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Human Rights as tools for political progress

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Résumé

La pratique des droits de l'homme est souvent décrite comme une entreprise qui vise à établir des standards minimaux pour guider l'action des États et des individus. Dans cet article, je tente de remettre en question la position minimaliste défendue par deux auteurs, James Nickel et James Griffin, en défendant une thèse selon laquelle la philosophie et la morale ne devraient pas être limitées par la pratique et les circonstances du monde. Sans apporter une réponse précise à la question de la faisabilité des droits de l'homme tels qu'on les connaît, je soutiens que le minimalisme défendu par Griffin et Nickel n'est pas nécessaire, ni souhaitable, dans la lutte pour la défense des droits de l'homme, lutte dans laquelle la philosophie a un rôle de premier ordre à jouer.

> "The greatest improvement in the productive powers
> of labour, and the greater part of the skill, dexterity,
> and judgment with which it is any where directed,
> or applied, seem to have been the effects
> of the division of labour."
> Adam Smith, *The Wealth of Nations*, 1776

Human rights are oftentimes described as minimal standards for a "decent human life". On that account of human rights (HRs), we should take the concept of human rights as a guide for action for states, governments, and other international agents in order to ensure they provide the minimal conditions for human life. HRs, it is said, *are not a list* of great aspirations for the best human life possible ; they are, instead, minimal standards by which States should abide. Having said that, the question of the minimalism of HRs is even more difficult when one realizes the term "minimalism" is actually

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equivocal. First, it can involve trimming down the list of HRs to a minimal set of "basic" HRs. This minimalist list would be more likely accepted by all, or so the argument goes. Secondly, it can mean that HRs should only be *minimally demanding*, thus taking the scarcity of resources available in a given situation into account. Finally, it can mean that we should only insist on rights that are feasible, rejecting high ideals entirely.

The thesis I defend in this paper is that one should not (or at least one *does not have to*) concentrate on either of the minimalist accounts of HRs presented here. Moreover, I shall argue for a more expansive account of HRs defending a more *critical* and *political* use of the concept. I should also note that I do not focus on any of these particular forms of minimalism. Rather, I wish to critique minimalism as an *a priori* attitude towards human rights, taken to be part of political and theoretical endeavors. Indeed, all the works I discuss in this paper do not follow the same logic and are not part of the same school of thought. However, they all, in one way or another and for various reasons, argue for a minimalist approach to the study of human rights. Thus, this paper is more a general critique of minimalism and *not* specific defense of maximalism. I reject minimalism as a practical and philosophical necessity, but I cannot offer a defense maximalism in this article.

I must recognize that given that I am aiming at several targets, my position could confuse the reader. He or she might wonder what authors or what position I am really critiquing or what exactly I am defending. Because this confusion is understandable, I want to be as transparent and clear as possible: my critique of minimalism is subordinate to a defense of a *critical* political philosophy. Political philosophy has been throughout history, and should endure as such, a critical endeavor in which philosophers argued for what the world *ought to be like*. Saying, like some of the authors I critique, that the practice and theory of HRs should be kept minimalistic because a more expansive account would not fit the world *as it is*, is precisely the attitude I am condemning in this article.

The strategy I want to employ in order to rebuke minimalism is twofold. First, I will address the arguments that justify a defense of HRs as minimal standards. Secondly, I will defend a critical and political approach to HRs that would take them to be tools in the

struggle for justice and equality. Basically, HRs should be taken as they are: HRs are supposed to give us an idea of how the world *ought to be like*. Following that line of thought, the concluding paragraphs will present a discussion on the role of political philosophy in the practice of HRs. Basically, I argue that the best way to bring forth progress for justice and equality is to ensure a division of the moral labour between political philosophy and other social sciences – which is why I quote, rather provocatively, Adam Smith. My conclusion is that political philosophers need to think of human rights as *tools for political progress*.

I should also note that the thesis I am defending in this paper is concomitant with a very particular account of justice. That is to say my views on HRs are embedded in a socialist-egalitarian conception of social *and* global justice. Unfortunately, I do not have the space to defend that position in and of itself, so I will not be able to answer the difficult question: *Why (not) socialism (on a global scale)*? Even though a more elaborate answer *is needed*, I remain certain that the only serious objections to a strong socialist-egalitarian view of global justice and HR are questions of feasibility and implementation – I will not address these specific objections in this paper. I will however make the (some would say wild) assumption that the *principles* of a socialist-egalitarian view of global justice and HRs are sound.

Because of these very real difficulties set forth by the question of feasibility and implementation, I remain neutral on the nature or, better, the structures of this particular account of global justice – be it a World federation, a World State, etc.. Having said that, I believe that a rather strong version of egalitarianism is already built-in the *global* practice of HRs. I would therefore tend to argue for global egalitarianism (and not a minimal one). However, we will see in the concluding paragraphs that egalitarianism does not necessarily entail that HRs are meant to defend justice *between States* – unfortunately, this is a difficult problem I will not be able to adequately address here. With those introductory remarks out of the way, I will start by addressing Nickel's defense of a minimalist account of human rights.

James Nickel offers in *Making Sense of Human Rights* "four strong reasons" for a minimalist approach regarding human rights[1].

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[1] Nickel, J. (2007), *Making Sense of Human Rights*, p. 37-38.

Beginning with the assumption that human rights "aim at avoiding the terrible rather than achieving the best", Nickel claims that a minimalist conception of HRs is essential in order to ensure (1) that HRs keep a level of high priority and universality; (2) that the practice of HRs "leaves ample room for democratic decision-making at the national level"; (3) that HRs can be accepted by "countries who prize their independence and self-determination"; (4) and finally that "by limiting human rights to minimal standards we make them more likely to be feasible in the vast majority of the world's countries".

That list appears to be the most basic (and perhaps the strongest) arguments for a minimalist account of HRs and, for that reason, they will constitute a sort of benchmark for us to test my thesis. If I can show that all or at least some of these arguments are problematic or at least not necessary, we will have a case against the so-called minimalism of HRs. At the very least, we will have reasons to mitigate that minimalism.

Because of the very basic character of these arguments I will not address them fully now and I will rather refer to them throughout the paper. First, I will link argument (4) to the concern regarding "demandingness" raised by Griffin's use of the "Ought Implies Can principle" (OIC principle); argument (1), coupled with (2) and (3), bring up the issue of parochialism that I will address in a discussion of Seyla Benhabib's thesis for "another universalism"[2]. I will refer to the same arguments in order to push Beitz's arguments further than what his latest work on HRs suggested[3]. Finally, I will mobilize argument (1) *precisely* to argue in favor of a more expansive account of HRs in the last part of this article. Let us start with the discussion of Griffin's thesis.

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[2] Benhabib, S. (2007), "Another Universalism : On the Unity and Diversity of Human Rights", p. 7-32.

[3] Note that the arguments (2) and (3), along with a conception of HRs as ground for international concern, are the arguments that made Charles Beitz shy away from making a strong link between a theory of HRs and a theory of global justice. We can see the evolution by comparing "What Human Rights Mean", p. 36-46 and Beitz, C. (2009), *The Idea of Human Rights*, p. 142-143. I will come back to this in my later discussion.

James Griffin's project is to give a more determinate definition of what HRs are and what they aim to protect.[4] His goal, as Allen Buchanan notes, is not to give an account of the HRs practice. Rather it aims at defining a theory of HRs without reference to the practice. This theory would then be used to build a critical appraisal of the practice.[5] His project is therefore two-fold : first, defining HRs, and second comparing his definition against practice to check for "discrepancies between philosophy and international law"[6]. The nexus of Griffin's project is therefore to correct the practice of HRs with a solid and definite conception of what HRs truly are. Although most of the discrepancies Griffin identifies follow from his personhood account of HRs, the notions of feasibility and minimalism loom on the side[7]. In a sense, feasibility and a commitment against over-demandingness is somewhat of a meta-concern for Griffin's theory of HRs ; that is why I focus on these aspects to offer a critique of Griffin's account of HRs.

If, according to Griffin, the issue of over-demandingness is important for our account of HRs, it is because it is also important for morality *in general.* For James Griffin, morality needs to adopt a sort of realism. It should always take into account the capacity of *actual* moral agents[8], that is actual human beings with all the motivational limits this implies. Essentially, Griffin argues that we cannot let morality demand things that we know agents are incapable of fulfilling. He even argues that "a norm that ignores the limited nature of human agents is not an 'ideal' norm, but no norm at all[9]". To illustrate his thesis, he cites Kant's famous phrase : "*Ought Implies Can*". According to Griffin that phrase means that we *do not have* moral obligations to do something that we *cannot* do. This, I think, is a grave error and I will try to show that Griffin's use of the OIC principle is highly problematic for several reasons.

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[4] Griffin, J. (2008), *On Human Rights.*

[5] Buchanan, A. (2010), "The Egalitarianism of Human Rights", p. 680.

[6] Griffin, J. (2008), *On Human Rights*, chapter 11.

[7] Although I also find Griffin's personhood account to be problematic, I will not address that question here.

[8] Stern, R., (2004), "Does 'Ought' Imply 'Can' ? And did Kant think it does ?", p. 44.

[9] *Idem.*

First of all, let us remember that Griffin's minimalism is based on a so-called "realist" conception of human nature and capacities. With that in mind, Griffin thinks that ethics should "ensure that our abstract principles are adequate to our practice, but also to accommodate the way in which our practice – our human nature with all its limitations and the needs of our actual societies – determine the content of our principle[10]". According to that conception of ethics, we need to look at the capacity of the moral agents before we say what moral demands we should make of them.

Griffin tries to present several ethical cases to prove that morality really is limited by human nature[11]. He argues, for example, that in a situation where several children are drowning, including one's own, one *cannot* save all the children because agents have a *permitted partiality* towards their own child. Because this permitted partiality is bound by human nature (it is natural to prefer one's own child), it is not true that we *ought* to save all the children (we do not even need to get in a discussion about one's physical capacity to save but one child)[12]. Griffin argues here for a "motivational limit" to morality. Motivational limits are bound in human nature, therefore we cannot demand that moral agents act beyond those limits.

Griffin then parallels his approach to morality in general to the practice of HRs. So, for him motivational limits also apply in the context of HRs – more specifically to socio-economic rights. He argues that "[HRs'] demands must stay within the capacities of the sort of people that society seeks to regulate. We should do what, with present resources, we can to raise the destitute to the *minimum* acceptable level[13]". Here, I must admit that I agree partly with Griffin. Of course, at the level of implementation of moral demands and requisites, motivational limits are a real issue. However, I think that the questions of motivational limits should be issues in social sciences and not in philosophy or ethics. That is to say, philosophy

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[10] Griffin, J. (2008), *On Human Rights*, p. 74-75.

[11] Although I could offer a more extensive critique of the very notion of "human nature" and its validity in any philosophical argumentation, I will have to defer. Suffice it to say that "human nature" is a problematic concept in its own right due to lack of any empirical evidence of its very existence.

[12] Griffin, J. (2008), *On Human Rights*, p. 72.

[13] *Ibid.*, p. 99.

should focus on identifying and justifying moral demands without limiting them with human weaknesses or any other "facts[14]". So, if the practice of HRs is too demanding, here and now, it's not a philosophical problem, but a political one.

Although I hope to make this argument clearer throughout this article – it acts as a "*fil d'Ariane*" for my thesis – I need to explain what I mean here. Philosophical approaches to morality are oftentimes divided in two broad categories : theories of moral principles and theories of moral actions[15]. That is, a philosopher could choose to search for the principles one should follow in order to attain *the* "good life" *or* find out what actions one should do in order to lead *a* "good life". We could illustrate the two different approaches in regards to the links between principles and actions with the following : the first would have the moral principles (and only these) guide one's actions, whatever the circumstances ; the second would leave the principles aside in order to evaluate which actions is best in each circumstance.

Even though this last paragraph could lead us in a much deeper debate in meta-ethics and epistemology, I do not want to embark on it just yet. The only argument I wanted to shed light on was that when Griffin limits morality with human motivation, he is limiting moral principles with individuals' actions (or capacities to act). In contrast, I believe ethics should provide us with the principles of morality that should, in term, guide us in finding out what we should demand of moral agents. Within this approach, neither the content nor the justification of moral demands are conditional to moral agent's capacity to act according to them. By limiting HRs, or morality, with human motivation, Griffin is not only untrue to Kant's approach to morality (this fact renders his use of the OIC principle even more problematic), but he also operates a radical rejection of demandingness in morality that is not philosophically necessary and perhaps politically problematic.

A last note on human motivation before we move on : although Griffin feels motivational limits are part of human nature, he does

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[14] I am referring here to G.A. Cohen's (2003), "Facts and Principles", p. 211-245. This issue will come back later in the article.

[15] I have no intention of delivering an exhaustive list of approaches to morality and ethics. I just want to illustrate my thesis.

address the objection according to which motivation is "plastic" and that it can evolve. For defenders of that conception, people could be inspired by a severe and rigorist ethics. The demands of such an ethics could be unrealistic, but because this rigor demands extraordinary strength and discipline, one could imagine a person wanting to emulate this high ideal of morality. In that context defending a rigorous ethics would encourage, inspire, *motivate* people to act according to the best mores possible.

Moreover, the acquisition of knowledge could help make motivation more likely. One could be more motivated to act in certain ways, however demanding they are, after learning these specific actions would have a great impact on a particular problem. However, Griffin simply dismisses those arguments saying that an "unreachable goal" is an oxymoron, a logical flaw morality has to do without. He also argues that if motivation is changing, it is also highly unstable. For example, Griffin argues that an extremely rigorous ethics inspired the Red Guard during the Chinese Cultural Revolution. However, the very same "fanatics" eventually took part in the Tienanmen Square demonstration[16]. All this to say that motivation is highly unstable. Griffin argues that "the sorts of ethics that can so revolutionize motivation are not plausible, and the sorts that are plausible cannot so revolutionize motivation[17]". But apart from the fact that his example is not empirically verifiable (and similar to a straw-man fallacy), Griffin shows here a pessimism that is uncalled for. Can't we imagine something between complete indoctrination to highly demanding ethics and complete abdication of moral demandingness on the basis of human limitations ?

Now, after this long tangent, let us come back to the moral duty of a parent to save drowning children. I would now like to address the distinction between moral obligation and moral blame. If, as Griffin would surely believe, we cannot *blame* the parent for saving his own child in priority, it does not mean that he did not have a *prima facie* duty to save all the children. Griffin's argument would surely be that one cannot have a moral duty to do what one cannot do. Hence, the parent does not have a moral duty to save all the

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[16] Griffin, J. (2008), *On Human Rights*, p.73.

[17] *Ibid.*, p.73.

drowning children ; therefore we cannot blame the parent for not fulfilling his or her moral duty. Because "ought implies can", and because the parent could not possibly save all the children, it is not true that she ought to save all of them.

But saying that the parent could not save all the children is not in contradiction with the statement according to which the parent had *the moral obligation to save all the children.* Even if we have legitimate reasons to withhold moral condemnation if he or she does not fulfill this obligation, it does not mean that the moral obligation is dropped. Of course one would be rather puritan if he were to accuse the parent of not fulfilling his moral duty if he or she were to save only his or her child. But I say morality ought to be as puritan as that, and that is precisely Kant's view of it.

We need here to see what the OIC principle means when set in a rigorous morality such as Kant's. According to Kant, the moral law is a categorical imperative that is accessible *a priori* through reason and that is available for all reasonable agents[18]. It suffers no exception, especially no exception based on experience and practice[19]. The moral law, and that is why the categorical imperative is universal in form and not content : "Act only according to that maxim whereby you can at the same time will that it should become a universal law." This formal definition of the moral law is always available to the moral subject. The material circumstances have nothing to do with morality. That is not to say that the moral agent will always act according to the moral law, but only that he will always feel the duty to act in "good will".

To illustrate how human motivation is always bound by the categorical imperative and morality, Kant offers an example that resembles Griffin's but that ends with a completely opposite conclusions : imagine that a man is asked to accuse another man that he knows to be honest ; if he does not do so, he will be killed. That man, says Kant, will know that he *can* do what he *ought* to do (in that

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[18] Carnois, B. (1973), "Position de la liberté par rapport à elle-même : l'autonomie de la volonté", p. 81.
[19] *Idem.*

case not lie). It does not mean he will do it, only that *he knows he can*[20]. In that example, Kant shows that the moral law is always available to moral subjects even though they do not always act according to it.

Of course, Griffin would perhaps think that this example is absurd because morality is supposed to be action-guiding and asking the impossible (or at least improbable) of moral agents is at least counter-productive, at worst plainly absurd, because after all *ought implies can*. However, Robert Stern notes that Griffin makes several assumptions that are uncalled for. First, he takes for granted that "if a moral rule says that what is right is something we cannot do, it is pointless ; and second, if a moral rule is pointless, it cannot really be a moral rule[21]". However, we can legitimately argue that strong moral demands are not pointless. Indeed, they can be a source of great inspiration. The man in Kant's example has access to the moral law and knows that it would take great character and compose to act in good will. This could then inspire him to act in good will. Although this argument leads to a debate in moral psychology, I do not want to get into it as it is reasonable to think that appeals to great moral figures can inspire people in their moral practice (such inspiration can be found in the infamous "What would Jesus do ?" motto). And that, in and of itself, would constitute a "point" to high moral standards.

Furthermore, the fact that moral law is demanding and that people will not always act according to it is irrelevant to the definition of moral demands. Again we can bring up the argument from blame and agree with Griffin that a moral agent is not to be blamed for actions he could not avoid. However, Stern notes that there is a difference between evaluating an agent and evaluating an action[22]. When one condemns an action he is not necessarily blaming the agent. Indeed, one could say that a person's actions are morally reprehensible, but because she was in such a dire situation, she, as a moral agent, should not be condemned.

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[20] That example is cited in Carnois, B. (1973), "Position de la liberté par rapport à elle-même : l'autonomie de la volonté", p. 103. For original see: Kant, Akademie Ausgabe V 54.

[21] Stern, R., (2004), "Does 'Ought' Imply 'Can' ? And did Kant think it does ?", p. 50.

[22] *Ibid.*, p. 47.

That is to say we can rightly argue that one had a moral duty to do X, but because he was in a situation where he could not do X, the moral blame for not doing X should be less severe. The evaluation of moral action is always an after-the-fact enterprise in which the facts have to be taken into account – the moral condemnation will be strong or weak depending on whether or not the agent had strong or weak reasons not to act according to the moral law. But the definition of moral duty (to follow the moral law, as Kant would have it) cannot be bound by the facts around which the action has taken place. Following from that statement, it is clear to me that Griffin's interpretation of the OIC principle is much too strong and contrary to Kant's view of it.

The view I am defending is that morality is (or at least should be) independent from practice and human limitations. Again, I did not aim to contradict the OIC principle plain and simple. One could point out that although it would be awfully nice (and morally desirable) if people could solve problems with a simple gesture, one cannot demand of a moral agent to clap his hand to end poverty – obviously, one *cannot* do that. Remember, ought implies can. But there is a big difference between limiting moral demands with the "laws of physics" and limiting them with the so-called "human nature" with whatever motivational limits that concept can carry. In limiting the demands of morality through his strong interpretation of the OIC principle, therefore limiting the list of HRs to what human agents *can* do, here and now, Griffin goes too far.

Now Griffin could rightfully argue that I also need to make a distinction between desirability and feasibility. Of course, he would say, it would be absolutely desirable if we could arrive at the highest and most desirable moral standards through the defense of HRs, but it is not feasible, plain and simple.

To that hypothetical answer I respond by arguing that in the context of human rights, we do not have to worry all too much about the highest and most desirable moral standards. That is simply because we already have something to work with ; that is the Universal Declaration of Human Rights. Of course, Griffin, Nickel and many others, would argue that the list is already blown out of proportion with ludicrous demands such as "holidays with pay" that *we cannot possibly implement* in most countries. But frankly, if we can say

that feasibility is a spectrum and not an either-or concept, demanding for holidays with pay is far from being as impossible as demanding that people get wings (however desirable that would be)[23].

So now that we have reasonable doubts concerning whether the OIC principle necessarily sets a strong limitation for the justification and the content of human right, we need to address Nickel's arguments (1), (2) and (3). We will examine, more specifically, dangers of parochialism and ethnocentrism that would call for a more minimalist account of HRs. The thesis I will defend here is similar to the one I have defended against Griffin ; basically, regarding the universality of human rights, the *ought* comes before the *can*.

What I mean by this is that the idea of universal HRs is not "about what there *is* but about the world we reasonably *ought* to want to live in[24]". I will be the first to admit that there is a lot of problems concerning the idea of universal HRs, especially given the history of Western colonialism and its crusades to civilize the barbaric peoples – one cannot deny that atrocities have been committed to civilize the World. So we must approach that characteristic – universality – with a healthy dose of skepticism. Again at the level of implementation, a minimalist account of HRs might be more easily accepted by people of different cultural and ethical backgrounds. An argument for minimalism here would be that we have a lot more chance to find a common denominator for HRs if they are not too demanding. Having said that, I do not think that we need (or ought) to prune down the list of human rights to make it more acceptable.

As I said, I do not want to discuss the content of HRs. The closest thing we have to a commonly accepted set of HRs is readily

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[23] I am aware that this statement needs a much longer development. Issues of feasibility and desirability have been covered in much more details in the literature, but I take as a reasonable enough claim to say that feasibility is not only an either-or concept to take it for granted. Because I do not have the space and because my point was more to show that the OIC does not necessarily warrant a strong limitation of moral demands I will avoid this discussion. For a discussion on that issue see: Cowen, T. (2007), "The Importance of Defining the Feasible Set", p. 1-14, section 3.3.

[24] For the reminder of the argument I am inspired by Benhabib, S. (2007), "Another Universalism: On the Unity and Diversity of Human Rights", p. 14.

available and I shall be satisfied with that for the time being. Yet it is important to have a conception of HRs in which we can keep the power of universality without falling into moral imperialism. What Seyla Benhabib argues for is another kind of universalism that is not necessarily based on an essentialist account of human nature (or culture) and that does not entail a specific list of HRs. She is more interested in a universalism of justification. Let me further develop this.

Her universalism is based on moral universalism, which entails that "everyone is entitled to equal moral respect[25]". Now that would not be saying a lot since that is what HRs are supposed to do anyway, but she also argues for a "justificatory universalism[26]". That notion is based on the assumption that human beings share normative reason that allows for political deliberation, on a basis of equality between all participants. This deliberation should aim at defining what all the participants can value as the common good. Again the feasibility of such a deliberation is a legitimate concern that would deserve a development of its own, but I will not do it here. Suffice to say that a hypothetical forum, in which all can have a say on what they believe is good, could permit us to come up with an idea of HRs acceptable by all reasonable agents taking part in the debate. Benhabib rightfully notes that "moral universalism does not *entail* or *dictate* a specific *list* of *human rights* beyond the protection of the communicative freedom of the person ; nor does justificatory universalism do so[27]". Therefore universalism in our conception of HRs is not only desirable, it also does not necessarily present the features of moral imperialism that we reasonably want to reject.

However, one could argue that since HRs are supposed to be the foundation on which one can legitimatize external intervention, the only universalism morally acceptable entails a very minimalistic account of human rights[28]. Having said that, I believe, as does

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[25] For the reminder of the argument I am inspired by Benhabib, S. (2007), "Another Universalism: On the Unity and Diversity of Human Rights", p. 12.

[26] *Ibid.,* p. 12.

[27] *Ibid.*, p. 13.

[28] I will briefly come back to the question of interventionism in my concluding paragraphs.

Benhabib, that moral egalitarianism implies a more cosmopolitan view of justice. It may be true that we should avoid maximalism and universalism in order to avoid moral imperialism, but we should also avoid minimalism in order to avoid the danger of setting two norms of justice – one for the rich North and one for the rest[29].

Here I want to counteract arguments according to which HRs should be minimal because we cannot possibly apply the same standards to rich and poor countries. For example, some authors (Nickel and Griffin included) argue that the HR to holidays with pay, to come back to an example I have used before, cannot be a HR because poor countries simply don't have the resources to implement it. This argument creates a double standard that is uncalled for and I frankly don't see why Somalians would not have the right to holidays with pay because they happen to be born in a poor country. Of course, Nickel and Griffin would agree that we should not have double standards, but they offer to drop the right (hence lowering the standards to minimal HRs) and I see in that position a depressing defeatism.

It is now important to stress that universalism *does not need to entail a rejection of local democratic decisions* (argument (2)) nor does it necessarily go against the idea of self-determination and independence (argument (3)). If a State, in an economic situation where it cannot possibly do both adequately, decides that funding child-rearing is more important than several holidays with pay, it should have the democratic prerogatives to implement the first over the second. But that is coherent with Benhabib's conception of universalism ; HRs are open to deliberation by all reasonable agents, with their own culturally and historically constituted ideas of the good life[30]. Note that this deliberation should be an on-going process. Of course conflict is unavoidable due to the fact of moral pluralism. But that should not be a cause for distress ; if we accept moral egalitarianism, which I believe is built-in in both the practice and idea of HRs[31], one can only argue that it would be morally desirable to set

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[29] Benhabib, S. (2007), "Another Universalism : On the Unity and Diversity of Human Rights", p. 11.

[30] *Ibid.*, p. 15.

[31] As Buchanan notes it in Buchanan, A. (2010), "The Egalitarianism of Human Rights".

up fora in which everyone could deliberate. One can also think that, through clashes of ideas, great progress can be made. Of course, I did not say anything about feasibility. But keep in mind that, like the common good or simply like HRs as we know them here and now, "universalism is an aspiration, a moral goal to strive for ; it is not a fact, a description of the way the world is[32]".

Admittedly, I have not yet given any reason *for* a maximalist or even a more expansive account of HRs. Even worse, my thesis is in a sense question-begging. After all, I say that HRs should not be minimalistic because they are not minimalistic. Having said that, I hope that my critique of Griffin was sound enough to at least create a doubt about the implication of Griffin's strong interpretation of the OIC principle for morality and HRs in particular. Moreover, I have shown that universalism does not necessarily entail a minimalist account of HRs. Now why should HR be kept the way they are, that is not minimalist in content or justification ?

As I said in the introduction, I follow Charles Beitz in taking the practice of international human rights as it is. Contrary to Griffin and Nickel, my goal was never to give a definition of HRs outside of the practice that would entail changes in the list of HRs. But contrary to Charles Beitz, I still believe that HRs should be part of a larger project towards equality and global justice.

I have mentioned briefly that what made Beitz shy away from the conception I still defend is a legitimate concern for the dangers of interventionism. HRs are said to trigger international concern, so keeping them as a basis for a more comprehensive theory of justice, can have dire consequences given the fact of pluralism in the international community and the so-called "anarchism" of international relations. To this concern I respond that we already have extensive literature on the idea of a just war readily available to construct an argumentation on legitimate intervention. Thus we already have some of the tools necessary for a critique of international relations – human rights' students do not have to do the

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[32] Benhabib, S. (2007), "Another Universalism : On the Unity and Diversity of Human Rights", p. 16.

work that is already being done elsewhere[33]. That is what I meant, in the introduction, by a division of the moral labour.

My goal was to focus on the role that HRs and philosophy play in society, locally and globally. The practice of HRs is not (and cannot be) minimalistic because its purpose is to be critical. They act as a guide for action towards justice. A strong feature of the HRs practice is precisely its capacity to motivate actors (individuals, NGOs, states, political parties, etc.) to petition their government or the international community for more respect for HRs or simply to prevent abuse. As Beitz says, "[p]articipants in this practice take its central moral ideas with great seriousness. Many are empowered by them. Some risk their lives for them. Its beneficiaries and potential beneficiaries regard the practice as a source of hope[34]".

And that feature is *essential* for a practice of HR and a philosophy that promotes justice and equality for all human beings. I think it is safe to say that HRs have high priority for its defenders because they cover *important* issues. And to motivate its defenders HRs *have to be demanding*. They cannot merely protect what people barely have already ; for that reason Nickel first argument does not entail minimalism.

One of the main reasons I am very skeptical of a philosophical revision of HR that would aim at giving a minimalist account of HRs is the fact that philosophical discourse *is also part of the practice of HRs*. Limiting the list of HRs because it is more logically sound or because the list would be more consistent is missing the point of HRs and HRs' practice. While I was reflecting on this matter, a strong image, even though it is arguably caricaturing, came to me ; imagine if a delegation of HRs philosophers were to meet with local activists and say : "*Hey, you know that right you were fighting for ? Well, it turns out we were wrong all along...it's not really a right...sorry...* ". Philosophy has a role to play in the struggle for justice and *it is not to make the theory appear to be more feasible from within*, without finding council in other social sciences.

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[33] I am not saying that they should not take those concerns into account. Quite the contrary, I am just saying that HR students can concentrate on defending a strong conception of HR, while leaving the job of defining what is and (especially) *what is not* a just war for the students of just war theory.

[34] Beitz, C. (2007), *The Idea of Human Rights*, p. 2.

If one has a compartimentalized view of knowledge, society, reality, etc., one can easily fall in traps that are easily avoidable when the scope of reflection is wider. When political philosophy tries to deal with issues that have political, social, and *human* consequences, without taking into account the facts of the political, social and human world, one cannot but make mistakes. Of course, theoretical simplifications can be useful to isolate a problem (that is to say all variables cannot possibly be taken into account in *every* political philosophy reflections). Also, as G.A. Cohen says it : "We cannot orient our critical political thinking if we make desirability assessments conditional upon feasibility assessments[35]". Although the position I have defended in this paper is similar to Cohen's in the sense that I tried to show that morality is independent from practice or human capacities, I do not go as far as Cohen. I also think that the role of philosophy is to tell us what we should think[36], but I think it also has a *practical role*. It has to employ the facts gathered by social scientists to expand its critique of society, information which in turn can be used by the activists to demand justice. If ethics and political philosophy lose all contacts with reality, one can seriously doubt their usefulness as tools for a critical appraisal of the world as we know it.

In a sense, settling for a minimalist account of HRs because it fits more with our logic or because it makes easier to defend is insulting for defenders of HRs who have a legitimate claim for equality on a global scale. Arguing that there is no social and economic rights because there is no agent capable of fulfilling them or because, however desirable they are, they are not feasible is frankly revolting[37]. HRs' discourse is *supposed* to give people the tools for change, for improvement, and for that reason it *cannot* settle for minimalism ; *HRs' practice has to be demanding.*

Notice that throughout this paper I have not once come close to addressing the very difficult questions of concrete feasibility and implementation of the great ideals I defend. One would be right to point this out in saying that, with regards to this point, I have the burden of the proof. I admit that this is a difficult problem, but I am not one to give up before a challenge. One is forced to admit that we

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[35] Gilabert, P. (2011), "Debate: Feasibility and Socialism", p. 54.

[36] *Ibid*, p. 58.

[37] I am aware that this is not the position that Nickel and Griffin defend.

have come a *long* way since the glorious days of slavery and colonialism ; progress has been made, and it would be revolting to stop when so much has yet to be done to improve the life of all individuals.

If *ought implies can*, it is true that we ought to take an incremental and reformist approach to politics. But at least in some way, aiming for the best is a *sine qua non* condition for the better to be possible. HRs as we know them now might be the best we can aim for. Achieving the better will perhaps bring forth a new best, and that is a good thing. HRs' practice has and will evolve.

The task at hand is extremely difficult, but it should not be discouraging. It would be a sad day for philosophy (and indeed for humanity) if all philosophers simply gave up high ideals when confronted by the sheer difficulty of the task to implement them.

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