

The Lure of Minimalism

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Abstract

Philosophers often claim that human rights are minimalistic standards, concerned only with “avoiding the terrible rather than achieving the best.” (Nickel 2007: 36). But this claim fits poorly with the maximalism of human rights law, which contains many norms of high ambition. How can we explain this divergence between theory and practice? And can it be justified?

Notes on Contributor

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1. Introduction

What are human rights for? What makes them different from other kinds of rights?¹ One popular answer emphasizes the distinctive *universality* and *naturalness* of human rights: the idea that, unlike the U.S. President’s right to veto congress, human rights are those possessed by all persons, simply in virtue of being human (Tasioulas 2012a). Another popular answer stresses the unique *political* function(s) of human rights, e.g., as benchmarks of political legitimacy, limits on state sovereignty, and/or targets of international aid (Beitz 2009; Rawls 1999; Raz 2010).

Popular as these answers may be, they are also divisive. Theorists who endorse one tend to reject the other. Yet few disagree that human rights are distinctively *minimalistic* – that is, unique in the special importance and rudimentary nature of their demands. This isn’t just a matter of human rights being limited in focus, or covering “only one special part of morality” (Griffin

¹ Thanks to Jesse Tomalty and Kerri Woods for helpful comments on earlier versions of this chapter, as well as to audiences at the University of Glasgow, CUNY Graduate Center, Northwestern University, and the APA Eastern and Pacific Division Meetings. This chapter is a descendant of what was originally a co-authored work with Robert Mark Simpson. As time wore on, Robert and I realized our disagreements were too stubborn for co-authorship. You can find his (rival) views on this topic in Simpson 2021. I am very grateful to Robert for his work on the first iteration of this project, and have learned a great deal from his thinking. All views here are of course my own.

2008: 95). That much is guaranteed by their being *rights*, since many moral goods (like being generous or kindhearted) have little to do with rights. Minimalism adds a further delimitation: that *human* rights represent a special class of austere and morally basic rights. James Nickel captures the spirit of minimalism when he writes, echoing a popular formulation, that “human rights aim at avoiding the terrible rather than achieving the best” (Nickel 2007: 36).

Convincing as this idea may seem, and popular as it is, it is best understood as a *prescription*, rather than a description – at least as far as the content of human rights law is concerned (Nickel 2019: I). Consider that international law recognizes human rights to:

- **The highest attainable standard of physical and mental health.** (International Covenant on Economic, Social, and Cultural Rights [ICESCR]: 12.1; European Social Charter [ESC]: I.11; African Charter on Human and Peoples’ Rights [ACHPR]: 16[1])
- **Technical, vocational, and free higher education directed at the full development of the human personality.** (ICESCR: 13.1-2; ESC: II.10; The Universal Declaration of Human Rights [UDHR]: 26[1-2])
- **Rest, leisure... and periodic holidays with pay.** (ICESCR: 7[ii][d]; ESC: II.2[2][3]; UDHR: 24)
- **The continuous improvement of living conditions.** (ICESCR: 11.1)
- **World peace.** (Declaration on the Right of Peoples to Peace: 1)
- **Intellectual property.** (ICESCR: 15[c]; UDHR: 27[2])
- **Enjoy the arts and to share in scientific advancement and its benefits.** (ICESCR: 15[b]; UDHR: 27[1])
- **Grow up in a family environment, in an atmosphere of happiness, love and understanding.** (Convention on the Rights of the Child: Preamble)

These may be important rights. But it is hard to see how they can plausibly qualify as minimalistic. Indeed, several of them seem to *maximize* on available ambition: reaching for the “highest attainable” standard of *x*, or the “full development” of *y*, etc.

As a doctrine applied to the law, then, minimalism is revisionary. But this raises a puzzle. If human rights law is so ambitious (or “maximalist”), why is human rights *theory* so unerringly conservative (or “minimalist”)? Why do theorists, activists, and observers so often assume that human rights aim only at avoiding the terrible, or prohibiting base cruelty (Ignatieff 2000; Moyn 2012 & 2014), when human rights law is clearly concerned with so much more?² What explains this divergence, i.e., the theoretical *lure* of minimalism? And can it be justified?

This is the puzzle that concerns me in what follows. I address it in three steps. The following Section (2) examines three common varieties of human rights

² Two clear exceptions to this theoretical consensus on minimalism are Brems (2009) and Tasioulas (2012b). Less obvious, though still plausible, exceptions are Beitz (2009: 141-144) and Liao (2016). S. Matthew Liao thinks of human rights as entitlements to the freedoms and resources necessary to pursue “basic activities” that are fundamental to any good life, though not those sufficient for living an “excellent” life (Liao 2016: 41-46). Even though Liao’s theory is not after full human flourishing, its emphasis on the good, as opposed to just the minimally decent, makes it more than “minimal,” I take it (See Section 3, below).

minimalism, to flesh out the doctrine, and provide further evidence of its popularity. Sections 3 & 4 consider five plausible explanations of minimalism's popularity. These explanations are each assessed, in turn, as possible *justifications*. Are the reasons why so many seem to endorse minimalism, or find it alluring, also *good* reasons to do so?

What I argue is that, in fact, explanations are easier to come by than justifications here. Minimalism is on reflection less obviously compelling than it is often taken to be. Perhaps international law gets it right, then: Why shouldn't human rights demand more?

2. Human Rights Minima

One can be a "minimalist" about different aspects of human rights. Many believe that human rights require a minimalistic, ecumenical *justification* – to make them acceptable from diverse cultural, religious, theological, and moral points of view. This is what Joshua Cohen calls "justificatory" minimalism (Cohen 2004; Ignatieff 2000: 322-3). Cohen writes:

[Justificatory minimalism] aspires to present a conception of human rights without itself connecting that conception to a particular ethical or religious outlook; it minimizes theoretical aspirations in the statement of the conception of human rights with the aim of presenting a conception that is capable of winning broader public allegiance — where the relevant public is global. (Cohen 2004: 192)

Cohen has in mind a Rawlsian idea: that human rights should be grounded in abstract values and ideas available to "public" reason (Rawls 1996: 212-55; Rawls 1999: 121-81). But justificatory minimalism might also involve thinking of human rights as having *no* official grounds at all. As Jacques Maritain suggests in his introduction to the 1946-47 UNESCO Inquiry into the Theoretical Bases of Human Rights: "everyone agrees on the norms on the condition no one asks why" (Maritain 1949: 9). So long as diverse parties can agree on human rights norms, perhaps there is no need for an agreement on grounds (See also Taylor 1999).

Another possible kind of minimalism focuses on the *enforcement* of human rights. For instance, some may believe that, at the international level at least, human rights should only be enforced by non-coercive means (or "soft" power), such as public naming and shaming, as opposed to sanctions or military intervention. Minimalists of this sort might be moved by doubts about the trustworthiness or competence of international actors, the effectiveness of hard power as a means of promoting human rights internationally, and/or the morality of doing so.

But minimalism may also be about the *practical requirements* or "content" of human rights, i.e., *what* they demand of us. This is what Cohen calls "substantive" minimalism (Cohen 2004: 192), and it is the kind of idea that I am interested in here. Once again, the claim isn't just that human rights are morally distinctive norms, or limited in purpose. Human rights might be different from norms of charity or filial duty but nonetheless quite ambitious or "maximalist" in content – say, if they were to require a generous universal basic income. Substantive minimalism limits the ambitions of human rights to the morally austere and elementary.

This needn't mean that the list of human rights must be very short, or what Nickel calls "ultraminimalist" (Nickel 2007: 98-103). Minimalism limits the *content* of human rights themselves, i.e., what they are rights *to*, not the number

thereof. And although substantive and justificatory minimalism may seem like natural companions, they can easily come apart, in both directions. After all, one might ground a substantively *austere* list of human rights – which guarantees, say, only the barest essentials required for survival – on justificatorily *rich* assumptions about the historically revealed word of God. Equally, one might ground a substantively *rich* list of human rights on a justificatorily “thin,” abstemious, and ecumenical idea of human dignity, much like what we see in international human rights law as we know it (McCrudden 2008; Walzer 1994: 9-11). Some form of justificatory minimalism is embraced by *both* (a wide swath of) human rights theorists and by the practice itself, then. By contrast, it is the striking *discrepancy* between theory and practice, as regards substantive minimalism, that I want to try to understand in this chapter.

On a minimalistic picture, human rights address only the most severe injustices – i.e., atrocities – rather than promote broader forms of justice and / or the good (See Scanlon 2003:113).³ But this rough idea can of course be worked out in different ways. In the following section, I offer a sampling of three common formulations in the philosophical literature. This is not a comprehensive overview, but it helps us grasp the basic idea, and shows just how popular minimalism is in theoretical work on human rights.

3. Substantive Minimalism: Three Types

Agency Minimalism. Perhaps the most common form of minimalism is what we might call agency minimalism. This is the idea that, to quote one prominent exponent, instead of a good or flourishing life, human rights guarantee only “the more austere life of a normative agent” (Griffin 2008: 53).

Of course, much depends, here, on how we understand the relevant notion of “agency.” The most convincingly minimalistic versions of this view will understand agency in strictly negative terms – that is, as the mere absence of external interference in individual and collective decision-making. This would leave social and economic rights off the list of human rights proper: as we see in the agency minimalism of Michael Ignatieff, for example (Ignatieff 2000: 322-3).

Other versions of the view, like those of Carol C. Gould or James Griffin, adopt a richer conception of agency – one friendlier towards welfare rights (Gould 2004: 35). For Griffin, agency, or what he calls “personhood,” requires negative liberty, but also the minimum capacities and resources necessary for genuinely autonomous choice – so-called “minimum provision” (Griffin 2008: 33, 44-8). These include “a certain level of health, certain physical and mental capacities, a certain amount of education, and so on,” (Ibid: 150) but not the “highest attainable” standard affirmed in international human rights law (Ibid: 208).

³ Understood in this way, substantive minimalism seems to impose restrictions on the *kind* of objects guaranteed by human rights – limiting these to basic essentials, rather than those necessary for full human flourishing. But, as Pablo Gilabert rightly notes, it might restrict other relevant elements as well: such as “the *specific objects* within the relevant kinds (e.g., certain economic resources, civil liberties, political liberties, etc.); the kind of *relation* to the objects that the norms would require support for (e.g., formal opportunity to enjoy them, capability or access to them, etc.),” and so on. For Gilabert’s complete and very helpful list, see Gilabert 2018: 288, fn. 1. The forms of substantive minimalism surveyed here seem to cut across these distinctions, so far as I can tell, and can be refined by them.

Urgency Minimalism. Another option is to think of human rights as minimalistically focused on matters of special *urgency*. According to Martha Nussbaum, for example, human rights are “especially urgent” moral claims (Nussbaum 1997: 286). Pablo Gilabert writes that “human rights identify the most urgent issues of global concern” (Gilabert 2018: 2). And Nickel regards them as distinctively “high-priority” norms (Nickel 2007: 3, 9, 36).⁴

Theorists will interpret the notions of “high-priority” and “urgency” in subtly different ways. At the very least, however, the notions suggest that human rights will ordinarily win out in cases of conflict with other demands of morality, law, and politics – such as the demands of social utility, security, economic productivity, and procedural justice (Nickel 2007: 41-2). They also suggest that fulfilling human rights is a *time*-sensitive matter, one that cannot be deferred (Gilabert 2018: 296). And though it’s hard to know exactly which rights will qualify under these headings, many of the ambitious rights listed in the Introduction presumably will not.

For instance, within the awesome totality of a state’s obligations, the establishment of a free system of higher education (ICESCR: Article 13) is not *undeferrable*. It is of course important to provide universal access to higher education, so far as possible. But surely, in some circumstances, there will be more urgent projects for the state to pursue even just in the area of education, such as the provision of basic access to primary and secondary schooling. Moreover, other higher education funding schemes – involving e.g., partial state-subsidization, means-tested tuition, private scholarship programs, and/or discounted student loans, etc. – may work as tolerable interim alternatives to free tuition. We might have similar worries about the priority and necessity of the right to periodic holidays with pay, which Nickel excludes from the list of human rights for these reasons (Nickel 2007: 36-7).⁵

In a sense, this is precisely what the UN Committee on Economic, Social, and Cultural Rights recognized in its much-discussed “General Comment 3” (1990). There, the Committee famously distinguished between the (a) “progressive realization” of, e.g., the human right to health or education, and (b) “minimum core obligations.” The latter pick out “minimum essential levels” of healthcare, education, etc. that must be provided now and for everyone; the former pick out more long-term, gradually realizable projects, such as achieving the “highest attainable standard of health” or introducing free higher education for all (See Brems 2009: 354-355). The Committee suggests, accommodatingly, that human rights obligations can take both forms, both gradual and immediate. But an “urgency” minimalist restricts the content of human rights to the latter category (b) alone: minimum core obligations.

Decency Minimalism. A third alternative is what we might call *decency* minimalism. This is the idea that human rights guarantee not a good, excellent, or flourishing but only a “minimally good” or “decent” life (Nickel 2007: 36).

⁴ Similarly, Charles Beitz grounds human rights in distinctively “urgent individual interests” (Beitz 2009: 109), and John Rawls calls them a “special class of urgent rights.” (Rawls 1999: 79).

⁵ Gilabert places rights against alienation, exploitation, and domination beyond the scope of human rights on similar grounds. While they are demands of socialist justice, they are not as urgent as the fulfillment of basic labor rights (Gilabert 2018: 302, 311). See Waldron (1993: 4-10), for a powerful defense of the urgency and necessity of the right to periodic holidays with pay.

This a common view in both the theoretical literature and popular discourse (See Griffin 2008: 53; Ignatieff 2000: 56-7; Miller 2012).

It also has a certain currency in human rights practice itself. Consider the language of “adequacy” one often encounters in international human rights treaties – as in the right to a standard of living “adequate” for health and well-being (UDHR: 25), or the right to a “decent living” (ICESCR: 7[ii]). Such rights seem to evoke a minimal “decency” threshold of some sort – one that depends, perhaps, on the satisfaction of basic human needs, as opposed to broader interests, desires, and / or preferences (Miller 2012). Other legally posited human rights seem to extend well beyond any reasonable interpretation of this threshold, however: including the already mentioned rights to the “highest attainable” standard of health, to the “full development” of the human personality, and to the “continuous improvement” of living conditions.

These common forms of minimalism are not mutually exclusive. One might endorse all three and see human rights as concerned with the uniquely *urgent* matter of guaranteeing all persons a minimally *decent, autonomous* life – as Griffin (2008), Gould (2004), and Ignatieff (2000) do.

Given the popularity of these formulations, it is also easy to see how minimalism is standardly associated with the idea that, as Eva Brems puts it, “human rights express what is most valuable, most sacred, and should not be touched upon” (Brems 2009: 350). Indeed, Nickel opts for a minimalistic, high-priority account of human rights because it ensures that they are concerned only with “very severe problems” (Nickel 2007: 56). Griffin favors a minimalistic focus on agency or personhood because of the latter’s “special importance” (Griffin 2008: 36). And decency minimalism’s focus on the “bare essentials” needed to make life livable, or at least tolerable, effectively guarantees human rights’ supreme importance; without such goods, human life as such would hardly be possible, and possibly not worth living.

4. The Lures of Minimalism

Now that we have a clearer sense of minimalism as a theoretical doctrine, we can examine its attractions, and ultimately its justification. Why are so many theorists committed to minimalism about human rights? And do they have good reason to be? In this section and the next, I consider five possible explanations. As I go, each explanation will be assessed for its justificatory value in turn.

Fidelity to the Practice. One standard explanation that’s not going to be straightforwardly available in this instance is that minimalism is motivated by a desire to produce theory that is “faithful to the practice” (especially its legal component). This is a nearly universal goal amongst philosophers of human rights (see Etinson 2018 for a broader discussion). But, as discussed earlier, minimalism is not a plausible feature of international human rights law. And so, it’s not clear why anyone familiar with and interested in being theoretically “faithful” to the law’s content would come away thinking that human rights are or should be distinctively minimal demands. It is true that certain varieties of minimalism (e.g., those which affirm social and economic human rights) will have an easier time matching up with extant human rights law than others. Nonetheless, minimalism seems like a poor reading of the law as it stands, for reasons already outlined.

There are other aspects of the “practice” that theorists might want to be faithful to, however. And this may well help explain part of what’s going on. One possible explanation is that, in endorsing minimalism, theorists have either wittingly or unwittingly been influenced by the tone of human rights *activism*. Since their inception in the 1960s and 70s, the most famous human rights advocacy groups – *Amnesty International* (AI) and *Human Rights Watch* (HRW) – have practiced what is sometimes called “informational politics”: that is, the public naming and shaming of human rights violators. And, in general, these organizations have adopted a strategy of focusing on the most *egregious*, most “nameable and shameable” human rights violations: torture, genocide, severe discrimination, corruption, political assassination, etc. This makes sense if, as Kenneth Roth (the former Executive Director of HRW) puts it, we think of these organizations as having limited moral capital and operational resources, which might be wasted if they focus on anything less than the most egregious, self-evidently serious rights violations, i.e., calamities and atrocities (Roth 2004).

So, it could be that, in embracing minimalism, theorists are trying to be faithful to the minimalistic focus of this prominent *activist* aspect of human rights practice. My guess, however, is that, if there is any truth to this line of thought, something more indirect is happening. Through the power and visibility of their advocacy work, HRW and AI have undoubtedly shaped the popular understanding of human rights. And this naturally has an impact on theoretical work. Perhaps we’re so used to hearing about human rights violations *of the sort* that HRW & AI typically advertise, that we’ve commonly come to think of human rights *in those terms* – as essentially rights of a minimalistic kind – and theorists are (perhaps inadvertently) giving voice to that common understanding in their theoretical work. We might think of this as a matter of being faithful to something like human rights “culture.”

That explanation, if it’s right, happens to fit well with Samuel Moyn’s well-known history of human rights. In Moyn’s view, human rights only acquired broad popular currency in the 1970s, precisely through the work of organizations like AI & HRW (Moyn 2009). It was, Moyn argues, because human rights, as practiced by these organizations, were comparatively unambitious – concentrated only on atrocity and (what he calls) “minimal constraints on reasonable politics” – that human rights were first able to break through and speak to an ideologically disenchanted public (Moyn 2009: 121). Perhaps theorists and members of the public continue to instinctively think of human rights in this minimalistic, activist-frame, where the mission is only “to make the world a slightly less wicked place,” (Eckel 2013: 201) even though human rights law itself has long been more ambitious, having mostly been written *before* the 1970s.

This is an interesting explanation of minimalism’s popularity. Even so, it isn’t much of a *justification*. That is, for all its sociological or historical plausibility, it’s not clear that this gets us anywhere “philosophically.” For one, if theorists are going to be faithful to the practice of human rights, there’s no reason why they should focus only on its activist component (and/or its associated cultural dimension), let alone *this* activist component. There is, after all, plenty of human rights activism out there. Even *Amnesty International* has been advocating for less prototypically minimalistic Economic, Social and Cultural rights in recent years (See e.g., Amnesty International 2014). Most importantly, even if it’s true that human rights have become popular on account of their *perceived* minimalism, this isn’t on its own sufficient reason to think they are *in fact* minimalistic.

Trumping Sovereignty. I mentioned in the Introduction that many theorists believe human rights to have a distinctive “political” function (Beitz 2009; Rawls 1999; Raz 2010). The main idea here is that human rights are sovereignty-trumping – that, unlike other individual and group rights, a state’s violation of *human* rights licenses the international community to react in ways which would ordinarily be prohibited by state sovereignty. But since national sovereignty is normally considered to be a powerful right that can only be trumped in exceptional circumstances (such as preventing grave atrocities or war crimes), human rights, on this view, seem confined to minimalism – that is, to avoiding the terrible, rather than achieving the good or best.

There is little doubt that this line of reasoning *explains* the lure of minimalism for many. Rawls’ startlingly curtailed “ultraminimalist” list of just four human rights (to life, liberty, property, and formal equality) is perhaps the clearest example (Rawls 1999: 65). But is this reasoning sound? Does it *justify* minimalism, on reflection? Here things are less clear. If the measure of a human rights violation, on this view, is its capacity to license sovereignty-trumping measures like armed intervention, or economic and political sanctions, then some form of minimalism is indeed inescapable: these are simply inappropriate responses to violations of maximalist rights to free higher education, the highest attainable standard of health, or periodic holidays with pay, among others. At the same time, this verdict depends on an oddly restrictive interpretation of the “political” view (see Tasioulas 2012b & Waldron 2018). After all, foreign intervention and international sanctions are the rarest and most extreme forms of human rights enforcement – and widely reputed to be unsuccessful at that (See Goodman & Jinks 2013; Simmons 2009).

We can instead understand the idea of sovereignty-trumping more openly to mean that human rights are matters of international *concern* – a concern that may, in extreme cases, manifest in forms of external compulsion, but can otherwise be actioned via more moderate and familiar international mechanisms of accountability, knowledge-exchange, acculturation, inducement, and assistance (Beitz 2009: 31-42, Nickel 2006). Once we move in this interpretive direction – which fits much better with the multifaceted character of international human rights promotion anyways – the present argument for minimalism falls apart. Why *shouldn’t* all nations be actively concerned, both in word and deed, with the universal progression towards higher standards of governance and living, just as international human rights law demands? Why *shouldn’t* members of the international community advocate for and *help* one another achieve good (as opposed to just “not terrible”) housing, healthcare, and education, etc.? Once we leave an implausibly narrow interpretation of the political function of human rights behind, maximalism remains a tenable option.

Determinacy. A third, very different reason to be a minimalist is to make human rights, or the practice thereof, *determinate*. Human rights practice is often accused of *indeterminacy*: of proclaiming rights haphazardly, too quickly, or without rigorous conceptual justification (Alston 1984; Cranston 1983; Griffin 2008: 14-18), and also in an imprecise manner, i.e., without sufficient attention to practical details about *what* exactly such rights require and of *whom* (O’Neill 2005; Posner 2014). It is here that minimalism might seem to be of some use. By limiting or narrowing the aims of human rights, minimalism promises to (first) establish explicit justificatory criteria against which human rights claims can be verified or judged, and (second) to clarify the content of the obligations imposed by such rights (Simpson 2021).

The desire for determinacy certainly helps explain the turn towards minimalism in some cases. Griffin's work is one clear example. His main concern is with the conceptual indeterminacy of human rights. And his solution is to adopt what I called agency minimalism. But the philosophical argument here seems crude. For one, in principle, these indeterminacies can be remedied via institutional procedures; there may be no need for a *theoretical* solution. Philip Alston argues that we can introduce quality control and determinacy into human rights law by adopting "procedural safeguards" to govern the proclamation of new rights within the UN system (Alston 1984: 618-621).

But of course, theory can help structure, challenge, and enrich the reasoning of those who engage in such institutional procedures (See Buchanan 2008; Griffin 2008: 14; Habermas 2001). And some theorists may be interested in examining human rights strictly or primarily as moral norms, unattached from the law, anyways. Is minimalism necessary for determinacy here, at least? It is hard to see why. After all, maximalist theories of human rights can be determinate, too. Perhaps my theory of human rights guarantees every adult person a minimum income of at least \$55,000 US per year. This is an ambitious goal; it's certainly not minimalistic. And yet, whatever one makes of its feasibility, its abundant determinacy cannot be denied. Since human rights can, in principle, contain a wide array of similarly determinate maximalist norms, it is not clear that the desire for determinacy as such provides any durable *justification* for minimalism.

Feasibility. Another argument for minimalism comes from concerns about *feasibility*. Human rights are supposed to be achievable. Otherwise, how can they impose genuine obligations? One cannot, it is normally assumed, be required to do the impossible. If we take that thought seriously, minimalism may seem attractive. After all, the *less* human rights demand, the more likely it is that their demands can be met. Some thinkers, such as Maurice Cranston, have clearly been pushed to minimalism on these grounds (Cranston 1983: 13). And perhaps it is an important motivator in many other cases as well.

But philosophically, this is also at best a crude argument for minimalism. The scope of what is strictly speaking *achievable* for human rights purposes is (a) always changing, and (b) clearly very broad. Strictly speaking, and despite the formidable obstacles such a project would currently face, it would be "feasible" for humanity to pursue an ideal of universal material equality – that is, to equalize wealth across the global human population (See Gilabert 2009 for a helpful distinction between "hard" and "soft" feasibility here). But this, I take it, is not a minimalistic goal. Indeed, it is far more ambitious than the sufficientarian redistributive demands of human rights law as we know them, which focus on "adequacy" as opposed to equality (Moyn 2018). Equally, when human rights law reaches for more maximal demands such as the "highest attainable" standard of *x*, the "continuous improvement" of *y*, or the "progressive realization" of *z*, these standards are designed to allow signatories to do the best they can *over time* – that is, they explicitly take current feasibility constraints into account. So, feasibility concerns on their own do not necessarily force us into the arms of minimalism.

And though it's true that human rights should be *collectively* feasible, with no single right (or set thereof) too demanding to be compatible with the fulfillment of others, it's at least not clear that we need to be minimalists to ensure even this. If we think of respect for, and the fulfillment of, human rights as an *international* project – that is, one which may draw on the immense totality of global resources available through international assistance and cooperation – minimalism is by no

means a foregone conclusion. Its justification would depend on complex empirical assessments of global political, social, technological, and economic capacity which cannot be settled *a priori*.

Whatever explanatory work it may do, then, I think we ought to treat arguments for minimalism from feasibility with a healthy dose of skepticism, or at least caution. A feasible conception of human rights may well stretch *beyond* the boundaries of minimalism as I've broadly defined it.

5. Human Rights and Politics

Political Viability. Concerns about feasibility are connected to another, final set of considerations which are more likely to do some justificatory work, however. These have to do with what we might call the *political viability* of human rights. Human rights ultimately require domestic implementation, and there is reason to think that such implementation will be more viable if human rights meet the following three criteria (see Nickel 2007: 36-37 & Scanlon 2003):

- (i) Have *limited implementation costs*, which don't exhaust or overwhelm the resources of a majority of domestic polities.
- (ii) Have a *narrow focus*, leaving plenty of room for broader domestic decision-making.
- (iii) Maintain a degree of *political neutrality*, or avoid partisanship, accommodating various political platforms and ideologies.

By demanding less, a minimalistic conception of human rights seems likely to be more politically viable in all these ways: (i) limiting costs, (ii) leaving space for domestic politics, and (iii) achieving broad acceptance. We have a strong *prima facie* case for minimalism here, then – one with apparent explanatory and justificatory power. But let me add some notes of caution.

Human rights theory can serve many purposes. Not all such theories need to be concerned with the political viability or acceptability of their proposals – although there's nothing wrong with being concerned with this. If what you're trying to do, as a theorist, is formulate recommendations about the content of human rights law, then it probably does make sense for you to think very carefully about the political viability of your proposals (or "theory"), and not just for pragmatic reasons: the (ii) narrowness and (iii) political neutrality of human rights law can be seen as requirements of respect for national sovereignty as well as the fact of reasonable disagreement (Rawls 1999 & Cohen 2004).⁶ But if your interest is broader than this – if, say, you're trying to formulate a normatively appealing understanding of what is owed, first and foremost as a matter of moral right, to all human beings, then it might be odd if political viability were at the top of your mind (see Nickel 2018 on related points of methodology). Indeed, so long as the objects of human rights, i.e., the "things owed," are both feasible and reasonable to demand of duty-bearers (See Tasioulas 2012b: 15-18), moral theorists are fully entitled to place concerns about (ii) narrow focus and (iii) political neutrality to one side, if they like.

But let's imagine we *are* trying to formulate recommendations about the content of human rights law, and so must take political viability into serious account. Let me conclude with some thoughts about whether we'll be forced into the arms of minimalism in that (restricted) case.

⁶ My thanks to Jesse Tomalty for emphasizing this point.

Implementation Costs. First, what I said earlier about feasibility applies equally well to the concern about limiting implementation costs at the domestic level. It's not clear that such cost considerations undermine the possibility of rights to the good, i.e., to something more than just the "bare essentials" of a decent or minimally tolerable life. Plausibly (though this is an empirical claim I can't defend here), there is and will continue to be enough wealth and resources available to make the conditions of life, for every human being, something *more* than just barely tolerable. Of course, international assistance may be required in cases where domestic resources and /or institutional capacity are insufficient, but this is a basic (and, I would think, hardly unreasonable) stipulation of international human rights law, even if it is all too often ignored.⁷

Narrow Focus. As for the concern about making sure that human rights have a narrow scope or focus, so that domestic polities have enough room to decide important matters of political justice by their own lights – this is a more complicated issue. But here, too, there are a few things to say.

One is that states are entitled to submit *reservations* to any international or regional treaties they ratify. So, if we have an ambitious international human rights regime that conflicts in some respect with domestic ideas and practices, states may (and sometimes do) cope with this by entering a reservation during the treaty ratification process, adjusting their obligations accordingly. Of course, states cannot reject any right they see fit. There are limits to the reservation process (See International Law Commission 2011). But this is still an important way of accommodating domestic political will. And if reservations are insufficient, it is always possible for a state not to ratify a treaty at all, as the United States has refused to ratify the ICESCR, for example.

A second point is that even ambitious human rights norms can be implemented or interpreted in different ways. So, for example, the right to the highest-attainable standard of healthcare can potentially be satisfied by a single-payer system, a multi-payer system, or a subsidized private alternative— all with different costs and benefits. And a state obligated by this right can at least decide for itself how to go about fulfilling it. Indeed, to some extent this is true of all human rights. Some states think fair trials require the use of juries, while others do not, and that's entirely fine. The European Court of Human Rights' doctrine of a "margin of appreciation" is specifically designed to allow for such differences in domestic human rights implementation across the 46 member states of the Council of Europe (See Brems 2009: 351-352 & Letsas 2006). And so is the abstraction of human rights language itself (See Etinson 2013: 482-486).

It is true that human rights as we know them intrude on many questions of political justice. Government responsibilities to provide adequate food, clothing, housing, education, and healthcare for all, as outlined in the UDHR and ICESCR, may not sit well with libertarians or anarchists. The widely recognized human right to asylum clashes with (increasingly popular) party platforms favoring closed borders. Minimalism promises to at least "minimize" these intrusions via its (ii) narrow focus. But if the point of such minimization is to ensure that the

⁷ Article 2.1 of the ICESCR: "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

human rights regime adequately balances (a) the protection of individual rights with (b) respect for domestic political sovereignty, then I think we just have to accept that it is an open and difficult question how best to do this. Is minimalism the only answer? Given the available mechanisms of accommodation described just above, perhaps not. Perhaps the best overall solution is to verge, as human rights law does, on the side of protecting and promoting the individual human good over the sovereignty of groups.

Political Neutrality. Finally, let me say something about the importance of political neutrality and the broad acceptability of human rights: the third requirement of political viability.

This has clearly been a motivating factor for many. To bring it back to activism for a moment, organizations like AI & HRW have understood their very credibility and efficacy to depend on their perceived political neutrality – their “unbiased” journalistic integrity. These organizations do a great deal to present human rights as if they stand *above* the political fray. And theorists, too, understand that the worldly success of human rights depends, at least in part, on their ability to gain the support of a diverse set of proponents, who are committed to different ideologies, religions, cultures, and worldviews. Once again, a minimalistic construal of human rights seems, all else equal, distinctly advantageous in this respect. The *less* human rights demand, it stands to reason, the *more* likely it is that diverse parties will ultimately agree on their content – the more likely it is that human rights will be regarded as self-evident, or “beyond” argument, rather than a partisan creed.

Think, for example, of how damaging it’s been that climate change has become an increasingly partisan political issue. Surely, politicization is something we want to avoid in the case of human rights if we can. And perhaps minimalism is the best way to do so.

But there is need for caution here. After all, total political neutrality is of course impossible. Human rights are, like it or not, a partisan creed. They carry normative content that will, inevitably, fit better with some political projects than others. And as ideological tides inexorably shift, both within and across societies, neutral ideological ground will always remain a moving target. In the years leading up to and just after the Second World War, for example, social and economic rights were quite broadly accepted in the United States; not so much anymore. And in the last decade, numerous leaders (including Jair Bolsonaro, Donald Trump, and Rodrigo Duterte) have vocally advocated for the use of torture and punishment without trial, making opposition to these practices “partisan” in a way it wasn’t before.

Given that perfect neutrality is impossible, a sensible goal for any theory seeking political viability would be to achieve the right *balance* between, say, normative plausibility, on the hand, and ideological neutrality, on the other. But I’m not convinced that we need to be minimalists to properly strike that balance. For one, as Maritain pointed out – and as international human rights law’s self-professed “derivation” from a thin, ecumenical concept of human dignity shows – *justificatory* minimalism can do some of the work here: an ambitious (i.e., substantively maximalist) list of rights should at least be easier for diverse parties to accept if it avoids grounding itself in controversial or partisan ideas (Cohen 2004). It’s also possible that the ambitiousness of human rights law has *enhanced* (rather than set back) its political success, by serving as a focal point for advocacy, protest, and political mobilization. And might even further ambition (say, by incorporating rights to the global redistribution of wealth) boost human

rights law to new heights by helping it avoid common criticisms about its complacency in a world of profound structural injustice and staggering (and rapidly rising) inequality? (See Moyn 2018).

Perhaps the most reasonable strategy in light of all this is to try to be *as* ambitious as the limits of political viability will allow – to grab onto *as many* maximalist (normatively plausible) prescriptions as one can – which is, it seems, more or less what human rights law does. Of course, the question of which maximalist prescriptions are sufficiently normatively plausible to merit consideration must be answered from the eye of the beholder. But there are plenty of (in-principle-maximalist-friendly) theoretical ideas one might appeal to here for guidance: such as universal human interests (Tasioulas 2012b), human capabilities (Nussbaum 1997), and the promotion of human dignity, among others (See Taylor 1999).

6. Conclusion

This discussion has (hopefully) offered some plausible explanations of why minimalism is so popular, despite raising some doubts regarding its philosophical justification. The result suggests that there's nothing obviously wrong with – and perhaps even something wise about – the piecemeal ambition of human rights law as we know it. In the case of human rights, we should be open to the idea that less is not necessarily more.

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