

1. RESEARCH SUMMARY

Most political philosophers assume that democracy is a legitimate form of government and, indeed, has a presumptive legitimacy that alternatives do not. They may not believe that democracy is *necessary* for political legitimacy. Rawls, for example, believed that there can be decent but not-democratic governments which are legitimate, though not fully just. However, the lack of democratic authorisation means that undemocratic governments lack something which, so most philosophers assume, is *presumptively* necessary for legitimacy: the free and informed choice of the government by citizens.

The aim of this project is to see how a commitment to democratic government, suitably understood, can help us to think intelligently about political ethics – its methodology as well as its substance. Democracy provides an intermediate point between the most abstract questions of ethics and the most practical, in so far as both the ideal and practice of democratic government is different from near alternatives such as liberal constitutionalism, or republicanism. We cannot identify a democratic procedure, institution or choice independent of the conceptions of equality, freedom, solidarity and rationality that it seeks to instantiate, because not all elections held by universal suffrage are democratic - as Pinochet's plebiscites remind us. So, determining what counts *as* a democratic choice can help us to think about the differences between those accounts of moral values, rights and duties which are consistent with democratic government, and those which are not. And because democratic choices mean that some people, parties, policies and institutions gain a legitimacy that they would otherwise lack- although the alternatives may have been equally consistent with democratic principles- a commitment to democratic government can help us to think about the relationship between the morally optional, the obligatory and the forbidden.

This project therefore has two parts. In the first, I will clarify the idea of democracy for philosophical purposes, integrating the best of recent social scientific work on democracy with the most recent developments in political philosophy. This is necessary because there has been an explosion of excellent work on democracy in the past 25 years – empirical as well as philosophical - which has not yet been fully integrated into philosophical thinking about democracy. In the second part of the project I will try to clarify the differences between a 'democracy-centred ethics' and leading alternatives, whether specified in political or moral terms. Thus I will compare a democratic perspective to republican and liberal approaches on the one hand, and to utilitarian and deontological perspectives on the other. Not all forms of republican and liberal ideas are consistent with democratic government, and the same is true of deontological and consequentialist ones. So our comparison will help to identify the different ways in which, however unintentionally, influential political and moral theories may end up undermining the values democracies seek to realise. I will use contemporary philosophical and political debates on privacy, security and freedom of expression to illuminate the differences between these approaches and, thus, to clarify the methodological and substantive implications for political ethics of a commitment to democratic government.

2. RESEARCH PLAN

We can use fairly uncontroversial assumptions about democratic institutions and values to answer ethical questions, even if these do not directly concern the nature and value of democratic government. This is the central idea of a democratic ethics, which this project seeks to develop and to illustrate. It is an idea that can be found in the work of Joshua Cohen, for example, on freedom of expression, freedom of conscience and in his sympathetic interpretation and reconstruction of Rawls' ideas, as well as in his papers of democratic theory specifically.¹ Its basic motivation is this: that if we think that democratic governments have prima facie claims to legitimacy that the alternatives do not, we should make that belief explicit and built it into our analysis of ethics. This is not simply a matter of intellectual honesty, or of methodological transparency. Rather, it is because our ideas about fact and value are unlikely to be democratic by chance. Our sense of what is possible, desirable, necessary, and right are likely to be impregnated with unjustified assumptions about the natures of men and women, and the significance of racial or religious attributes.² A conscious effort to ensure that our beliefs are consistent with democracy, unfortunately, is no guarantee that they will be. However, it is safe to assume that such consistency will not happen unless we seek to achieve it. The aim of this project, therefore, is to establish the main building blocks of such a democratic approach to ethics, and to provide some examples of its distinctive features and importance.

But what does it mean to talk about something called 'democracy', when the world we live in is characterised by very substantial differences in the institutions, goals, strengths and weaknesses of recognised democracies; and when there is still so much that we do not know about democracies empirically and normatively? The answer, I think, is to try to stick to fairly familiar ideas about democracy, while acknowledging that the term refers as much to an ideal, or set of ideals, as to some actual set of institutional arrangements.

¹ Joshua Cohen, *Philosophy, Politics, Democracy: Selected Papers*, (Harvard University Press, (HUP) 2009); *The Arc of the Moral Universe and Other Papers*, (Harvard University Press, 2011) and 'Freedom of Expression', *Philosophy and Public Affairs (PAPA)*, 22.3 (1993) 207-63.

² See for example, Catherine A. MacKinnon, *Feminism Unmodified*, (HUP 1988); *Are Women Human?* (HUP, 2007); Sally Haslanger, *Resisting Reality: Social Construction and Social Critique* (Oxford University Press (OUP) 2012). See also A. Lever, *A Democratic Conception of Privacy*, esp. ch. 2 (Authorhouse, 2013)

I will also be assuming that democracies can take a variety of different forms, whether we think of them in more idealistic or realistic terms, and that there are a variety of values and normative goals which they seek to realise and which they use to justify political institutions and options. We will therefore want to avoid assuming that democracies have to fit some favoured institutional model and that there is therefore some uniquely correct answer to the question whether democracies should be presidential or parliamentary, majoritarian or consociational, or how far they need to have the formalised legislative procedures and bodies of law with which most of us are familiar.³ Taking seriously the idea that many different types of association and relationship can be democratic, suggests that we are likely to have a rather impoverished idea of the variety of forms that democracy can take, of which the ones we know are, at best, a subset. And taking seriously the fact that our societies are imperfectly democratic, commends modesty in taking our societies as models of democracy.

That said, we have to start our thinking from somewhere, and the place I suggest we start is with the familiar assumption that democracies are countries whose governments are elected by universal suffrage, and where people have an equally weighted vote and are entitled to participate in collective decisions, no matter their wealth, knowledge, virtue, or pedigree. However, it is important to remember that lotteries, not elections, were considered the quintessentially democratic form of political appointment in classical and renaissance republics.⁴ So it is a substantive question how far democratic government requires *elections* as opposed to lotteries, rotation, appointment and other forms of selection for political office.

I will also assume that democracies require 'one rule for rich and poor' and for governors and governed- that they are constitutional governments – although the extent to which democracies must have formal systems of law, and distinctive legal institutions, is by no means settled. Still, whether democracies have the clear separation of powers that Americans aim for, and whether or not they make room for customary law of

³ My conception of democracy, therefore, is wider than Corey Brettschneider's, in *Democratic Rights; the Substance of Self-Government*, (Princeton University Press, 2007), whose difficulties I discuss in 'Privacy and Democracy: What the Secret Ballot Reveals', forthcoming in *Law, Culture and Humanities*, and in 'Democracy and Judicial Review', in *Perspectives on Politics*, 7.4, (2009), 805-822.

⁴ Bernard Manin, *Principles of Representative Democracy*, (Cambridge, Cambridge University Press, 1997).

various sorts, I assume that democracies must have well-known and generally effective protections for political, civil and personal freedoms of association, expression and choice.⁵

Democracies on this picture can take many forms – some will look more like Brazil or India, others more like Sweden, Switzerland, Italy or America. However, allowing for the familiar gaps between ideals and reality, they will entitle people to form a variety of associations through which to advance their interests, express their ideas and beliefs, and fulfil their duties as they see them. Democracies, therefore are characterised by protection not just for political parties, unions, interest groups and churches but also by the protections they secure for soccer-clubs, scientific societies, families, charities, and associations of the like-minded.

However, I tend to emphasise more than is common in the contemporary literature, the fact that democratic government demands no special knowledge, virtue, resources, or lineage for citizens to be entitled to participate politically– and to be entitled to *rule*, not merely to *elect* those who rule.⁶ Some democracies, such as the United States, limit their highest political office to native born citizens, thereby excluding naturalised citizens, and some democracies, especially in Europe, have hereditary heads of states, or monarchs. But these features of actual democracies are generally understood to be exceptions to the rule that all citizens are political equals, and equally entitled to compete for, and hold, high office.

I therefore suppose that democratic citizens have a difficult and distinctive duty, which might be compared to the difficult and distinctive duties associated with Utilitarianism, on the one hand, and Kantianism, on the other: the duty to see each other as equally entitled to rule over others. I will refer to this as '*the core democratic duty*' from now on. We can all have the duty not to cause pain to sentient beings, no matter the form of government we live in, or the political principles we affirm; and we can all have the duty to treat others as ends, whatever our views on democracy. However, it is only if we

⁵ These are points emphasised by Joshua Cohen in 'Procedure and Substance in Deliberative Democracy'; in *Democracy and Difference*, ed. S. Benhabib, (Princeton UP 1996) and in his work on associative democracy, reprinted in J. Cohen, (2009).

⁶ See, for example, A. Lever, 'Compulsory Voting: A Critical Perspective', *British Journal of Political Science (BJPolS)*, 40.04, (2010), 897-915 and, in particular, my 'Democracy and Voting: A Response to Lisa Hill' in the same issue, pp. 925-929. See also, 'Democracy and Judicial Review' supra.

think democracy a legitimate form of government that we have a moral duty to treat others as potential rulers and, if we live in a democracy, to obey laws designed to reflect that duty.

The core of this project, therefore, is to determine how attention to this duty - and to the rights, duties, permissions, institutions and policies which it presupposes and justifies - can help us to construct a common framework for ethical evaluation in the face of competing, but plausible, claims about fact and value, and the difficulty of adjudicating decisively amongst them. The project is therefore divided into two halves. The first involves the effort to specify more clearly the core elements of a democratic approach to ethics, and the second seeks to illustrate its distinctive features and to bring out their importance for issues of contemporary political and philosophical controversy.

The first part therefore is concerned with developing a philosophically persuasive conception of democracy as a political ideal and practice bearing in mind that some conceptions of democracy are defective, because based on sexist or racist conceptions of what it is to be a citizen, or what it means to treat others as free and equal. Starting from debates about the justification of the secret ballot, whether voting should be obligatory, and whether judicial review is democratic, the first part of the project will develop a philosophical conception of democracy suitable for ethical purposes, because these debates enable us to clarify the relationship between rights and duties to vote, the claims of citizens as opposed to legislatures, and the relationship between legislative and judicial politics.

The first part will also examine and seek to clarify the conditions for democratic legitimacy and its implications for the idea that there is something distinctively valuable about democratic government that our ethical theories should reflect. To that end, I will explore the idea that democracies are presumptively legitimate in the way that alternative governments are not and seek to clarify when, if ever, non-democratic forms of government might be legitimate. This will involve critically examining the claims of John Rawls and Joshua Cohen that there is no human right to be governed democratically because while a fully just society must be democratic, 'decent

hierarchical societies' of various sorts might exist, and they would be legitimate.⁷ Conversely, I will try to clarify whether – and, if so, how and why – democratically elected governments can cease to be legitimate or, indeed, may lack legitimacy to begin with. An implication of contemporary concerns with declining voter turnout at national elections is that below a certain threshold of voter participation otherwise democratically elected governments lack legitimacy. Likewise, an implication of recent work on human rights is that systematic violations of human rights, even by democratic governments, releases people from the duty to obey their government and may even require them to oppose it.⁸ So a critical element of a democratic approach to ethics depends on clarifying whether only democratic governments are legitimate and, if not, under what circumstances the presumption of legitimacy attached to democracy is rebuttable.

The second part of the project aims to clarify the ways in which an explicitly democratic approach to ethics differs methodologically and substantively from alternatives and, particularly, from alternatives which seem superficially similar. It will start by examining different interpretations of the core democratic duty, to treat fellow citizens as 'equally entitled to rule', and will consider how far that duty can and should be generalised to non-citizens, including the citizens of other democracies, the subjects of undemocratic rulers, and those who are refugees.⁹ It will examine alternative

⁷ John Rawls, *The Law of Peoples*, (Harvard UP, 1999), 64 -72; Joshua Cohen, 'Is There a Right to Democracy', reprinted in *The Arc of the Moral Universe*, 349- 372; Pablo Gilabert's 'Response to Cohen' in *Revista Latinoamericana de Filosofia Politica / Latin American Journal of Political Philosophy* 1 (2):1-37; John Tasioulas, 'On the Foundations of Human Rights', forthcoming in *Philosophical Foundations of Human Rights*, eds. Cruft, Liao and Renzo, (OUP, 2014); Tom Cristiano, 'An Instrumental Argument for a Human Right to Democracy', *PAPA*, 39.2, 142-176

⁸ See, for example, Cecile Fabre, 'Guns, Food and Liability to Attack in War', *Ethics* 120 (2009): 36-63, as well as Joshua Cohen, *supra*. See also Dorota Mokrosinka, *Rethinking Political Obligation*, (Palgrave, 2012) and Arthur Applbaum, 'Legitimacy Without a Duty to Obey', *PAPA*, 38.3, (2010) 215-239.

⁹ On the former, see for example, Jack Knight and Jim Johnson, *The Priority of Democracy: Political Consequences of Pragmatism* (Princeton UP, 2011) and their 'What sort of Equality Does Democratic Deliberation Require?' in *Deliberative Democracy*, eds. Bohman and Rehg, (MIT press, 1997), 279-320. On the latter, see Marc Fleurbaey and Robert Goodin, 'Enfranchising All Affected Interests, and its Alternatives', in *PAPA* 35.1. (2007) 40-68 and David Miller, 'Democracy's Domain', *PAPA* 37. (2009) 201-228.

conceptions of political equality – such as the idea that political equality involves ‘the equal opportunity to exert political influence’ in order to highlight the importance of seeing citizens as potential *rulers* or legislators, and not simply as potential *voters*. Thinking of citizens as rulers, not just voters, focuses attention on the symbolic attributes of rights, institutions and policies and their consequences for our ability to identify with, and to trust, each other. Thus, I will examine the conceptions of political representation implicit in debates over the wearing of religious symbols, such as the hijab or the cross, and over the role of race and ethnicity in the response to crime in order to explore the symbolic and material consequences of seeing each other as potential rulers. I have already published work on the latter and am in the process of revising an article, ‘Appearance Discrimination and the Problem of Petty Tyranny’, so these are areas of philosophical research with which I am familiar.¹⁰

The project will conclude by contrasting a democratic approach to political ethics with republican and liberal theories of political morality on the one hand, and with leading deontological and consequentialist theories of political morality on the other. Whereas the former reflect explicitly political theories of morality, centrally concerned with the justification of power over others, the latter start from the premise that principles of political morality must derive from an ethical theory which is structured in the right way. To that extent, the latter reflect a conception of political philosophy as ‘applied ethics’ which is, increasingly, an object of controversy amongst political theorists and philosophers.¹¹ While there is much to be said for the idea that principles appropriate to the justification of power over others must be formulated from the beginning with problems of power in mind, liberal and republican political theories appear just as likely to justify undemocratic rights, duties, policies and institutions, unless efforts are taken to prevent this, as are more explicitly moral theories of politics.¹² Thus, the concluding section of the project seeks to distinguish an explicitly democratic approach to ethics from leading alternatives in order to identify the common features of those ethical

¹⁰ A. Lever, ‘Why Racial Profiling is Hard to Justify: A Response to Risse and Zeckhauser’, *Philosophy and Public Affairs*, 33.1, January 2005, 94-110; ‘What’s Wrong with Racial Profiling? Another Look at the Problem’, *Criminal Justice Ethics*, 26. 1, Spring, 2007, 20-28; ‘Mrs. Aremac and the Camera: A Response to Ryberg’, *Res Publica: A Journal of Legal and Social Philosophy*, 14.1, March 2008, 35-42.

¹¹ David Leopold and Marc Stears, *Political Theory: Method and Approaches*, (OUP, 2008)

¹² For this criticism and efforts to circumvent it through a critical reinterpretation of liberal and republican principles see Melissa S. Williams, *Voice, Trust and Memory*, (Princeton UP, 2000) and Cecile Laborde, *Critical Republicanism: the Hijab Controversy and Political Philosophy*, (OUP, 2008)

theories which are consistent with democratic government from those – however attractive and similar they may seem initially – which are not.

2.1 CURRENT STATE OF RESEARCH IN THE FIELD

This research project cuts across a variety of different debates and literatures in contemporary political philosophy and is unique in its concern with the methodological implications for ethics of a commitment to democratic government. It is obviously inspired by, and will draw on, the blossoming of democratic political theory in the past two decades, often spurred on by feminist critiques of the way that the public/private distinction is drawn, that citizenship is conceived and that politics is organised.¹³ However, while recent work in democratic theory has been concerned to decide the relative merits of deliberative as opposed to agonistic or aggregative conceptions of democracy;¹⁴ or of liberal and republican constitutionalism; or representative rather than participative democracy, this project is interested in what, philosophically speaking, unites any form of democratic government and distinguishes it from alternatives. I am therefore more interested in understanding and evaluating the assumptions about democracy that enable deliberative democrats, or republican constitutionalists to recognise alternatives *as* democratic, than with their reasons for favouring the conception of democracy they think best.¹⁵ In that sense, I seek a more deeply philosophical version of David Held's invaluable text book, *Models of Democracy*, and an updated sense of the 'the idea of democracy', in light of nearly twenty years of scholarship since the influential book of that name.¹⁶ Likewise, I am more interested in trying to clarify the outer *boundaries* of what counts as a democratic choice of

¹³ See A. Lever, *A Democratic Conception of Privacy* *supra*, and 'Mrs. Aremac and the Camera: A Response to Ryberg', *Res Publica: A Journal of Legal and Social Philosophy*, 14.1, March 2008, 35-42; 'Privacy Rights and Democracy: A Contradiction in Terms?', *Contemporary Political Theory*, 5. 2, May 2006, 142-162; 'Must Privacy and Equality Conflict? A Philosophical Examination of Some Legal Evidence', *Social Research: An International Quarterly of the Social Sciences* 67.4, (2000) 1137-1171 and 'The Politics of Paradox: A Response to Wendy Brown', *Constellations: An International Journal of Critical and Democratic Theory*, 7.2, June 2000, 242-254.

¹⁴ Compare Joshua Cohen, Melissa Williams and Cecile Laborde, *supra*, Jurgen Habermas, *Between Facts and Norms* (Polity, 1997), Robert A. Dahl, *On Democracy*, (Yale, 2000), and the critic of such approaches to democracy in Carol Pateman and Chantal Mouffe.

¹⁵ Compare Fabienne Peter's excellent, *Democratic Legitimacy*, (Routledge, 2009), with its preference for epistemic conceptions of democracy.

¹⁶ David Held, *Models of Democracy*, (Polity Press, 2006) and *The Idea of Democracy*, eds. David Copp and Jean Hampton, (CUP, 1993).

institutions, policies and personnel, in order to distinguish democratic permissions from democratic obligations, than in deciding which of the morally acceptable choices or interpretations within that boundary we ought to favour. In short, I am concerned with the differences between democratic and undemocratic governments to an extent, and in ways, that most analytic political philosophers are not.¹⁷

Moreover, I am interested and engaged in a variety of public policy debates – albeit from a philosophical perspective – and have a fairly extensive engagement with the empirical and historical literature in these areas. Attention to the latter highlights the varieties of institution and policy found amongst democratic governments, and the interpretative and evaluative challenges which these pose for philosophers. For example, much of the literature on the democratic credentials of judicial review is built on the assumption that democracies have majoritarian electoral systems, or that where they do not, that it is majority coalitions which govern.¹⁸ However, the work of George Bingham Powell shows that these assumptions are misplaced.¹⁹ A philosophically adequate conception of democracy, therefore, needs to decide whether governments which reflect a minority of votes are, ipso facto, undemocratic and illegitimate, or whether philosophical theories need to be amended or nuanced in light of what we know about actual governments. This is but one example of many in which engagement with empirical work poses philosophical challenges for political philosophers, requiring them either to modify their assumptions or to be clear about what empirical examples, if any, can be used to illustrate their claims about democracy.

This is not the same as saying that we must choose between working at the level of ideal or real theory – though the issues that concern me have affinities with this debate in philosophical methodology.²⁰ The debate on whether judicial review is democratic, for example, can be understood either as a debate about what would be the case in an idealised democratic system of government or as a debate about what actually happens in countries conventionally considered as democratic. At either level, however, it is

¹⁷ An important exception is Albert Weale, whose work on democracy, and on political theory and social policy, are an inspiration and resource.

¹⁸ See my 'Democracy and Judicial Review' *supra*.

¹⁹ George Bingham Powell, *Elections As Instruments of Democracy*, (Yale 2000)

²⁰ Zofia Stemplowska and Adam Swift, 'Ideal and Nonideal Theory' in David Estlund (ed), *The Oxford Handbook of Political Philosophy*, Oxford University Press, 2012, 373-89

desirable to have examples of what one is claiming and, where possible, to draw those examples from actual events, and not just from hypothetical cases. Thus, the interpretation of legal history is, inevitably, a part of debates about judicial review, even whether those debates are couched at a fairly abstract level, as in the recent work of Jeremy Waldron, Christopher Eisgruber, Corey Brettschneider and Richard Bellamy.²¹ The challenge posed by Bingham Powell's work, therefore, is not whether we should argue about judicial review at the level of an idealised model of democracy, or in light of how actual democracies work, but of how far our accounts of the ideal should be revised in light of the facts and, importantly, how far a refusal to modify our ideal affects the historical and contemporary examples we can use to illustrate our claims in the future. Although recent arguments about the difference between principles of justice and 'rules of regulation' – to use G. A. Cohen's terminology²² – raise the former issue for theories of justice, though not of democracy – there has so far been much less interest amongst philosophers in the latter. To date, therefore, debate about method in political philosophy/theory has been carried out at a fairly high level of abstraction and has paid little, if any, attention to the implications of these debates for the interpretation and use of 'real world' examples, or to their significance for democratic theory. While the use of outrageous hypothetical examples has been an object of interest,²³ philosophically important questions about how to describe, interpret and evaluate actual events have received comparatively little attention. This project, therefore, extends current work on methodology in political philosophy, because it offers sustained attention to the problem of interpreting facts, as well as values, for philosophical purposes, whether one is interested in ideal or non-ideal conceptions of politics.

²¹ See A. Lever, 'Democracy and Judicial Review' *supra*. The work of Jack Knight is a helpful exception. See for example, 'Are Empiricists Asking the Right Questions about Judicial Decisionmaking?' in *Duke Law Journal*, (2009) and "Causal Mechanisms and Generalizations" in Chris Mantzavinos, ed., *Philosophy of the Social Sciences: Philosophical Theory and Scientific Practice* (Cambridge: Cambridge University Press), 2009. See also J. Cohen, 'Philosophy, Social Science, global Justice' in ed. A. Jaggar, *Thomas Pogge and His Critics*, (Polity, 2011).

²² G. A. Cohen, *On the Currency of Egalitarian Justice*, ed. M. Otsuka, (Princeton UP, 2011), 225-236. G. Cohen provides a powerful defence of the idea that the unfortunate facts do not affect the ideal in *Why Not Socialism?* (Princeton 2009), and *Rescuing Justice and Equality*, (Harvard, 2008). The difficulties of such a position, however, are reflected in J. Cohen's 'Taking People As They Are', *PAPA* 30.4. (2001)

²³ See, for example, Jakob Elster, 'How Outlandish Can Imaginary Cases Be?', *Journal of Applied Philosophy* 28 :3, 2011, p. 241-259.

2.2 CURRENT STATE OF MY RESEARCH

This project draws on longstanding research that I have conducted into the way that seemingly attractive and egalitarian conceptions of value, and accounts of our rights, can prove substantively inegalitarian in their conclusions, and at odds with basic principles of government. This research started with my doctoral dissertation, *A Democratic Conception of Privacy*, which has been published by AuthorHouse with grant support from the Ernst and Lucie Schmidheiny Foundation, and has shaped subsequent articles and a book, *On Privacy* (Routledge, 2011). It is also reflected in my published work on judicial review and compulsory voting, and on the ethics of patenting human genes (www.alever.net). Over the past two years I have tried to articulate the methodological assumptions of my work, and to generalise and deepen them, partly in response to the challenges presented by my work as an Ethics Advisor for the European Commission's Directorate General of Research, partly out of dissatisfaction with the idea that the deontological/consequentialist distinction should structure our approaches to the teaching of ethics. I now have presented several versions of this research project, in the guise of conference papers and invited lectures, to a variety of different audiences, including the staff running ethics reviews for the DG of Research. (see CV). I am currently revising a paper on democracy, public goods and the justification of intellectual property which is meant as a 'test' of my approach in an area -intellectual property rights- where established deontological and consequentialist justifications suffer from well-known defects, but where alternatives to these have been thin on the ground.²⁴ I am also revising a paper, 'Privacy, Democracy and Freedom of Expression' for *The Social Dimensions of Privacy*, (CUP, 2014) eds. Rossler and Mokrosinka, which extends and deepens arguments about the importance of privacy to democratic forms of freedom of expression, presented in *On Privacy*. So I now feel that the basic elements of this research project have been presented, tested and shown to be sound, and that I am ready to embark on the process of pulling the pieces of this project together, and of filling in the missing elements.

²⁴ See my introduction to A. Lever ed., *New Frontiers in the Philosophy of Intellectual Property*, (CUP, 2012) for some of the latest work in the area, and their difficulties.

2.3 DETAILED RESEARCH PLAN

The research plan turns on clarifying key concepts and steps in the argument which I have not worked on before, and then drawing out the links between them and my published research. I have therefore divided the research plan into three tasks which reflect the three areas on which I need to concentrate in order successfully to build on and integrate my prior research. Ultimately, these three areas will be united in a monograph that directly reflects the two parts of this project which I have just presented. In the meantime, dividing the research into three tasks will make it easier to organise, to present, and to publish as a series of articles for political theory and philosophy journals.

1) The Core Democratic Duty, Political Membership and Equality

The three tasks in this first area of research concern the central democratic duty, and its implications for political equality, political membership, and for political rights, duties and permissions. This is the first part of clarifying what the ‘core democratic duty’ involves, and can be pursued, presented and published without referring to what I have called the ‘presumption of legitimacy’.

1a) Political Equality: This task examines the ‘the core democratic duty’, and compares it with competing conceptions of political equality in the literature, such as ‘equal opportunity for political influence’.²⁵ The latter was formulated in response to the problem that a commitment to ‘equal influence’ *tout court* suffers from the same problem as other ‘equality of outcome’ interpretations of equality: that it is indifferent to legitimate differences in people’s ambitions and desires, as well as to their abilities. Moreover as one’s claims to political influence are competitive – a point which underpinned Rawls’ insistence on the fair value of the political liberties (*TJ* section 36) – they necessarily depend on the legitimate desires and beliefs of others. Thus, one of the first tasks is to revisit these older debates about political equality and draw out their significance for the interpretation of the core democratic duty. The result, I expect, will be different interpretations of that duty – each with its particular strengths and

²⁵See the works by Jack Knight and Jim Johnson, and by G.A. Cohen. See also Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Harvard UP, 2002). See also Richard J. Arneson, ‘The Supposed Right to a Democratic Say’ in *Contemporary Debates in Political Philosophy*, eds. Cristiano and Christman, (Blackwell Publishing, 2009)

weaknesses – but all of which are credible as a starting point for reflection on the ethical implications of a commitment to democratic government.

1b) Participation and Representation: The next task will be to clarify what this core democratic duty (in its variant interpretations) means for citizen participation and representation in the legislative, judicial and executive aspects of government. This involves developing ideas about citizen participation and representation already present in my work on judicial review, compulsory voting, jury trials and the rationing of healthcare, (www.alever.net) but which now need to be developed properly and related systematically to the core democratic duty.

1c) Membership, Citizenship and Foreigners: Here I will be concerned with the implications of the core democratic duty for the rights of citizens and foreigners. The latter involves addressing recent debates about the shape of the *demos*, and the interpretation, in an interdependent world, of the familiar medieval tag ‘that what touches all should be decided by all’. (Fleurbaey, Goodin, Miller, *supra*). While I am sympathetic to the idea that non-citizens who will be significantly affected by ‘our’ decisions should have the means publicly to influence those decisions, I do not see this as justifying equal voting rights for non-resident foreigners and citizens. I therefore want to use this debate to highlight the different ways in which people can participate in politics - such as testifying before official commissions, submitting documents to think-tanks and interest groups, subsidising political campaigns – and to use these differences to consider what a commitment to democracy implies about the rights and duties of citizens and foreigners. My work on the secret ballot and on the ethics of voting speaks partly to this theme, via my critique of the idea that the only ethical way to vote is to vote for ‘the common good’.²⁶ However, while I have some familiarity with ‘the boundary debate’, as it is called, I have done no research as yet on the claims of foreigners to share in citizen deliberation and decision-making.

2) The Core Democratic Duty and the ‘Presumption of Legitimacy’

The second key area of research concerns what I call ‘the presumption of legitimacy’ – or the idea that democracies have a presumptive legitimacy that alternatives lack.

²⁶ A. Lever, ‘Mill and the Secret Ballot’, *Utilitas* 19.3, 2007, 354-378

Clarifying the nature and implications of this presumption is necessary to complete the understanding of ‘the core democratic duty’ and involves two different tasks.

2a) Democracy and Legitimacy: This task concerns the thesis that ‘decent hierarchical societies’ can be legitimate, and identifies the assumptions about legitimacy, democracy and justice which underpin the thesis and the claims of those who accept or reject it. This involves a comparison of Rawls, J. Cohen, D. Miller, Gilabert, Cristiano and Tassioulas on political legitimacy and human rights, and the ways in which the two are connected.

2b) Legitimacy and Obligation: This task examines philosophical ideas about the nature of democratic legitimacy itself, and the conditions under which legitimacy is threatened or lost. (eg. Applbaum, Mokrosinka, Peter, Habermas, Fabre) It involves the study of recent debates on the best justification of human rights in general, and the right to be governed democratically in particular. However, it also examines philosophical work on conscientious objection and the duty to resist injustice,²⁷ as well as social scientific and philosophical research on ‘declining turnout’ at national elections, and the problems of voter alienation from established forms of politics. I am familiar with the latter because of my published research on compulsory voting (www.alever.net). Thus far, however, I have been concerned to show why the fact that *some* level of turnout is necessary for legitimacy does not mean that we have a duty to participate in all elections, and why the competitive character of democratic elections means that voter turnout is a poor proxy for legitimacy. I now need to build on, and deepen, these arguments in order to clarify how political alienation as well as governmental acts of injustice can undermine the legitimacy of democratically elected governments, and what this means for political legitimacy and obligation.

3) Democratic Ethics and the Alternatives

Finally, the third key area of research concerns the distinction between democratic and undemocratic governments and involves two tasks. Undemocratic governments come in many forms, and one of the intuitions behind this project is the varieties of undemocratic government can highlight ethically significant aspects of democracy which we may too readily take for granted, and suggest new aspects or forms of democracy

²⁷ Eg. Kimberly Brownlee, *Conscience and Conviction* (OUP, 2012),

which we may never have considered. I have explored the use of this contrast in my work on privacy, in order to illustrate the differences between democratic and undemocratic ideas of privacy in the family and in the workplace. It will now be necessary to do this more broadly and more systematically. The work of Judith Shklar is an inspiration here – with her interest in ‘ordinary vices’, and their relationship to types of political regime; and her concern with ‘the faces of injustice’.²⁸ The place of democratic government in Shklar’s ‘liberalism of fear’, however, is uncertain.²⁹ Hence, the merits, from a democratic perspective, of Shklar’s own conception of justice will form part of the investigation into how democratic government, as a political ideal and as a lived reality differs from its near relations, such as liberal constitutionalism and republicanism.

3a) Democratic Ethics and Liberal and Republican Alternatives: This task involves identifying the shared constituents of democratic forms of liberal and republican political thought, and the ways that they differ from alternatives. It involves drawing out the differences methodologically and substantively of starting an analysis of political ethics with a commitment to the core democratic duty - which might, in principle, be influenced as much by Marxist, Anarchist or Utilitarian thought as by Liberalism or Republicanism - rather than with one of these democratic forms of liberalism and republicanism. To facilitate analysis and comparison, I will focus on different conceptions of the public-private distinction and their implications for sexual equality, as this has been a central topic of philosophical debate in the past twenty years, and lies at the heart of competing claims about the relative merits of liberalism, republicanism, critical theory and post modernism, as well as of competing conceptions of feminism and democracy. I have considerable familiarity with the relevant literatures through my published research on privacy and democracy, so though this task requires attention to thinkers as disparate as Ronald Dworkin, George Kateb, Drucilla Cornell and Philip Pettit, (as well as C. Laborde, M. Williams, Iris Young, Nancy Fraser, Wendy Brown, Jurgen Habermas, Dennis Thompson, Seyla Benhabib), this a less daunting prospect than it would otherwise be.

²⁸ Judith N. Shklar, *The Faces of Injustice*, (Yale UP, 1992); *Ordinary Vices*, (Belknap, 1985)

²⁹ Judith N. Shklar, *Political Thought and Political Thinkers*, ed. Stanley Hoffman, (Chicago UP, 1998) and the collection of essays on Shklar’s liberalism in *Liberalism Without Illusions*, ed. Bernard Yack (Chicago, 1996)

3b) Democratic Ethics and Deontological and Consequentialist Alternatives:

Finally, I will examine conceptions of ethics which treat the differences between democratic and undemocratic government as ethically fundamental and those which are structured by the distinction between deontological and consequentialist moral theories. To that end, I will compare the arguments for freedom of expression in Joshua Cohen and Tim Scanlon, as well as the different roles that the quest for unanimous agreement plays in their conception of ethics.³⁰ I will then look at the disagreements between Joshua Cohen and G.A. Cohen over the demands of justice and of personal morality, and their implications for wage rates and for occupational choice.³¹ These three distinguished contemporary analytical philosophers are familiar with, and publish on, each other's work and, while sharing a great deal in common philosophically and politically, epitomise different approaches to egalitarian political philosophy. Specifically, Scanlon is associated with a contractualist moral philosophy; G.A. Cohen with egalitarian consequentialism and Joshua Cohen with the philosophy of democracy. It is worth noting, here, that while J. Cohen is a student of Rawls and, like Scanlon, is heavily influenced by Rawls' methodological approach to justice, he is also, like G. A. Cohen, an 'Analytic Marxist' although he differs from other members of this group, such as J. Roemer and J. Elster, in the influence Habermas' early writings have had on his political and social philosophy.³² The comparison between them, therefore, should be of intrinsic interest, and should help to illuminate the methodological and substantive significance of an explicit commitment to democratic government.

³⁰ See Cohen's 'Procedure and Substance', for example, as well as his 'Freedom of Expression', "Freedom, Equality, Pornography," in *Justice and Injustice in Law and Legal Theory*, ed. Austin Sarat and Thomas R. Kearns. University of Michigan Press, 1996, pp. 99-137 and "Establishment, Exclusion, and Democracy's Public Reason," in *Reasons and Recognition: Essays on the Philosophy of T. M. Scanlon*, eds. Wallace, Kumar and Freeman, (OUP, 2011), 256-275, and Scanlon's 'A Theory of Freedom of Expression,' *Philosophy and Public Affairs* 1, .2 (1972), 204-226; 'Freedom of Expression and Categories of Expression,' *University of Pittsburgh Law Review* 40 4 (1979), pp. 519-550; 'Why not Base Free Speech on Autonomy or Democracy?'" *Virginia Law Review* 97 (2011) pp. 541-548 ; 'Comment on Shiffrin's Thinker-based Approach to Freedom of Speech,' *Constitutional Commentary* 27 (2011) pp. 327-335; 'Comments on Baker's Autonomy and Free Speech,' *Constitutional Commentary* 27 (2011) pp. 319-325; 'Review of Freedom and Expression by Fred R. Berger,' *Ethics*, 92 (April 1982), p. 601

³¹ J. Cohen, "Taking People As They Are?" *PAPA* 30.4. (2001), 363-386; and G.A.Cohen, *Why Not Socialism?* (Princeton 2009), *On the Currency*, supra, ch. 12; and *Rescuing Justice and Equality*, (Harvard, 2008), Part 1 and pp. 373-412.

³² I say this because J. Cohen used to tell me that he felt his work on democracy was influenced rather by Habermas than by Rawls and because, as a doctoral student of Cohen's, the importance of Habermas to his teaching and his disparate writings is apparent in ways that, I believe, are overlooked by those who see him simply 'as a Rawlsian'.

2.4 SCHEDULE AND MILESTONES

The detailed research plan reflects the three large areas of research which will be necessary to complete this project, given the work that I have already accomplished, and their corresponding tasks. Divided in this way, the work can be scheduled quite easily over three years, with each year devoted to the research, presentation and publication of articles associated with one of these large areas. The task of uniting the three parts into a whole – or of writing the philosophical monograph which reflects the whole of this project – will take place in year 4, after the three years of research have been completed. By that time I will have a good overview of the whole and, importantly, will be eligible for a sabbatical leave from the University of Geneva. This way of scheduling the research, makes for a natural series of milestones, and will make it relatively easy to maintain momentum throughout the project (by giving each year some independence and novelty) without sacrificing the ability to measure progress.

Areas/Tasks	Year	Year 1	Year 2	Year 3
AREA 1: The Core Democratic Duty, Political Membership and Equality		[Green bar]		
Task 1a: Political Equality		[Green bar]		
Task 1b: Participation and Representation		[Green bar]		
Task 1c: Membership, Citizenship and Foreigners		[Green bar]		
AREA 2: The Core Democratic Duty and the 'Presumption of Legitimacy'			[Green bar]	
Task 2a: Democracy and Legitimacy			[Green bar]	
Task 2b: Legitimacy and Obligation			[Green bar]	
AREA 3: Democratic Ethics and the Alternatives				[Green bar]
Task 3a: Democratic Ethics and Liberal and Republican Alternatives				[Green bar]
Task 3b: Democratic Ethics and Deontological and Consequentialist Alternatives				[Green bar]
DELIVERABLES		D1 ▲	D2 ▲	D3 ▲

Figure 1 : Schedule of individual area work, component tasks and deliverables

Figure 1 summarises the work schedule for each of these areas and the component tasks as well as the timing of the project deliverables.

Year 1, will be devoted to Area 1: clarifying what it means to treat people as 'equal rulers' and what this means for political participation by citizens and foreigners. This is the first part of clarifying what the 'core democratic duty' involves, and involves

research which can be pursued, presented and published without referring to what I have called the ‘presumption of legitimacy’. A research report will be submitted at this end of this year (deliverable D1) detailing progress to date, including publications and presentations.

Year 2 is devoted to Area 2: clarifying the meaning and implications of the ‘presumption of legitimacy’. At the end of year 2, therefore, research on ‘the core democratic duty’ will be complete. Year 2, therefore, is dedicated to debates about democracy and human rights, democracy and legitimacy, political alienation and conscientious objection – reflecting Tasks 2a -2b. These tasks can be pursued and presented independently of the work in Year 1, which will facilitate dissemination and publication of the research findings. However, the research report which I will submit at the end of Year 2 (deliverable D2) will include a synthesis of the findings from Years 1 and Years 2, so that progress in meeting the project’s goals, as a whole, can be assessed.

Year 3 is devoted to Area 3: the comparison of a democracy-focused ethics with liberal and republican alternatives, on the one hand, and of deontological and consequentialist alternatives on the other. The two sets of comparisons will initially be pursued separately, and will be the focus of distinct publications. The findings will then be synthesised with the results of Year 1’s study of political equality and Year 2’s study of political legitimacy for a further series of presentations and articles. The third year report will summarise the results of that synthesis, and will act as a preparation for the Final Project Report (deliverable D3), to be submitted to the SNF.

2.5 IMPORTANCE AND IMPACT

The motivation for this project, as I have said, lies partly in my experience as an ethics advisor to the European Commission’s Directorate General of Research – particularly in the area of security – and partly out of dissatisfaction with the way that ethics is taught to lay professionals, such as doctors and nurses, or scientific researchers. Too often, the alleged differences between deontological and consequentialist theories are taken as the privileged starting point for ethical reflection, although this inevitably means downplaying the significance of other approaches to ethics, and means overlooking the ways that both deontological and consequentialist theories have shared in the justification of sexual and racial inequality, and of undemocratic forms of government.

In teaching practical ethics, therefore, and in helping people to think about the ethical significance of their work, we should, ideally, work with only that subset of ethical theories which are consistent with democratic values, relationships and institutions. But working out which these are will be all but impossible unless we seek to incorporate an explicit concern for democratic government into our ethical analysis. Nor will we have learned much about the democratic character of our theories until we can understand why some ethical theories which appear to have nothing much to do with democratic government are, nonetheless, consistent with democratic ideas about politics and morality, whereas other, similar, theories are not.

The impact of this research, then, is of considerable practical importance, although the research itself is decidedly philosophical in character. The results of this project should help us better to understand the nature and consequences of different ethical schools of thought, and this, in turn, should help to improve the teaching of ethics and the work of practical ethicists. From a scientific perspective the outcome of this project, I hope, will be a new approach to ethics, which will be reflected in a philosophical monograph and a series of high-standard scholarly articles, (as well as a doctoral dissertation). However, I would like to also emphasize the practical potential of the project's outcomes.

On a first level it will offer a practical basis for helping lay people to think about ethics – and, in particular, the ethical implications of different power relations – in their working lives and personal relationships. SNF funding would considerably enhance my ability to engage in ethical work beyond the university including the preparation of a handbook on ethics which can be used by lay professionals.

On a more complex level, this project will facilitate the construction of an ethics framework which can be used in different fields to consider the ethical aspects and implications of decisions and actions, and to frame ethical guidelines for a variety of professional contexts. My work with the European Commission has provided an initial outlet for this endeavour, and a motivation and testing ground for my ability to use highly specialised philosophical research to help in the ethical evaluation of research and policies in specialties very different from my own. The chance really to press ahead with this research project, then, would greatly facilitate and improve efforts to engage in ethical work and reflection beyond the university, and to make ethics a tool of increased

practical relevance and power in addressing the complex problems confronting today's world.