist, the realist and the minimalist. A thin democracy is ‘‘instrumental, representative, (...) in its three dispositions’’ (2003:117)

It is not my purpose to present an exhaustive account of these nuances, however, I wanted to acknowledge their existence and underline the common factor to all, namely, that all of these, by preferring individual rights to community ones, end by promoting conflict (between individual liberties, for instance) and express a lack of social cohesion which is ultimately necessary for the development and successful sustenance of a democratic society. Also, by emphasizing individual rights and liberties the value of participation is neglected, and citizenship emerges as an artificial category that plays a mere and limitative political role with little substance from the perspective of (moral) values. By focusing only on legalism and adopting a positivist attitude *vis-à-vis* sovereignty and power, social and political dynamics are reduced to a matter of behavior control along with identification of strategies for balance between self-interests. The ‘common good’ as such never really emerges, and if it does it is only in a travesty way, i.e., as giving public appearance to what actually are private interests.

According to Barber’s reading of ‘‘thin’’ democracy, a model like this can never really accomplish the democratic goals and ideals that the concept of democracy just by itself inspires. Quite the contrary, if one is inspired and committed to the democratic ideals of equality, justice and freedom, then one must introduce the variable of community in the democratic discourse. Democracy cannot mean only *political* democracy; it must also mean *social* and *economical* democracy. Under this light, the introduction of the community in the discourse marks a shift of paradigm, insofar society can no longer be defined from a egotistic and selfish point of view; quite the contrary, society must be redefined as encounter of individuals where the well being of all, or ‘common good’, must be regulative (or limitative) of individual actions and liberties. The perspective is inverted, or at

least complemented by the recognition of community's importance to individuals' flourishing, which in its turn will be reflected in the flourishing of the community as well.

Under the light brought by a reference to Barber's work, I want to clarify that in order for democracies to be closer to human rights theory and discourse it is important that democracies do not remain within a procedural level only - of reducing 'democracies' to the existence of elections in regular times. Also, it is not sufficient to underline individual rights only. Individuals must be seen in relation to the community they belong to. It is only through the analysis of this relationship, and the recognition of the institutional setting that supports it, that a strong model of democracy can emerge.

So, what is a strong democracy? According to Barber - a reading that I share - "(strong democracy) reuses on the idea of a self-governing community of citizens who are united less by homogeneous interests than by civic education and who are made capable of common purpose and mutual action by virtue of their civic attitudes and participatory institutions rather than their altruism or their good nature." (2003: 117) A democracy is as stronger as the level (and quality) of the participation and engagement of its citizens.

Again, I cannot fully develop at this point the implications of such emphasis on participation, as condition for a strong(er) democracy. However, I want to stress out the idea that *first*, democracies that actually meet human rights criteria are (or tend to be) strong(er) democracies; *second*, the strength of a democracy should be measured through the levels of participation, civic engagement, but also institutional support and other measures that assure the correct implementation and practice of these rights, with the duties they entail. *Third*, a strong(er) democracy cannot remain at the political level only; it must integrate the social, cultural, but also economical variables in order to articulate a fuller concept of community and citizenship. This is the greatest challenge contemporary democracies face today: how to integrate a discourse on human rights with economic premises within a democratic context?

## 1. Setting the Democratic Framework

To answer the question above one must acknowledge a fact, namely, that economics and the ‘global economy’ do have a great impact on the way democracies work - how they function, how the process of democratization is developed and how it is sustained - therefore, the economic premise must be taken into consideration when reflecting upon the relationship between human rights and democracy.

However, positions about the impact economics have in democracies and specially in they way it affects the conceptual promotion and practical implementation of human rights, vary. In one extreme, one finds those who argue that global economy is an advantage, i.e., a plus that can enhance the human rights cause. On the other extreme, one finds those who argue that the subsumption of democracies and other systems to economy makes us question the level of democracy itself, ultimately turning human rights discourse in a ideological instrument to advance economic goals. What can we say about this relationship?

For our purpose I will leave out the problems that authoritative states raise to the development of human rights. Let us focus on democratic states. Indeed, a question that emerges when we bring to discussion economy and human rights is the question to know what serves what: is the economy made to serve the good of society, or is the good of society made to serve the economy? Without relying in moral or metaphysical answers or assumptions, it should be the first case. Economy should be put to work in order to improve the human condition—our health, welfare, freedoms, and security. If one is committed (as most democracies in the world formally are) to contribute to a safe and peaceful world, then, economy should be used in order to enhance these goals - and we know how economic measures can have a great impact in contributing to this achievement. As David Kinley says:

economic globalization has helped to lift millions of people out of abject poverty. It has helped to provide people with jobs, health care, housing, and education, as well as giving them voice, knowledge, and greater

self-respect. In these respects it is a civilizing force. However, these benign effects have neither been universal nor uniform. And there are also casualties of globalization where its impact has been ineffective or negative—thus for every South Korea or Brazil, there is a Myanmar or Zimbabwe. The challenge in recognizing globalization as an instrument is to use it in ways that extend its beneficence and curtail its savagery. In other words, to civilize it. (David Kinley on his new book *Civilising Globalisation: Human Rights and the Global Economy* (Cambridge University Press, 2009, in <http://www.policyinnovations.org/ideas/briefings/data/000145>)

Manuel Branco, on his turn, in an article entitled ‘Economics against Human Rights’ (2007) argues that the problem is that economics and human rights have difficulties in communicating - while the first speaks the language of *needs*, relying in the concept of ‘capability’, the second speaks the language of *rights*, relying in the concept of ‘entitlement’. The direct implication of this is that each language and each paradigm give rise to a very different social and political landscape - while from an economic point of view it is conceivable to coexist with exclusion and inequality; from a human rights’ perspective, equality and inclusion are a condition *sine qua non*, i.e., goods and services can be unequally distributed, while rights cannot. It is under this context that Manuel Branco argues that economics works against human rights. I would like to explore a little bit of his argument in this section, and in the final one I will present my conclusions regarding what is to be done in order to shift the current relationship between human rights and democracy.

### **1. Different languages, different objects, same purpose?**

Despite the different languages between economics and human rights discourse, Branco starts with the assumption that they share a similar goal, namely, (and at the light of the previous quoted passage of David Kinley) to ‘free’ mankind - either from the constraints of needs, or the constraints of fear. However, the means to achieve this goal differ, and these differences become manifest in the discourse adopted by each of them. For instance, from an economic perspective,

the goal is to *a)* satisfy needs and *b)* maximize utility. The economic dimension is constructed through the concepts of goods, exchange, money, value. Even from a Rawlsian perspective, economic inequality is compatible with social justice, as long as the minimum threshold is respected and the least well off are still better than in any other possible world. The human rights discourse, on the other hand, is grounded in the equalitarian premise, meaning that ‘all’ human beings have certain rights - all human beings are entitled to a set of rights, and no human being has more rights than other.

Apparently, one could think that at least for a while - encompassing the first and second generation of rights - these discourses didn’t directly clash against each other. However, once ‘economic’ rights were introduced, economics was forced to deal with the dimension of *rights*, i.e., it was forced to think of a comprehensive way to deal with needs *and* rights. This revealed to be problematic; more so, in a democratic context where ideals not only have a regulative function; they also guide practical policy making and have direct repercussions in legislation and institutionalization.

Let us look at an example. It is a human right to have housing/shelter or food. What are the implications economically speaking under a democratic umbrella? Governments would need to make sure that *all* of its citizens/ as human beings, have these goods; but how to assure that the (re) distribution is well made in order to fill out the gaps? The introduction and commitment to a discourse of human rights imposes a (moral) duty upon governments and States to take ‘democracy’ seriously - not only as a political, preferable, model, but also social and economic. The commitment to human rights discourse introduces and makes visible the responsibility *and* accountability at State level - ultimately, if a State does not fulfill the basic human rights list, can one say that the State is still ‘democratic’?

The problem is that enhancing the economic goals sometimes openly conflict with enhancing the human rights cause. Let us take article 23 of the Universal Declaration of Human Rights, which states that

1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. (...) 3. Everyone who works has the right to just and favorable remuneration ensuring himself and his family an existence worthy of human dignity, and supplemented if necessary by other means of social protection.

Take the actual circumstances of Europe, from Greece to Ireland, Portugal, Spain, but also UK and others, where the unemployment rate increases every month, where people, who still have jobs, are invited to work much more for much less, where people live in constant fear of losing their income and therefore, falling in disgrace (because the State is cutting back the social supports and subsidies to unemployed). Is the actual economy contributing or opposing itself to the human rights cause, and with it, to democracy itself? If we read carefully these passages, what is written is that 1. everyone has a *right* to work, 2. the job one has should be the result of a *free* choice by the employee, 3. one must have (and not only *should have*, because 'right' brings necessity with it) *just and favorable* conditions, 4. one must be protected *against* unemployment, 5. remuneration must be *fair* - and fairness or justice is here measured by the level of 'dignity' that it can assure to the employee and his/her family - if this remuneration is not sufficient to reach the minimum criteria of 'human dignity' then 6. the State is compelled to *provide* additional social protection.

Reality is quite different from the theoretical and normative claim brought by the discourse on human rights. We could analyze each of the items and refute them in practice; however, for the purpose of our argument I just want to identify the tension that is being built here, and that is a tension between the quantitative and the qualitative claim. The quantitative, in the sense that 'all' human beings have a right to work, result from a free choice. The qualitative, in the sense that the job must meet certain criteria according to which 'human dignity' is assured. This criteria is vague and volatile, it has been the

subject matter of legislators, who try to define the boundary between the just and unjust in the labor market, or between the sufficient or insufficient for living conditions and a certain well-being. If all of these criteria were to be met *à la lettre*, we would probably still be waiting to find the ‘perfect’ job. However, what is at stake here is not a search for perfection, it is, instead, a search for fairness, meaning, a search for a delicate balance between the economic claim and goal *and* the human rights and democratic setting. How can this be done?

### III. Final Remarks

The relationship between economics and human rights is tense, but democracy cannot escape it. There are many other aspects that could be pointed out, exposing the tense relationship between the discourse on human rights and democracy. However, in these final remarks I just want to leave some suggestions regarding things that can be done, or avenues that should be pursued.

From a theoretical point of view it is important to spell out the forms that this tension between the discourse on human rights and democracy takes. That could happen through a comparative analysis between the adoption of the discourse on human rights, public policy making and actual institutionalization between different countries.

Second, this analysis would force us to conceive democracy differently, i.e., not as having the ‘nation-state’ figure as gravitational force; instead, by replacing it by democratic institutions. Only through an analysis of how democratic are democratic institutions can one measure the level of democracy of a society, and ultimately, account for its proximity (or not) to the discourse on human rights as regulative ideals and pragmatic goals.

Third, even if one shifts the focus from ‘nation-state’ to ‘institution’, still, it is necessary to complement that with an interdisciplinary approach. I.e., disciplines should research and act in concert, if we (as collectivity, as people who share the same interests and goals, and ultimately, as humanity) want to contribute to a better world.

Fourth, the inter-disciplinary is revealed in the dialogue between economics, political science, political philosophy and law. Having reflected upon the content and implication of concepts (philosophy task), and having studied and compared cases (political science), it is important to introduce the legal dimension and analyze the question of jurisdiction for human rights claims. For instance, if human rights are violated in Indonesia, in a factory that is owned by a Trans-national corporation who has its headquarters in England or the U.S., then, it is important that a previous legal agreement exists between the countries involved in order to avoid these violations. Of course, this requires, and imposes a more demanding level of transparency of a) corporate law that defends economic interests and b) business decision-making that respects human rights as such, regardless of the country where the corporation acts. This assumes that corporations have the same measure of treatment of human beings regardless of the country where they are.

If this happens, i.e., if trans-national jurisdiction is created in order to express the link between ‘democracy’ and human rights, we have a better chance of achieving economic and social justice, equality and liberty.

Democracies should give the example. For those - individuals or corporations - who do not want to apply the rules for themselves (who want to be the exception to the rule), there should be sanctions agreed by the international community.

What would be the implications of this? If we want to promote the discourse and cause of human rights, it is necessary to reach an agreement, at global scale, on what the goal really is - is it to promote justice, fairness, equality, is it to provide conditions for an autonomous life and freedom *or* is it to maximize gains at the expense of human lives? It is important to spell it out and be clear on what the priorities are, in order to reveal the hypocrisy that has governed the world. If libertarian and liberal principles are more important than ‘global justice’ and human rights, then, democracies should redefine themselves and expose how the relationship between human rights and Democracy is not as linear as it may seem. If, on the contrary, there is

a recognition and agreement that, in order to talk about human rights we are acknowledging the existence or we are postulating a common good, then democracies just need to walk the talk.

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