

Pablo Gilabert “**Reflections on Human Rights and Power**” (forthcoming in Adam Etinson ed., *Human Rights. Moral or Political?* Oxford: Oxford University Press).

1. Introduction

Human rights are particularly relevant in contexts in which there are significant asymmetries of power, but where these asymmetries exist the human rights project turns out to be especially difficult to realize. The stronger can use their disproportionate power both to threaten others’ human rights and to frustrate attempts to secure their fulfillment. They may even monopolize the international discussion as to what human rights are and how they should be implemented. This paper explores this tension between the normative ideal of human rights and the facts of asymmetric power. It has two objectives. The first, pursued in section 2, is to reconstruct and assess a set of important power-related worries about human rights. These worries are sometimes presented as falsifying the view that human rights exist, or at least as warranting the abandonment of human rights practice. The paper argues that the worries do not support such conclusions. Instead, they motivate the identification of certain desiderata for the amelioration of human rights practice. The paper proceeds to articulate twelve such desiderata. The second objective, pursued in section 3, is to propose a strategy for satisfying the desiderata identified in the previous section. In particular, the paper suggests some ways to build empowerment into the human rights project that reduce the absolute and relative powerlessness of human rights holders, while also identifying an ethics of responsibility and solidarity for contexts in which power asymmetries will not dissolve. Power analysis does not debunk the human rights project. Properly articulated, it is an important tool for those pursuing it.

Philosophical work about human rights has not systematically addressed issues of power. This is in part understandable because such issues involve empirical questions that philosophers are not best equipped to answer. However, given the tension mentioned in the previous paragraph, a full account of human rights must include considerations about power. More generally, a full account of human rights should include such considerations because human rights are to be pursued through political practice, and political practice often involves asymmetric power relations. Philosophers can in fact make a contribution when it comes to the conceptual and normative articulation of how power matters for our understanding and pursuit of human rights. This philosophical work may proceed at a relatively high level of abstraction and be primarily concerned not with empirical description of power structures or with specific policy recommendations but with the general concepts and substantive principles that shape the human rights project. Philosophers should not apologize for working at that level if they clarify how their inquiry connects to more specific descriptions and recommendations. Philosophical proposals are helpful to organize and orient our practical reasoning. And this is particularly needed in the case of the relation between human rights and power, on which conceptual clarity and normative articulation is largely lacking.

Before proceeding, let me provide some characterizations of *power* and the *human rights project*. These characterizations are general, broadly shareable, and allow for making thematic the relevant issues to be discussed below. I start with power. In certain circumstances *C*, an agent *A* has power with respect to whether some outcome or state of affairs *O* occurs to the extent that *A* can voluntarily determine whether *O* occurs. More specifically: In certain circumstances *C*, an agent *A* has power over a subject *S* (a thing or an agent, either *A* or some other) with respect to whether some final outcome or state of affairs *O* occurs to the extent that *A* can voluntarily

determine how S turns out to be or behave with respect to O.¹ The general idea is simply that an agent's power is their ability to shape aspects of the world as they choose. Regarding human rights, there is some agreement that they are moral entitlements that have special moral urgency, hold universally at least in modern times, are primarily critical rather than positive standards, and should often at least in part be pursued through political action and institutions. The political project of human rights, at least since the end of World War 2, comprises several forms of domestic and global action and institutions geared to the fulfillment of a set of basic civil, political and socioeconomic rights. The key international documents of the human rights movement, the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR), include a general statement of such rights. The practice is emergent.² It rallies around a project that is itself in the making. There is dispute about what claims should be recognized as human rights and how they should be justified and implemented. We need an account of how power is significant for each of these areas of discussion, and the rest of the paper provides some reflections and proposals meant to contribute to such an account.

2. Exploring power-related worries about human rights

2.1. What might be the upshot of the worries?

Many scholars have voiced power-related worries about human rights. In this section I survey some of them. This is not an easy task because for the most part the authors presenting such worries are not clear about what their upshot is supposed to be. There are at least three quite different possible judgments that might result from power-related worries:

Inexistence: there are no human rights.³

Abandonment: the human rights project should be abandoned.

Shaping: the human rights project should be (re)shaped in certain ways.

In this subsection I present a preliminary argument for the claim that the most appealing practical judgment to entertain is Shaping. In subsection 2.2 I discuss several power-related worries and identify what I take to be their strengths and mistakes, with a particular focus on unearthing desiderata for the shaping of the human rights project.

A common difficulty in the literature on human rights and power is the lack of careful distinction between descriptive and normative talk. The former comprises reports, explanations, and predictions about what some people think, say, or do. The latter, in contrast, comprises claims as to what some people *ought to* think, say, or do. This difference should apply in human rights discourse. In this context, normative claims are about what human rights there are. They purport to refer to normative facts about what treatment individuals are entitled to in their social

¹ This characterization is very open and does not preempt substantive debates: it allows for degrees of power; it includes power over oneself and over others; it can apply to both individual and collective agents; it includes "good" and "bad" ways of exercising power (e.g. through rationally convincing someone to do something or through force, coercion or manipulation); it includes power over things besides persons (e.g. technological power to transform material environments); it includes various possible subjects of power: not just someone's action, but also the formation of their beliefs, desires, and other features and circumstances. For a survey see Lukes 2005.

² Beitz 2009, pp. 42-4.

³ The claim may be less sweeping, saying that *some* human rights do not exist. I assume here that human rights have the four features identified in section 1. In particular, I assume that human rights are primarily *moral* rights, and as such they are independent of legal or institutional recognition.

life. Descriptive claims, on the other hand, purport to refer to empirical (psychological, social, etc.) facts about what people believe they are entitled to in their social life, and they report, explain, or predict how people act with respect to some putative entitlements. Normative claims address such putative entitlements directly, affirming their existence or inexistence, and make judgments about the duties that correlate with them.⁴

To illustrate, consider the following utterances:

- (a) “[P]ower and interests define the dominant conception of human rights in any historic period”
- (b) “[R]ights should be understood as a process that reflects particular historic configurations of power relations”⁵

(a) is a descriptive claim. (b) is somewhat ambiguous, and the text in which it appears sometimes hints at a normative and sometimes at a descriptive interpretation. The normative version could be mistaken. We want to be able to distinguish between rights that are *taken as* existing and rights that *actually* exist. This distinction helps us make sense of a typical role of rights talk, which is to *challenge* dominant conceptions of rights. It could be problematic to say, in the normative mode, that a right to freedom of religion exists in a social setting in which the majority accepts it and enforces it institutionally but did not exist a generation earlier when only a minority accepted it or when it was not institutionally implemented. It is indeed important to ascertain whether a certain putative right is backed by a particular historical configuration of power relations. But such configurations do not settle the normative issue whether people have the putative right. In other places the author of the text in which (a) and (b) appear insists that he is not contesting the ideal of human rights, but providing an analysis of power relations that would in fact support action geared to its fulfillment.⁶ This kind of disclaimer is common in power-based critical discussions of human rights. Thus, Mutua speaks about the “basic nobility and majesty that drive the human rights project,” and Kennedy recommends that we think pragmatically so that “the purposes of human rights are achieved.”⁷ But notice that the disclaimer makes sense precisely because there is a difference between descriptive and normative talk about power and human rights. As we will see it is of course also important to properly combine descriptive and normative claims in political reasoning. But their conflation frustrates clear thinking about how to achieve it.

Power-related worries often involve the claim that human rights practice fails to fulfill, or even sets back, its own aims. What is the normative significance of this descriptive point if true? Does it warrant Inexistence, Abandonment, or Shaping? It seems to me that it normally fails to warrant Inexistence. First, as we saw, those making the descriptive point sometimes presuppose the existence of the rights about whose fulfillment they puzzle. They embrace the aim of the practice that power relations allegedly set back, which is the fulfillment of human rights. They

⁴ Let me make two remarks to prevent misunderstanding. A source of confusion may be that normative talk, in purporting to refer to certain facts (in claiming their existence), seems to engage in a kind of description. But what is purportedly referred to is characterized in directly normative phrases (as what some agents are *entitled* to, have a *duty* to, etc.). The “normative facts” referred to concern what ought to be the case, not what is the case. Second, normative claims may be either *evaluative* or *prescriptive* (they are evaluative when they focus on what some agents ought to do if they could, and prescriptive when they focus on what agents ought to do given actual feasibility constraints). When the term “normative” is used in this text, the context will make clear which of the two senses is assumed.

⁵ Evans 2005, pp. 26, 34.

⁶ Evans 2005, p. 8.

⁷ Mutua 2002, p. 10. Kennedy 2004, p. 4.

cannot say that we do not have the rights they think we should realize. More importantly, the truth of the descriptive claim does not by itself affect the existence of human rights. The existence of a human right is a normative fact about what people owe to each other. As such, it is independent from other facts about whether people pursue, or succeed at fulfilling, human rights. People may fail to seek (or achieve) what they ought to seek (or achieve). If the dominant powers successfully frustrate the pursuit of some rights, this does not entail that the rights do not exist. Saying the contrary would imply the absurd conclusion that human rights do not exist when the power asymmetries are maximal and the top dogs are systematically able to set back the urgent interests of the under dogs. It would actually generate a perverse incentive for human rights violators to become as asymmetrically powerful and dominating as possible as the best way to respond to the criticism that they violate human rights.

So power-related worries do not yield Inexistence.⁸ What is really at stake is not the truth of human rights principles, but the practice seeking their fulfillment. Do the worries yield Abandonment? Abandonment is a normative recommendation. It may of course be simply based on the normative claim that there are no human rights. But we are considering the more circuitous (and *prima facie* more appealing) challenge based on the view that overall it is more desirable (taking the fulfillment of human rights themselves as our evaluative yardstick) to drop the human rights practice than to engage in it. This might seem to be so if the practice aimed at fulfilling human rights principles were systematically self-defeating. Perhaps trying to fulfill human rights is like trying to fall asleep. Perhaps we should abandon the practice in the hope of

⁸ There is an association between some power-critiques and the Inexistence claim. I have addressed a version of these critiques that stands at odds with its own moral character, i.e., its (explicit or implicit) commitment to basic norms of respect and concern which it regards as being violated by the practice of human rights as it stands. But I acknowledge that there could be other skeptical, relativistic, or nihilistic versions of power-critique. I believe that we must distinguish between human rights as moral entitlements and as conventionally articulated statuses. Normative argument is based on the former, not the latter. Conventions can be morally mistaken. My view of this distinction assumes a form of cognitivism about moral human rights. There are some irreducibly normative truths referring to what we have moral reason to do, and moral human rights are among them. (For a discussion of how this kind of cognitivism does not entail unsavory metaphysical assumptions that reason-involving properties exist as natural properties in the spatio-temporal world or in some non-spatio-temporal part of reality, Parfit 2011, sect. 113. Given space constraints, I cannot address other power-related worries about the existence of moral human rights that challenge this view. One possible such worry surmises that human rights exist only where there are specific institutional articulations and effective mechanisms of enforcement of them and that since these are absent in the current world human rights do not exist in it. This view is counterintuitive because one of the roles of human rights talk is precisely to justify the introduction of enforcement mechanisms where they do not exist, are feasible to introduce, and are needed to protect human rights. But a defender of this challenge could reply that my response is merely a move in “power politics,” an attempt to impose the satisfaction of my moral beliefs on others. On this view, the existence of human rights is a subjective matter of what we invent and establish through power politics, not an objective matter of independent normative facts that we can discover. This nihilism is at odds with my intuitions that our moral beliefs about human rights track objective normative reasons, and that they need not be linked with a will to impose our moral attitudes on others. But I acknowledge that this challenge deserves further discussion. For exploration of the challenge just mentioned see Geuss 2001, pp. 143-6.

A second challenge is perhaps inspired by Carl Schmitt’s account of “the political” as a domain of radical antagonism (Schmitt 1996). It says that human rights talk is either at odds with political practice (which is fundamentally about how to fight our enemies, not about how to fraternize with every human being) or a tactical device within it. Human rights talk is either hopelessly naïve or it displays rhetorical manipulation. Although I believe that conflict is a common feature of politics, and that universalist discourse is often used hypocritically, I disagree that radical antagonism is in every case a necessary or desirable feature of politics, and that we cannot or should not disentangle universalist commitments from their manipulation. But again I acknowledge that this challenge deserves further discussion. I thank Adam Etinson and Elizabeth Frazer for their comments about the issues addressed in this footnote.

preventing mechanisms that set back its purpose. If this were the case, then although human rights principles would not be false, they would be deficient as action-guiding propositions. This is worrisome because we intuitively see normative principles as having the two roles of helping us determine whether certain practical outcomes are morally desirable and of helping us decide what to do. If pursuing the fulfillment of human rights principles were bound to be self-defeating, then those principles would not be action-guiding. But these considerations need not really yield Abandonment. If a principle does fulfill the role of determining the moral desirability of certain final outcomes of action, then even if it were to be self-defeating as a direct guide to action it could be orientating in an indirect way. If the final outcome that is morally desirable according to the principle is not likely to be achieved by directly aiming at it, then we could aim at bringing about other outcomes that will cause the final outcome as a by-product. When we engage in this planning, it is the final outcome that guides us in the selection of intermediate outcomes. Returning to the example of sleep: we can decide to solve mathematical puzzles, read a novel, etc., which in turn will tire us out and make us fall asleep. We should not simply close our eyes and tell ourselves “Fall asleep now!” Something similar could be the case with human rights. Perhaps we could pursue changes in the international economic and political order that would create incentives for powerful agents to act in ways that would prevent human rights violations. We are familiar with indirect mechanisms at the domestic level. A state can motivate agents to do what is right by engaging their greed (through economic incentives) and fear (through threats of penalties).

The previous response to Abandonment accepts, for the sake of argument, that the direct pursuit of human rights is overall self-defeating. But I have not found in the relevant literature evidence for that overall claim. To support it, the defender of Abandonment would have to show that a global political environment in which we engage in human rights advocacy would likely be worse than another in which we do not. To show this it is not enough to mention a set of appalling examples about power-relations subverting human rights purposes. Abandonment is a sweeping proposal, and it requires comprehensive evidence. In fact, one of the most comprehensive recent empirical studies of contemporary human rights practice suggests that on balance the international practice has been positive.⁹ Given the absence of comprehensive support backing its claim about the systematically self-defeating nature of human rights practice, the presence of important empirical support for the opposite claim, and the inherent moral desirability of human rights, we should be reluctant to embrace Abandonment.

But even if it were true (against the existing evidence) that the human rights practice has been overall self-defeating, this would not yield Abandonment. The relevant comparison in the assessment of the practice should be broader, including not only (i) what has happened in the human rights practice so far and (ii) what would have happened had the human rights practice not been pursued, but also (iii) what could have happened, or could happen in the future, if the human rights practice had been, or were shaped in other ways.¹⁰ This leaves us with Shaping, the most plausible upshot of power-related worries about human rights. The idea here is that the

⁹ Simmons 2009, ch. 9. Simmons says that the common sentiment that “international law has done very little to improve the rights chances of people around the world ... has largely developed in an evidentiary vacuum” (p. 350). Kennedy acknowledges the difficulty of justifying sweeping comparative claims about the consequences of engaging and not engaging in the human rights project (Kennedy 2004, pp. 32-3). Beitz shows that general skeptics about the human rights practice cannot avoid defending a general claim about its relative undesirability (Beitz 2009, p. 207).

¹⁰ The comparison could be complicated further by including (iv) what could have happened, or could happen in the future, if a normative ideal different from human rights had been, or were pursued in its stead.

worries can provide us with reasons to arrange the human rights practice in certain ways. The rest of this paper explores Shaping. Before proceeding, it is important to highlight the fact that the human rights project involves many possible patterns of domestic and global action,¹¹ and that the same power-related worries that warrant rejection of some forms of action in some circumstances may not defeat others. For example, even if unilateral foreign coercive intervention is likely to be a bad response to human rights violations in the overwhelming majority of cases, other forms of action including international diplomatic criticism, campaigns by grass-root international human rights movements, or domestic resistance may be appropriate.

2.2. Specific power-related worries and desiderata for shaping human rights practice

2.2.1. Parochialism and imposition

A typical power-related worry about human rights practice is that it involves an imposition of particular values by stronger Western societies on weaker, non-Western ones.¹² This worry relies on two claims. The first, empirical claim is that the origin and content of human rights doctrine reflect parochial values that are not widely accepted amongst people in non-Western societies. The second, normative claim is that it is wrong to disregard the will or opinions of others by externally imposing the implementation of human rights principles on them.¹³

These claims are problematic, especially if they are used to support Inexistence and Abandonment. The use of the empirical claim faces four familiar challenges. First, the origins of contemporary human rights doctrine were not so parochial. The drafters of the UDHR included members of different world cultures, and they consulted a variety of intellectuals across the world to develop an account that would resonate widely.¹⁴ Second, the development of an international legal framework for the pursuit of human rights was primarily pushed not by representatives of the strongest Western countries (they in fact often blocked or delayed it), but by leaders of relatively weak democratic and Third World countries and by NGOs, public intellectuals, and activists.¹⁵ Third, the content of most human rights stated in the UDHR protect interests that are widely recognized. For example, the interests in not being tortured, have enough to eat, be educated, have housing, access employment, and avoid unfair trial are clearly not merely “Western.” There are of course other claims in human rights documents that are controversial, such as those concerning more demanding social rights, strong political rights, and non-discrimination on the basis of gender. (Notice that some of these rights are disputed by some people in the West.) However, fourth, we should avoid a conventionalist view according to which a right exists only if those possibly affected by its implementation already accept that it exists. Normative claims about human right are not reports of public opinion. We should avoid the fallacy of moving from the empirical claim that there is disagreement about a right to the

¹¹ Nickel 2007, p. 101. Beitz 2009, pp. 33-40.

¹² Brown claims that “[t]he contemporary human rights regime is, in general, and for the most part, in detail, simply a contemporary, institutionalized and universalized version of the liberal position on rights.” (Brown 1997, p. 43). Žižek claims that “‘human rights’ are, as such, a false ideological universality, which masks and legitimizes a concrete politics of Western imperialism, military interventions and neo-colonialism” (Žižek 2005, pp. 128-9). Kennedy argues that the human rights project is “tainted” by its parochial origins: it is less effective as a result, and its generalization of Western liberal ideas and political frameworks “impoverished local political discourse” in countries where other viable and potentially effective ideas were marginalized (Kennedy 2004, pp. 18-21).

¹³ Beitz 2009, p. 203 (Beitz construes the second claim differently).

¹⁴ Glendon 2002, ch.5.

¹⁵ Simmons 2009, pp. 40-1, 46-9, 352-3.

normative claim that there is no such right. Women had rights against discrimination before the belief that they do became an item in mainstream political agendas. Another common fallacy that operates in the neighborhood is the genetic fallacy according to which we should judge the plausibility of an idea by considering its origins. The truth value of the normative claim that there is a human right to democracy is not threatened by the truth (if it is a truth)¹⁶ of an empirical historical report saying that the belief in the value of democracy is Western in origin.

The normative claim seems plausible. But it should be qualified. It is not necessarily always true that the disvalue of external imposition outweighs the value of the outcomes that could only be reached through it. Serious emergencies can warrant exceptions. But in any case we must see that the current practice of human rights is not one in which coercive international action is widespread. In fact, the two Covenants include (in their Article 1) strong clauses stating peoples' self-determination, and their implementation is normally led by domestic political actors.¹⁷ On the other hand, we should not only worry about international imposition. We should also worry about domestic imposition. It is not uncommon for worries about foreign interference to be voiced by agents who want to maintain domestic practices of oppression and domination. This is not only the case when it comes to some "non-Western" leaders challenging strong political human rights whose fulfillment would threaten their authoritarian rule. It was common for example in the United States, when many political leaders worried about official recognition of international human rights law that could be used to challenge the oppression of African-Americans in the American south.¹⁸ Certain forms of imposition might (with the usual caveats regarding likely effectiveness and avoidance of unacceptable consequences) be justifiable in extremis to protect some from severe impositions by others. This need not be a form of paternalism, as those protected may already resent their condition.¹⁹

But the empirical and normative claims involve genuine concerns for Shaping. The history of colonialism and the contemporary global imbalances in economic, military, and cultural power must put us on guard. It is indeed problematic when the articulation of the content and implementation of human rights is in the hands of disproportionately powerful agents and does not seriously include all those to whom they would apply. It is also a problem when some powerful agents act in self-righteous ways, without proper acknowledgment of their own deficits. For example, Americans proselytizing for democratic governance around the world should also pay attention to the serious pathologies facing their domestic politics, shaped as it largely is by the influence of people with large sums of money to fund campaigns, control the media, and offer lucrative jobs to public servants after they leave office. In response, human rights practice should accept the following desiderata:

(D1) *Epistemic openness*: We should have a fallibilistic attitude towards the correctness and completeness of the set of human rights we currently accept. We should pay attention to the voice and point of view of people from diverse social settings.

(D2) *Presumption against external imposition*: Absent strong countervailing considerations, the implementation of human rights in a social context should be such that the agents in that context have effective opportunities to control it.

¹⁶ Sen argues that democratic values also sprung independently in many Asian societies (Sen 2009, ch. 15). "Like fire, or painting or writing, democracy seems to have been invented more than once, and in more than one place" (Dahl 1998, p. 9).

¹⁷ Simmons 2009, pp. 365-73.

¹⁸ Simmons 2009, pp. 40, 43.

¹⁹ Beitz 2009, pp. 84-5.

(D3) *Humility*: When criticizing others, those pursuing human rights should not be condescending and arrogant, and they should be open to criticism.

2.2.2. *Hegemonic manipulation*

Antonio Gramsci argued that “the supremacy of a social group manifests itself in two ways, as ‘domination’ (*dominio*) and as ‘intellectual and moral leadership’ (*direzioni*)”.²⁰ Whereas the former exacts compliance through force or coercion, the latter recruits the willing consent of the members of subordinated groups through persuasion. The achievement of the second kind of supremacy is what Gramsci called “hegemony.” Hegemonic mechanisms involve (inter alia) normative discourses that capture some of the interests of the members of subordinated groups while being on balance tilted in favor of the interests of the members of the group shaping the discourses, thus cementing the power of the latter over the former.

Might human rights discourse work as a hegemonic device? Some believe that it does. Each contender in the Cold War used human rights discourse to bleed support from the other: the USSR emphasized the underperformance of the US regarding the civil rights of African-Americans and the social rights of workers, and the US criticized the violations of freedom of speech, association, and political participation in the countries under Soviet control.²¹ Each funded purportedly nongovernmental human rights organizations that articulated these criticisms.²² Some characterize human rights discourse as a tool wielded by capitalists to cement their power in the contemporary global economy. According to Evans, “[h]uman rights are conceptualized as the freedoms necessary to maintain and legitimize particular forms of production and exchange,” they focus on a “set of values delimited by an assumed normative consensus that legitimizes activities associated with market discipline, specifically, negative rights and those associated with property.”²³ There is also the general suspicion that the “enforcement of human rights by the international community is determined, in practice, by the foreign-policy imperatives of the major powers”.²⁴ At the limit, human rights are invoked as part of the justification of coercive interventions that in the eyes of many are primarily motivated by economic or geopolitical interests rather than by human rights concerns. For example, many think that the American invasion of Iraq was about control of oil rather than about responding to international terrorism or promoting democracy. Finally, there is the widespread phenomenon of inconsistent implementation. The US ratified the ICCPR but not the ICESCR. While it criticized the Soviets for trampling on civil and political rights, it supported the dictatorship of Pinochet in Chile, which violated both in egregious ways. It is common for foreign aid to be focused on countries with which the donor country has extensive trade links, disregarding other countries even if they need more help.²⁵ International prosecution and criticism for war crimes commonly

²⁰ Gramsci 2000, p. 249 (see also 195, 205-6, 211-2, 306-7, 333-4, 345).

²¹ Glendon 2002, ch. 11.

²² Simmons 2009, 47-8.

²³ Evans 2005, pp. 43, 44. Evans also stresses how socioeconomic (and even political) rights are ignored and undermined to create attractive conditions for investment and intensive exploitation of labor by multinational corporations. Such corporations have extensive influence on governments and international decision-making agencies (such as international trade organisms) (pp. 44-5, 50).

²⁴ Brown 1997, pp. 53-4. See Žižek 2005.

²⁵ The Canadian government recently decided to end its aid efforts toward several countries, alleging that the “operation costs” are too high. Many of those countries are among the poorest in the world. On the other hand, Canada will continue its support to countries with which it has ongoing trade agreements or in which it is carrying out significant business activity, even though several of them are significantly less poor. (Sheikh 2012).

targets leaders of poor countries, but very rarely if at all leaders of powerful countries.²⁶ These phenomena seem to support the view that human rights discourse surfaces in strong ways only when it is likely to serve the strategic interest of powerful agents.

The foregoing considerations obviously do not warrant Inexistence. The instrumental use of human rights talk does not disprove the existence of the human rights talked about. In fact it exploits the widespread, and independent conviction that those rights exist. What about Abandonment? Would the relatively powerless be better off if human rights were not part of the domestic and international political vocabulary? As I said before, this is hard to ascertain. But there are reasons to think that the use of human rights discourse has very important positive effects. To begin with, human rights are not only invoked by the powerful. Appeal to them was, and is, a common normative resource in the struggle of subaltern groups such as women under patriarchal regimes, the working poor in wealthy and developing countries, and mistreated prisoners across the world. Second, hegemonic manipulations can be unmasked and criticized by referring to human rights. For example, contemporary international and domestic economic arrangements can be faulted for their violation of the human rights of workers in sweatshops and their association with political regimes that flout the civil and political rights of protesters. Third, although human rights discourse can be coupled with different wider normative conceptions of social organization (such as capitalism and socialism), it imposes constraints on them by identifying a minimum of decency and dignity for any agent subject to their rules. Even if human rights discourse is subject to hegemonic articulations, it involves recognition of a form of minimal justice that should be welcomed rather than dismissed. It would be worse if such minimum moral core were not on the table as something to reckon with (even through manipulation). Finally, as Koskenniemi points out, the hegemonic pattern of discourse has the pragmatic consequence of helping build an international political community in which general rights and duties are routinely invoked and discussed, and this forces players of the hegemonic game to be more inclusive of the interests of others.²⁷ I would go further: the moral language game of human rights has a tendency to subvert merely strategic reasoning. It does so by invoking constraints of symmetric regard and impartial concern between human beings. These are never reducible to the search for strategic advantage: although they might at times coincide with it, they may also be used to challenge its tendency to select norms that downplay the needs of the weak, or to apply appropriate norms inconsistently. The moral component of hegemonic devices has independent significance.

So we probably should not abandon the human rights project. But the worries about hegemonic manipulation are of course very serious. They give rise to the following desiderata regarding Shaping.

(D4) *Multilateral authorization*: Responding to the problem of corruption of human rights discourse by unilateral international interventions, we should pursue “an international regime combining a mechanism for approval of unilateral protective efforts with a capacity to apply incentives to encourage fidelity to the efforts’ purposes”.²⁸

²⁶ Evans 2005, p. 31.

²⁷ Koskenniemi 2004.

²⁸ Beitz 2009, p. 207. Buchanan and Keohane 2004.

(D5) *Prioritizing the worst off*: In proposing and assessing the desirability of international actions to promote human rights, we should primarily focus on those whose human rights situation is the worst.²⁹

(D6) *Encouraging imagination of multiple articulations*: Human rights can be components in different wider conceptions of social justice. We should be open to these different articulations, both to respond to discursive manipulation and to foster wider support for the human rights project.

(D7) *Public reasoning*: In proposing and assessing invocations of human rights in domestic and global politics, we should promote practices of public reasoning in which we can impartially test their fairness and consistency.³⁰

2.2.3. *Humiliation and solidarity*

Another power-related worry about human rights practice is that it encourages a pattern of social relations in which some people's agency is downplayed while others' is unduly exalted. Those undergoing human rights deprivations are seen as helpless victims, and those stepping in to help are seen as active saviors.³¹ What is wrong with this pattern? Although critics are not fully explicit on this question, it seems that there are two worries, one factual and the other normative. The factual objection is that the description of processes of human rights deprivation and amelioration by reference to victims and saviors is inaccurate. Those undergoing human rights deprivations may have been causally involved in their own deprivation. Perhaps they are partly responsible for their current situation because of their not having taken available steps to protect themselves (for example by engaging in political collective action more often to fight dictators, politicians' corruption, etc.). And perhaps they are, or could be, much more active in the process of amelioration. The "saviors," on the other hand, may not really be able to do much unless they engage the active agency of those undergoing deprivations. They cannot on their own reorganize the social life of the "victims." A normative consideration operating in this worry is this:

(D8) *Non-humiliation*: When some agents help others to overcome situations of human rights deprivation, the former should acknowledge, and engage, the initiative and active agency of the latter.

This is an important desideratum for the shaping of the human rights project.³² We should respect other people's agency by seeing them as active shapers of their own social life—at least

²⁹ This is a pro tanto consideration, which might be outweighed. One example concerns effectiveness: the situation in country A may be worse than in country B, but those in country C (the ones undertaking human rights supportive action) may be significantly more able to affect B than A. Another case concerns responsibility to compensate for harm: those in C may have to prioritize action regarding B if they have been complicit in bringing about the human rights deficit in B (but not in A, or less so).

³⁰ D7 is wider than D4, including domestic and international public debate that shapes opinion but not directly decision-making in specific institutions.

³¹ Mutua 2002, ch.1. See also Kennedy 2004, p. 29. Žižek claims that "[t]oday's 'new reign of ethics' ... [invoked by human rights advocates] relies on a violent gesture of depoliticization, depriving the victimized other of any political subjectivation" (Žižek 2005, p. 128).

³² Its disregard of course does not warrant the claim that there are no human rights, and it has not in fact been so widespread as to support Abandonment. Simmons responds thus to Mutua's worry that the human rights movement is framed by a narrative of "saviors" rescuing "victims" from "savages": "*Treaty commitments are directly available to groups and individuals whom I view as active agents as part of a political strategy of mobilizing to formulate and demand their own liberation. Rather than viewing international law as reinforcing patriarchal and other power structures, the evidence suggests that it works against these structures in sometimes surprising ways*" (Simmons 2009, p. 7). When governments explicitly commit to human rights international law, they raise the expectations of

so far as the fulfillment of their human rights is concerned. This point can indeed be used to criticize some forms of humanitarian intervention that see those whose human rights are violated as mere victims to be saved by other, powerful agents. Sometimes the “victims” bear some responsibility for their condition; and sometimes they can, and should, be among the key political players in the struggle for improving their condition. We disrespect people if we fail to recognize the extent to which they are active agents.

However, we should not exaggerate the concern about independent agency. Another important point is that we should take reasonable steps to help other human beings in need. It is a pervasive fact of human existence that people need help from others to avoid the bad and achieve the good. This of course also applies to the most urgent forms of the bad and the good, which human rights track. Sometimes others simply cannot successfully defend their rights on their own. Sometimes dictators will crush their dissent and systematically torture and kill them. Sometimes their hunger can end but is not terminated in the near future because the needed and reasonably available external help is not provided.³³ As a matter of fact, human beings can achieve little in the way of satisfaction of their most urgent interests without the active help of others. An ideal of radical independence or self-sufficiency is infeasible. It seems also unappealing because it misses the significance of cooperation and community in social life. We thus have reason to accept:

(D9) *Solidarity*: We should help others achieve conditions in which their human rights are fulfilled.

In fact, the value underlying this desideratum is among the key ones animating the human rights project. Article 2 of the UDHR calls all human persons to act in a “spirit of brotherhood.” Solidaristic support to achieve the fulfillment of human rights is owed both domestically and internationally. To fully express and elaborate this value, the human rights practice needs to avoid a narrow emphasis on independence. Such emphasis undermines the application of D9: it fosters feelings of shame in those seeking help, and of guilt in those helping. This is unfortunate: rights can, and should be seen, as a way of marking our need for and commitment to support each other in the search for a decent or dignified life.³⁴ Human rights practice should be shaped by a form of *respectful solidarity* that combines D8 and D9.

2.2.4. *Bourgeois ideology and deep change*

Although it was not focused on contemporary human rights but on the “natural rights” claimed in the modern bourgeois revolutions, Karl Marx’s critical remarks on rights (especially in his early text “On the Jewish Question”) have been extremely influential. Given this influence and the insights they involve, I will discuss four of them:

(A) Modern bourgeois revolutions involve “political” but not full “human emancipation.”

They introduce a package comprising “the rights of the citizen” (i.e. political rights to assemble, vote, etc.) and the “rights of man” (rights to free speech, personal security, private property, etc.) that achieves the dissolution of feudal society. But this package

domestic and foreign political actors, who then press for the fulfillment of those commitments with various means (litigation being just one of them).

³³ Ironically, those who emphasize the worry about “victimization” risk embracing the bourgeois ideology they claim to combat: *they* may fail to attend to the phenomena of social dependency and solidarity that render the ideal of radical individual independence both infeasible and undesirable.

³⁴ The human rights project can involve a recognition and valuation of mutual dependency. The UDHR can indeed be seen, in Glendon’s apt phrase, as a “Declaration of Interdependence” (Glendon 2002, ch. 10). On the relation between human dignity, empowerment, and solidarity, see Gilibert 2015.

involves a dualism that is multiply problematic. The division between the political community or the state, and the private sphere or civil society functions in such a way that the former (and its abstract forms of equality, freedom, and brotherhood) masks, permits, affirms, depoliticizes, and is a means to preserving the latter (with its pervasive egoism and inequalities of social power).³⁵

(B) The specific “rights of man” invoked in the French and American Revolutions are the claims of “egoistic man, of man separated from other men and from the community.”³⁶

(C) Rights discourse neglects the differences among individuals, condoning problematic inequalities. For example, in the first stage of a communist society in which distribution is based on a right of each to receive according to their productive contribution, those with greater native productive talents will be better off than others who exert the same amount of effort in their productive activities. The best society will be one in which we move beyond this inherent limitation. Thus, the final stage of communist society would instantiate the slogan “From each according to his ability, to each according to his needs”.³⁷ This society lies beyond the realm of rights.

A general claim underlying much in Marx’s (and many Marxists’) challenges is this:

(D) The “rights of man” are presented as universal, but often they articulate the specific interests of specific groups of people in specific societies (such as the interest of the bourgeoisie in private property over productive assets).

Each of these points involves important and true insights but also mistakes and exaggerations. I will briefly discuss them. I will also consider how they might apply to contemporary human rights. This is not the context Marx had in mind, of course. But some contemporary writers extend these points to human rights, and it is in any case a worthy exercise to consider the plausibility of such extension.³⁸

(A) involves two important insights. First, rights-talk emerges in specific historical circumstances. To understand the former we do well to attend to the latter, which include certain power dynamics. This point is relevant for understanding contemporary human rights talk, and is indeed a key motivation for this paper. Marx is also correct to think that what he calls “political emancipation” is not enough: without important changes in the economy, the “freedom,” “equality,” and “brotherhood” announced in the political sphere will be compromised.

There are, however, two problems with (A). First, it seems to ignore that political rights can be exercised to reshape the egoistic economy Marx says they are bound to presuppose. In fact they have been exercised in that way in the development of welfare states. Welfare states stop short of socialism, of course, but they go well beyond *laissez-faire* capitalism. Political power and socioeconomic power interact in complex ways that do not always fit the functionalist picture involved in (A).³⁹ Second, it is true that the distinction between the public and the private can, and has been used to obscure the problematic power relations operating in the latter (such as the exploitation of labor in factories, or the physical abuse of women in households). But the idea that there should be areas of personal life that are relatively free from public monitoring is in fact an achievement of modern liberalism that should be retained. I think that Marx would have agreed with this given that his socialism had significant libertarian components and was

³⁵ Marx 1978a, pp. 34-43. An insightful characterization of (A) can be found in Brown 1995, ch. 5.

³⁶ Marx 1978a, pp. 42-3.

³⁷ Marx 1978b, pp. 530-1.

³⁸ For example, Douzinas 2010 invokes versions of (B), (C) and (D). Žižek 2005 invokes versions of (A) and (D).

³⁹ For exploration of the debates on this issue within the socialist tradition see Wright 2010.

explicitly opposed to forms of communitarianism (or what he called “primitive communism”) that obliterate individuals’ self-differentiation and liberty. But for as long as conflicts between personal and collective autonomy are likely (I think this likelihood is inescapable, but Marx disagreed—more on this below), some distinction between the public and the private, and some rights protecting the latter from abuses by majorities capturing the former, will make good normative sense. These personal freedoms are not *capitalist* liberties to own means of production and exploit workers, but entitlements (qualified by whatever important constraints of fairness are appropriate) to some levels of non-interference in our personal affairs and relationships.

(B) also involves important insights. It is true that some of the alleged rights advocated in bourgeois revolutions protected egoistic, instrumentalist, or exploitative forms of economic interaction, and this seems problematic from the point of view of human emancipation. It is also true that rights-talk sometimes presents some capitalist liberties as if they protected universalizable interests. Marx is correct to worry about the tendency to make modern, capitalist, “egoistic man” into the “natural” or “authentic” one.⁴⁰ However, Marx’s discussion of the “rights of man” of the French (and American) revolution is too narrow, and his sweeping dismissal of them is unacceptable. We simply cannot accept that liberal individual liberty rights are just shields for bourgeois egoism. Liberty of conscience and freedom of the press (both mentioned in the French Declaration) are extremely important rights that any social system that recognizes the significance of people’s capacities to shape their own life from within would have to include. Marx is also mistaken to assume that “equality” is of no political significance. It is not true that it only means the “equal right to liberty ...[for every man as a] self-sufficient monad”.⁴¹ The recognition of formal equality and equal liberty are (even if insufficient) enormous achievements. They were denied people in feudalism, and they would become templates to be filled in in substantive ways through the identification of various new specific liberties and through their extension to larger sets of persons (such as slaves, workers, and women).⁴² The idea that all persons should have equal legal entitlements is an undeniable triumph against the earlier assumption that some deserve more rights than others, or are inherently more worthy of respect and concern. Second, Marx’s criticisms definitely do not apply to standard contemporary lists of human rights (such as the UDHR). These do not entail capitalist property rights. And they include numerous socioeconomic rights (see UDHR, Articles 22-6, which include social security, appropriate remuneration for workers, rest and leisure, health care, educational opportunities, etc.). They also state domestic and global duties to cooperate with the fulfillment of socioeconomic (and other) rights. So even if Marx is correct to criticize the narrow emphasis on independence and separateness in early liberal individualism, current human rights discourse and practice is explicitly attuned to the need for, and obligation to give, solidaristic support.

Turning to (C), Marx seems to me correct to criticize the so-called “contribution principle” (captured in the slogan “To each according to their contribution”) in that its application is consistent with inequalities of outcome that arise from morally arbitrary differences in individuals’ natural endowments. I also find the slogan “From each according to their abilities, to each according to their needs” appealing as it involves a more desirable view of social cooperation that captures both the importance of reciprocal contribution and sensitivity to difference.⁴³ More generally, it is true that the application (and even the formulation) of rights

⁴⁰ Marx 1978a, p. 46.

⁴¹ Marx 1978a, p. 42.

⁴² Hunt 2007, chs. 3-4. On the need for socialists not to dismiss human rights see Blackburn 2011.

⁴³ Gilabert, forthcoming.

often fails to capture the relevant differences among individuals. We can derive important desiderata from these points. The emphasis on responsibility towards others was captured in D9. We can add:

(D10) *Sensitivity to diversity*: In formulating, justifying, and implementing human rights, we should be sensitive to important differences among individuals.

Clearly, even if two individuals have the same rights, they may need different specific policies to attend to their fulfillment given relevant differences between them. This is already expressed in the human rights movement, for example through the generation of instruments identifying specific needs and claims on the part of certain groups (such as the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child).

Marx's dismissal of the idea of rights is however too sweeping. As we saw, differences *can* and *should* be incorporated in rights discourse and practice. Even if people have equal rights to a decent standard of living, they may need different things to achieve it: some cannot walk and need wheel chairs or ramps to access buildings, others need special medicines, some are very young and need special nutrition, some are very old and need special care). Rights-talk need not be abstract in ways that obscure important differences. Even though relatively abstract, rights claims can be framed to protect individuals against likely threats and problems that arise in their social life. Their formulation could address types of social circumstances to be avoided or promoted. This can happen at different levels of generality.⁴⁴ On the other hand, some amount of abstraction is unavoidable in lumping cases under common headings (as any set of rules must). Some of the problems might be solved by breaking types into important subtypes either in the formulation of specific rights or at the level of the policies that implement them (this is what D10 would demand). But the tension between standardization and singularity is likely to remain. We can only seek to navigate it through lucid contextual judgment. Of course, this would not be necessary in a society of superabundance and dissolution of serious conflict of interests (which Marx seems to envisage for the higher phase of communism in "Critique of the Gotha Program"). This society would be one in which rights-talk is no longer necessary: everyone would as a matter of course get what they need. But such a prospect seems wildly infeasible. In any case, for as long as it is not achievable, we will encounter scarcity, conflict, and power differentials. We will need normative guidelines for addressing such circumstances. And the rights idiom (properly understood) is suited to that important task.

Finally, regarding human rights, it is important to notice that they mostly are basic sufficientarian demands. Thus, socioeconomic human rights fall well short of socialist demands of equality. But there is no necessary conflict here. Socialist rights can be seen as including

⁴⁴ Thus, we may identify specific human rights in the contemporary world as specific urgent claims that people have against their own government and fellow citizens and against international organizations, foreign governments and foreign citizens. These may be based on more abstract rights or general claims based in extremely important interests shared by all human beings, and whose protection involves responsibilities for anyone who can affect their fulfillment. As stated, this distinction is of course too sharp. We could think of a spectrum going from more to less abstract rights. We could then identify, for example, (1) fairly abstract rights that hold in any social context, (2) the rights mentioned in the UDHR and the Covenants, Conventions, and Treaties, (3) the rights stated in national constitutions, (4) the specific rights as construed by governments' laws and policies, and (5) individuals' claims in specific circumstances. Even this sequence is somewhat artificial; for example, some of the rights mentioned in the UDHR clearly belong to (1) (e.g. the right to life identified in Article 3). The main point, however, should be clear. We can make important differences about the abstraction of rights, and these are significant for our reasoning about the content, justification, and implementation of different rights. Differences among individuals can be articulated at any of these levels, depending on their practical relevance. See Gilabert 2011 and 2013.

human rights as a proper subset. One can campaign for both. Still, the distinction is morally and politically important. Human rights are far more morally urgent than their complement in the socialist ideal. And one should be willing to achieve broader political alliances with those who endorse human rights but not socialist rights if this is necessary to immediately stop the evils of human rights violations (such as torture, starvation, and political oppression). On the other hand, the Marxian suspicion about just focusing on human rights is in order. If inequalities outside the domain of human rights are too wide, then perhaps not even the most basic human rights will be secure. For example, if inequalities of wealth and economic power are very wide, they may corrupt the political system, making it unlikely to impose the regulations needed to keep people out of severe poverty. Many contemporary capitalist societies exhibit this problem. Thus, broader, even if not distinctly socialist, economic reforms may be necessary to secure human rights themselves.

I will not comment on (D) because I have already covered the relevant issues when introducing desiderata D4-D7. D4-D7 can also be seen as responses to the threat of ideological manipulation. Their fulfillment would help disrupt the presentation of the contingent as necessary, the particular as universal, and the temporary as invariant. Marx's concern is clearly worth taking on board. I will return to this issue in section 3.

Another important issue inspired by critical considerations of the kind Marx introduced is the issue of "structural change." Many power-related discussions about human rights worry that human rights discourse is superficial because it does not address the causes of human rights deprivations. To do so, we should focus on the economic and political structures that frame domestic and international relations. Mutua, for example, says that we should critically discuss capitalism, imperialism, and the market economy besides merely regulating their worst outcomes.⁴⁵ Others worry that the human rights movement is narrowly focused on developing legal frameworks for holding individuals responsible, without addressing the circumstances that enable or encourage them to undermine human rights. The underlying desideratum seems to be this:

(D11) *Deep change*: In pursuing the fulfillment of human rights, we should seek to change economic and political structures and other deep factors that make human rights deprivations likely.

This desideratum is appealing. In fact, even many of those who focus on international human rights law accept it.⁴⁶ But this does not show that legal instruments are not important. They have enabled citizens to effectively force their government to act to protect their rights (as is the case, for example, with Colombian women fighting for their reproductive rights by pressing their government to honor its ratification of CEDAW⁴⁷). Furthermore, some human rights directly capture deep structural dimensions, as is the case with the strong political rights envisioned in UDHR (e.g. Art. 21) and ICCPR (e.g. Art. 25). The practice can, and should go further by addressing features of the international order. Thus, Thomas Pogge has recently discussed the need to change features of that order that enable and incentivize the formation of authoritarian governments that violate their citizens' rights (such as the international privilege to sell the

⁴⁵ Mutua 2008, p. 1027. See Kennedy 2004, p. 11. It is true that socioeconomic rights have been downplayed by Western governments and many international NGOs. But this has started to change. The UN Millennium Goals includes targets regarding poverty eradication, and NGOs such as Oxfam and (recently) Amnesty International have been focusing on economic deprivation. Still, more focus on "economic tyranny" and "economic powerlessness" is necessary if "asymmetries of power" are to be seriously addressed (Mutua 2008, pp. 1029, 1033).

⁴⁶ Simmons 2009, p. 366.

⁴⁷ Simmons 2009, pp. 245-53.

natural resources they seize, and to purchase weapons they use to suppress dissent).⁴⁸ Others have emphasized the need to change trade regimes and the governance structures of international institutions such as the World Trade Organization in order to facilitate fair trade, which could help millions to escape severe poverty.⁴⁹ These efforts reflect (D11), and are in tune with the important, framing Article 28 of the UDHR, according to which “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.” More efforts of this kind are obligatory.

2.2.5. Political action in nonideal circumstances

A final desideratum I want to identify is this:

(D12) *Nonideal ethical reasoning*: In pursuing the fulfillment of human rights we may encounter situations in which sufficiently many others act in ways that thwart that fulfillment, or do not act in ways that support it. In such nonideal circumstances we may follow special guidelines for action that would not apply in different, ideal circumstances.

The need for distinguishing between ideal and nonideal normative reasoning, and the significance of the latter for politics, are important issues that are becoming salient in debates in political philosophy.⁵⁰ I have defended elsewhere the need to engage in nonideal theorizing when it comes to the pursuit of global justice and human rights.⁵¹ I have emphasized the need for acknowledging what I call *dynamic duties*. These duties are focused on expanding agents’ capacities for political action so that more extensive implementations of human rights become more realistic. In the present context of discussion, this requires a hard look at power relations: the power of those blocking human rights pursuits must be limited, the power of those seeking their fulfillment must be expanded, and choices involved in such processes will include tradeoffs that would not be necessary in ideal circumstances in which the implementation of human rights is more feasible and more systematically embraced by influential actors. I thus agree with Kennedy that we need to adopt a pragmatic approach that is sensitive to both desirable and undesirable consequences, including costs, risks, and uncertainty—the “darks sides” of the human rights practice, in order to better realize its goals.⁵² This requires from political actors an ethical sense of responsibility: they have to weigh the moral significance of alternative forms of action (and inaction), and choose those that are, in their best judgment and overall, no worse than the alternatives.

3. Building empowerment into the human rights project

3.1. Power as an obstacle and as a resource for human rights

In 2.1 I emphasized the distinction between descriptive and normative claims about human rights and power. In 2.2 I identified some desiderata for shaping the human rights project to attend to important issues regarding power. Such desiderata combine descriptive and normative considerations without conflating them. Their full exploration would of course require the identification of specific agents, institutions and modes of action. But such an exploration is

⁴⁸ Pogge 2008, chs. 4 and 6.

⁴⁹ Stiglitz 2006, ch. 3. For a philosophical account of global justice centered on the responsibilities of powerful agents shaping international relations see Miller 2010.

⁵⁰ Valentini 2012.

⁵¹ Gilabert 2012a, chs. 4 and 7.

⁵² Kennedy 2004, pp. 3-8, 327-57.

beyond the scope of this paper. In what follows I will instead focus on a more general and framing issue about how to design a strategy that responds to the desiderata regarding power and human rights. The strategy I propose suggests that we build empowerment into our view of human rights. The first step in developing this view is that we notice that the moral valence of power for human rights is not always negative.

A way to get to this point is by considering the insightful account of the relation between power and human rights provided by Stammers.⁵³ At the level of description, Stammers claims that rights talk has been used in history both to “challenge” and to “sustain” certain relations of asymmetric power. Thus, in some forms of liberalism, some “innate” rights to liberty were invoked to challenge state power, but they were also used to sustain capitalists’ economic power in the private sphere. In some forms of socialism, the socioeconomic rights of workers and others were invoked to challenge the economic power of capitalists, but they were also used to sustain state power in societies that denied civil and political rights to its citizens. Finally, peoples’ right to self-determination was invoked to challenge imperialism and colonialism, but was used by some elites within Third World countries to sustain their privileges and control of state power. Similar claims might hold for forms of power concerning gender, sexual orientation, and race. At the normative level, Stammers suggests that we see human rights as justified challenges to certain existing forms of power. We can see them as responding to “standard threats of power” (a notion he coins by modifying Henry Shue’s notion of “standard threats”). Human rights can thus be seen as a “set of protection rights.”

I find Stammers’ descriptive and normative accounts illuminating and sound as far as they go. But they are insufficient and potentially misleading. First, the normative proposal is too narrow. Power is not only something human rights relate to by identifying forms of protection, as an *obstacle or threat*. Power can also be enabling for human rights, i.e. a *resource*. To capture both possibilities we should focus on the significance of power for people’s ability to access objects that satisfy important or urgent interests. *Protection rights* are rights that people have against others using power in ways that undermine access to those objects. *Enablement rights* are rights to have power *to* access those objects. Noticing this distinction (and the plausibility of both elements in it) suggests another problem with Stammers’ normative proposal. Since what grounds human rights is not just the presence of power threats, but also the importance of the interests that are threatened (or whose fulfillment is not enabled), the content of human rights cannot simply be identified by looking at power relations. We also need to look more broadly at forms of social action that would facilitate access to the objects of urgent human interests. (There is a counterpart at the descriptive level: we need to explore *enabling* besides *disabling* forms of power relations.) Preventing undesirable power disparities, or blocking their undesirable consequences, should not be the only animating concerns. Human rights are about securing a decent or minimally dignified life for all. This includes, but goes beyond, avoiding or protecting people from power threats. Our understanding of human rights should be power-sensitive but not narrowly power-centered.

3.2. An expressive-elaboration model

In a way, normative talk about human rights and descriptive talk about power are like oil and water: they always come apart. Might doesn’t make right (as Rousseau famously said⁵⁴), and rights don’t make might (as the history of rights violations amply show). But descriptions of

⁵³ Stammers 1993.

⁵⁴ “[F]orce does not make right.” Rousseau 1997, p. 44.

power in human rights practice are relevant for a full picture of normative reasoning about human rights. We can incorporate power analysis *within* the normative framework to identify the feasibility and contents of various human rights.

We can develop an *expressive-elaboration model* of empowerment within the human rights project. We can, first, elaborate the content of specific rights as requiring that the right-holders have power to access certain goods. To properly respond to an agent's right to a certain object O is to take reasonable and feasible steps to respect, protect, and promote the agent's capability to get O if they choose to do so. Second, when we engage in this elaboration we can express our commitment to agents' empowerment by recognizing their right to participate in it as equal partners. We can see the meta-level practices of discovery, justification, and implementation of various ground-level human rights as themselves areas of empowerment that we should take reasonable and feasible steps to respect, protect, and promote. Both of these points would incorporate the dimension of power as a resource mentioned in 3.1.

Given space constraints I cannot here develop this approach fully, and I present it as a hypothesis for future exploration. But let me note two important potential consequences of pursuing it. First, this approach has consequences for what human rights we should accept. The second point, for example, demands that we see strong political rights (including democratic rights) as part of the human rights package. Political rights are important in themselves because they involve the recognition of agents' capacity for political judgment and self-determination. They are also instrumentally significant because they enhance agents' power to identify, implement, and defend their other rights. (Notice that this includes both the protection and enablement considerations mentioned in 3.1.) This is an important result given the skepticism that some philosophers have recently voiced as to whether there is a human right to democracy.⁵⁵

Second, this approach would help us cater for the desiderata identified in this paper. The kind of empowerment envisaged in the first (ground-level) point would cater for D2, D5, D8, D10, and D11. If we construe human rights as demanding capabilities to achieve their objects, then we foster right-holders' ability to determine whether they get the objects of their rights (D2), we can focus on bolstering the capacities of the worse-off to do so (D5), we activate the initiative of rights-holders to shape their own condition (D8), we enable ourselves to focus on what they need to have the power to get the objects of their rights given their diverse circumstances (which affect their power) (D10), and we are moved to explore deep changes that give them abilities besides formal opportunities to achieve a decent or minimally dignified life (D11). If we also incorporate the second (meta-level) point, then we will also be well-positioned to cater for D1, D2, D3, D4, D6, D7, D8, and D10. If we construe the human rights project as fostering robust and cooperative practices of political self-determination, then we can foster multiple arenas of formal and informal, domestic and international political participation in which agents can engage in public reasoning (D7) and decision-making, revise their beliefs about what various agents do, can, and should do to fulfill rights (D1 and D3), minimize unilateral coercive imposition (D2 and D4), engage others as equal cooperators in the project of fulfilling human rights (D8), and envisage multiple possible ways of fulfilling human rights that are appropriate for different individuals in different circumstances (D6 and D10).

⁵⁵ Cohen 2010, ch. 10; Beitz 2009, sect. 26. For a defense of the human right to democracy, see Gilabert 2012b. I should emphasize that political empowerment involves many possible expressions, from democratic-decision making, to public reasoning, to protest and rebellion. The full panoply must be considered, especially when facing nonideal circumstances as desideratum D12 demands. See Gilabert 2012a, ch. 4. For an earlier discussion of the idea of an expression-elaboration model see Gilabert 2005.

3.3. The limits of empowerment

The remarks made in 3.1 and 3.2 emphasize the need to build empowerment into the theory and practice of human rights. We should seek to reduce asymmetries of power, and bolster the absolute power of all to access the objects of their rights. Although these moves would help us cater for most of the desiderata identified in section 2, they are not sufficient for as long as significant levels of relative or absolute powerlessness (relevant for the fulfillment of human rights) persist. In fact, their complete elimination may not be feasible. But even if the elimination of relative and absolute powerlessness were feasible in the long-term, in the immediate future they will exist. We will then have to think about proper ways of acting in the face of such circumstances of power. Our response should include the acknowledgment of dynamic duties to reduce relative and absolute powerlessness over time, and to immediately respond to human rights deficits in the present. But the agents of those duties here and now will often be unequal in their power, and will not always be able to thoroughly respond to existing human rights deficits. In facing these circumstances, we will be thinking about how to cater for desiderata D12 and D9. This will take us beyond the demand for empowerment, forcing us to articulate an ethics of power wielding in nonideal circumstances. The relatively powerful will have to wield their superior power responsibly. And the relatively powerless will have to accept the solidaristic help of others. So we will need to develop ethical standards for the use of unequal power, and envisage ways to recalibrate our sense of the importance of having power for living decent or minimally dignified lives.⁵⁶

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