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«Роман Захаров против России»
большой брат под контролем?

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The National Dimension
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ПРАВА ЧЕЛОВЕКА И МЕЖДУНАРОДНЫЕ ОТНОШЕНИЯ HUMAN RIGHTS AND INTERNATIONAL RELATIONS



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The Internationalisation of the Universal Declaration of Human Rights

Abstract

Taking Samuel Moyn's book, *The Last Utopia*, as an interlocutor the author argues that the internationalization of the Universal Declaration of Human Rights (UDHR) is only in a quite restricted sense the product of the 1970's. The difference between the UDHR and the 18th century declarations of rights does not lie in the existence of a special tie to the state, as Moyn claims, but in their basic philosophical assumptions. Author argues that the UDHR is perfectionist and that this position has a much larger potential for internationalisation than older declarations. Author explains why this potential, present in 1948, did not unfold until the 70's. He argues that delay was caused, first, by Cold War that facilitated an essentially conflictual conception of international relations unsympathetic towards the internationalization of the UDHR and, secondly, by the fact that the human rights activism was minimalist and did not embrace the full program of the UDHR. In a conclusion, author argues that human rights NGOs eventually adopted the perfectionist program of the UDHR because intellectual coherence would command them to do so, but not due to a pressure for giving answers to all questions necessary for a new "utopia", as Moyn claims.

Keywords: Universal Declaration of Human Rights, international relations, internationalisation, realism, human rights movement.

Интернационализация Всеобщей декларации прав человека

Аннотация

Автор статьи, полемизируя с Сэмюэлом Моэном, утверждает, что интернационализация Всеобщей декларации прав человека (ВДПЧ) только частично является продуктом 70-х годов прошлого века. Различия между ВДПЧ и декларациями прав человека XVIII в. коренятся не в наличии особой связи с государством, как утверждает Моэн, а в их базовых философских посылах. Автор отмечает, что ВДПЧ выражает идеи перфекционизма, и это дает ей большие – по сравнению с более ранними декларациями – возможности для интернационализации. В статье объясняется, почему эта возможность не была реализована до 70-х годов XX в. Автор утверждает, что отсрочка была вызвана, во-первых, «Холодной войной», породившей неблагоприятную для интернационализации ВДПЧ конфликтную концепцию международных отношений, и, во-вторых, достаточно слабым движением за права человека. В заключении статьи содержится вывод, что негосударственные организации по правам человека в конечном итоге восприняли перфекционистскую программу ВДПЧ не потому, что, как утверждает Моэн, были вынуждены предоставить ответы, необходимые новой «утопии», а ввиду того, что этот выбор соответствовал интеллектуальному содержанию ВДПЧ.

Ключевые слова: Всеобщая декларация прав человека, международные отношения, интернационализм, реализм, движение за права человека.

¹ Мёгенс Хром Якобсен, доктор философии.

THE INTERNATIONALISATION OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Introduction

It is commonly said that human rights have become internationalized, but it is less clear what this exactly means. Samuel Moyn, in his important book, *The Last Utopia*, from 2010, thinks this only happened in the 1970s, while it was ordinarily thought to have happened in the 1940's, where the Universal Declaration of Human Rights (hereinafter – UDHR) emerged as a consensus between a large variety of countries from all parts of the world. We would like to explore another possibility, namely that the very wording of the UDHR contains a potential for internationalization. Peter Bailey, an Australian human rights lawyer, points at article 28 as potentially explosive: “Article 28 emphasizes the responsibility of the whole international community for seeking and putting in place arrangements of both a civil and political and an economic and social kind that allow for the full realization of human rights.”¹ He notes drily that this provision has not been given legally binding force in the Covenants. We will argue that this potential is a direct consequence of the perfectionism which imbue the UDHR.

First, we will try to extract different notions of “internationalization” through a critical review of Samuel Moyn’s book. We will argue that Moyn is overstating his case concerning the difference between 20th century and 18th century conceptions of human rights. In our view, the difference has to be explained by different philosophical assumptions. 18th century assumptions had much less potential for internationalization than the philosophical assumptions of the UDHR. Moyn is nonetheless right noting that actual internationalization only took place in the 1970's, and we will have to explain why the potential for internationalization inherent in the UDHR did not unfold immediately. Moyn is equally right in pointing at the emerging Cold War as an essential factor. We will then argue that the Cold War also facilitated an essentially conflictual con-

ception of international relations which is wholly unsympathetic towards the internationalization of the UDHR. In theoretical language this conception is generally termed realism, and will here be represented by Reinhold Niebuhr, Hans Morgenthau and George Kennan. Theories of international relations do not as such explain this lack of unfolding, but international relations theory is the discipline where you would expect to find considered reflections about internationalization. We see these thinkers as an expression of a general state of mind pushing various kinds of internationalism into the defensive. The intense ideological conflict between East and West in the aftermath of the Second World War was no favourable ground for internationalist ambitions of the kind John Dewey among others was professing. In our view, Niebuhr and Dewey represent two very important philosophical positions informing the disagreement about internationalism.

With “détente” in the 1970's, internationalism began to see their chance again and realist assumptions were challenged. Robert O. Keohane and Jack Donnelly figure here as proponents of this approach. Again, theories of international relations are symptoms and should be considered in the light of the other factors Moyn is pointing at, namely de-colonization, grass-root movements like Amnesty International, the Helsinki process, dissident militancy in the USSR, mechanisms for monitoring, investigating and attributing blame for human rights violations and the Carter presidency's focus on human rights. Institutional international relations theory from this period will, however, allow us to identify those points which gave offence in realist theory and how different philosophical assumptions was allowed to unfold. This also appears as a necessary condition for liberating the internationalist potential in the UDHR. Even though human rights militancy and regime-building were not caused by theories of international relations it seems that the argument had to be made in order to clear the way for internationalization.

Moyn's explanation for the success of human

¹ Bailey, Peter: <http://www.universalrights.net/main/creation.htm> (consulted 20-01-2015).

rights was a crisis in the other utopias culminating in the fall of the Berlin Wall and the end of the Cold war, but much of their success was, according to Moyn build on their anti-political minimalism. Their success, however, made it necessary to address the whole range of global problems and the maximalism which was finally adopted imperiled thus the basis for its former success. Moyn argues this with much cogency, but we would like to emphasize that the maximalism Moyn is speaking about is inherent in the UDHR, and as soon as they chose to make the whole panoply of the UDHR rights the basis for their work, this maximalism imposed itself. Did NGOs then adopt a maximalist stand because they had to provide answers to all questions, or did they adopt a maximalist stand when they chose to work on the UDHR as a whole? We will argue for the importance of the last explanation. It is very possible that some groups within the NGOs wanted this development, but it would anyway had been difficult for the NGOs to adopt a perspective which was totally different from the one reigning in the UN system, since part of their impact was due to the fact that they could point to obligations made by states within this system.

1. Internationalization

Samuel Moyn's book, *The Last Utopia*, argues that international human rights only surfaced in the 1970's. He claims that they had to be reinvented and not merely retrieved.² They were "...not so much an inheritance to preserve as an invention to remake..."³ Human rights "...emerged in the 1970s seemingly from nowhere."⁴ He argues that the principal explanation for this fact was the bankruptcy of alternative utopian projects.⁵ This seems in many respects both an interesting and tenable hypothesis, but it is much less clear what this explanation actually explain. General terms are "globalization of rights"⁶ or more commonly "international human rights"⁷ When we try to understand what "interna-

tional" means in international human rights several different candidates present themselves. One suggestion concerns the link between human rights and the nation-state. Another suggestion emphasizes that human rights are somehow supra-national values. A third suggestion focuses on cross-border interest in human rights. A fourth suggestion accentuates the abrogation of the sovereignty principle. The last suggestion concerns citizen advocacy in the international sphere.

The first suggestion seems to be the most controversial contention and in our view also the most doubtful. He says about the so-called precursors of human rights that: "Far from being sources of appeal that transcended state and nation, the rights asserted in early modern political revolutions and championed thereafter were central to the construction of state and nation, and lead nowhere beyond until very recently."⁸ He follows Hannah Arendt's argument about "rights to have rights". Rights have no meaning if you are not in a community. It is only within an actual political community somebody can have rights effectively, because these are enforced by the state. This seems to be a variant of the old dictum of legal positivism that rights are only rights when they are effectively enforced by the state or some other entity. This was certainly not the way the American and French revolutionaries looked at the matter. There were certainly natural rights or human rights in their view. Political society should of course enforce these rights and make them effective, but is it any different today? In which sense did human rights "transcend state and nation" in the course of the 1970's or even today, which they did not do then? Moyn says that "...rights had been born as the first prerogatives of citizens..."⁹ He thinks there is a fundamental difference between earlier rights conceived as belonging to a (particular, we assume) political community and later human rights.¹⁰ He admits that rights were natural or human for some thinkers, but reiterates that they had to be enforced within the framework of the state. Within this framework citizens could debate about and fight for old and new rights. He

² Moyn, Samuel. *The Last Utopia* (Cambridge, Mass.: Harvard University Press, 2010). P. 83.

³ *Ibid.* P. 9. Cf. 216.

⁴ *Ibid.* P. 3.

⁵ *Ibid.* P. 4 ff.

⁶ *Ibid.* P. 205.

⁷ *Ibid.* P. 216.

⁸ *Ibid.* P. 12.

⁹ *Ibid.* P. 12.

¹⁰ *Ibid.*

thinks that rights after 1945 did not allow for that.¹¹ Why is this not possible? There seems to be much debate about which rights are human rights today, and even if it is not very likely, it is not impossible that a new conception of rights could be embodied in a new international declaration of rights.

He indicates next that the essential difference is that the new human rights "...might contradict the sovereign nation-state from above and outside rather than serve as its foundation."¹² To this one should retort that earlier declaration of rights was thought of as a check on the sovereign nation state, and they did this from above and outside as transcendent moral principles. In this there is no difference between earlier declarations and UDHR. The difference is, of course, that UDHR is an international declaration and that later covenants established mechanisms for scrutiny of state conformity, but this does not affect the conception of rights as such. He persists, saying that there is an essential connection between earlier rights and states, but which connection was there then which we do not have today. We still have states, and states are still considered the principal duty bearers for the implementation of human rights. We have now a mechanism for monitoring state compliance, which we did not have then, and we might have some new duty bearers like multinational companies which we did not have then (neither did we have that in the 1970's), so the system still relies quite heavily on states.

If earlier declarations served as the foundation of states, then UDHR would do so too, it was just decided by a collectivity of states in order to serve as the foundation of all states, but the French declaration of 1789 was also meant to serve as the foundation for all states, even though it was only elaborated by the French. So it boils down to the fact that the UDHR was international and 1789 was not, but this was a fact already in 1948 and has no special relation to the 1970's. The problem with Moyn's reasoning is that he reasons in terms of fact and thus ignores the pretensions inherent in what is enunciated. Earlier declarations were in fact elaborated in particular states by the political institutions

of these states, but this does not make them essentially, but only contingently related to these states. What they declared was not perceived as having any relation to the state in question apart from the fact that the declarers belonged to that state.

After a short review of early modern natural law theory Moyn claims that the "...actual significance of the era of democratic revolution in America and France, in other words, is as much in negating the possibility of twentieth-century human rights doctrines as in making them available."¹³ He sees early modern natural law theory as bound up with the modern state and the sovereignty principle. Elements of natural law theory are surely used to bolster and legitimate the state, but our own work in the area has convinced us that there is a perpetual conflict between natural law theory and sovereignty. Even in Hobbes, natural law in the guise of the duty to survive enters in inextricable conflict with the right of the sovereign to inflict capital punishment.¹⁴ Natural law theory is thus not bound up with the modern state. Moyn seems to assume that only modern human rights theory could justify the abrogation of sovereignty and foreign intervention, but natural law theory in whatever guise always kept this potential. The right of resistance was always looming in the shadow of transcendent moral principles. The natural law traditions inspiring the democratic revolution in America and France would thus not, according to our analysis, negate the possibility of twentieth-century human rights doctrines.

He believes to find in the title of the French declaration of rights from 1789 support for his thesis. The title of this declaration speaks both about man and the citizen: "In a sense, every declaration of rights at the time (and until recently) was implicitly what the French openly labelled theirs: a declaration of the rights of man *and citizen*. ... The 'rights of man' were about a whole people incorporating

¹¹ *Ibid.* P. 13.

¹² *Ibid.*

¹³ *Ibid.* PP. 23-24.

¹⁴ Cf. Jacobsen, Mogens Chrom. *Jean Bodin et le dilemme de la philosophie politique moderne*. Etudes Romanes 44 (Copenhagen: Museum Tusulanum, 2000); Hobbes, Thomas. *Leviathan*, Cambridge Texts in the History of Political Thought (Cambridge: Cambridge University Press, 1991). I.14, p. 92-93; II.21, p. 150-151.

itself in a state, not a few foreign people criticizing another state for its wrongdoings.”¹⁵

Moyn seems to assume that all the rights outlined in the declaration are both the rights of man and the rights of the citizen. This interpretation is not tenable. The distinction between active and passive citizens cherished at the time and implemented in the ensuing electoral law reserves rights of political participation only to men (and not women) with fortune. The rights of political participation outlined in the declaration cannot thus belong to the rights of men (where women are included), but only be citizens’ rights. The declaration outlines two sorts of rights: human rights and citizen rights. Political participation was not conceived as a human right in this declaration. The Covenant on Civil and Political Rights is also a bit fishy about the right of political participation, since it only states that every *citizen* has right to such participation.¹⁶ Since we cannot assume that everybody possess citizenship this right cannot be the one we have in virtue of being human. This shows very well the discrepancy between human rights and citizenship, and the first cannot then be bound up with the first. If human rights was about the meaning of citizenship,¹⁷ Moyn must give some other reason for this, but it is difficult to see in which ways earlier declarations could be about the meaning of citizenship and UDHR could not. Secondly, he introduces a different aspect, namely that of several other states criticizing another state for wrongdoing, as something quite new, but it is quite clear that the French revolutionaries criticized nearly all the neighbouring states for the wrongdoing pursuant to their feudal social structures. They looked very much outward and criticized other states. Some actually thought that this justified downright invasion.¹⁸

He admits that earlier rights were in some sense above the state, but they were only stated through

the state, and there was no forum above the state.¹⁹ What is this forum above the state? The UN, global public opinion, NGOs? He gives as an example that there was no judicial protection against the sovereign authority.²⁰ In the strictest sense there is no such thing even today, maybe apart from Council of Europe countries. There are today mechanisms for monitoring and investigating transgressions, but can we call this judicial protection? There certainly is a difference between then and today, but he seems to overstate this difference.

The second suggestion that modern human rights are somehow supranational values, needs some clarification, since it is clear that earlier declarations of rights also was conceived as supra-national in some sense. We have cited Moyn above for saying that they are somehow above the state, so he must mean something different when he says that they are supra-national values.²¹ He actually speaks about moving rights to the international level,²² about internationalism based on rights²³ and supra-national human rights mechanisms.²⁴ What makes these values supra-national seems to be the fact that they are agreed internationally in the form of declarations and covenants and furnished with mechanisms for monitoring and investigating. He notes that the 1947 ban on receiving petitions and investigating transgressions was only abolished during the 1960’s,²⁵ making it evident that such a machinery could not appear before this time at the UN level. It then became possible to investigate gross violations of human rights. Do we then have a “world of individual human rights”?²⁶ It seems that human rights were individual in 1948 as well as in 1789, and that duties to respect them still lie with the state. Do these new mechanisms “penetrate the impregnability of state borders”²⁷; do they “legally enforce rights across borders”²⁸; do they

¹⁵ Moyn, *Op.cit.* PP. 25-26.

¹⁶ ICCPR § 25.

¹⁷ Moyn, *Op.cit.* PP. 25-26.

¹⁸ Mavidal, M.J., Laurent, M. E. and Clavel, E. *Archives parlementaires de 1787 à 1860*. Première série, tome 53 (Paris: Librairie Administrative de Paul Dupont, 1898). 19. november 1792, s. 474; 15. december 1792, s. 70-76. Cf. Moyn, *Op.cit.* PP. 28.

¹⁹ Moyn, *Op.cit.* P. 26.

²⁰ *Ibid.*

²¹ *Ibid.* PP. 89-90.

²² *Ibid.* P. 39.

²³ *Ibid.* P. 118.

²⁴ *Ibid.* PP. 121-122.

²⁵ *Ibid.* PP. 68-69, 100.

²⁶ *Ibid.* P. 119.

²⁷ *Ibid.* P. 1.

²⁸ *Ibid.* P. 69.

offer an “international legal protection for individuals”²⁹; have we finally abrogated the sovereignty principle?³⁰ Strictly speaking, we have to await the “responsibility to protect” doctrine emerging at the beginning of the 21st century in order to see something approaching to abrogation of sovereignty.

Another difference, he points at, is a much greater interest in what happens in other countries. Formerly people interested in human rights “gazed within”;³¹ now it is about “propagation of rights abroad”³² and a “politics of suffering abroad”.³³ The French revolutionaries was very much alert about rights abroad, but still Moyn is right that there happened something new in the 1970’s, and it is related to what he calls the “institutionalization of activism”.³⁴ He explains that the 1970’s as something new saw a “citizen advocacy in the international sphere”.³⁵ The particularity of this kind of activism was that it “relied on people, not governments”.³⁶ People or organised groups addressed themselves directly to those governments seen to violate human rights. They relied on the pressure of public opinion both inside and outside the country in question, and the emergence of a cross-border public opinion was probably in itself something new at the time. A cross-border public opinion would both consist in mutual influences between national/regional public opinions and a general interest in matters outside local affairs. Moyn describes interestingly, how Amnesty International was instrumental in turning public opinion towards human rights, helped by President Jimmy Carter’s integration of human rights into foreign policy and dissidence in Eastern Europe.³⁷

Together with new mechanisms for monitoring and investigating, this last point seems to have been the most important move towards internationalization during the 1970’s. Moyn’s thesis, or what survives of it from this analysis, though in-

teresting, seems much less controversial than one might think at first. Human rights has not been reinvented in the 1970’s, but they have taken on a new significance in people’s minds and gained more importance due to new mechanisms of monitoring and investigating. The reason for this upsurge, Moyn attributes to popular movements while international lawyers are just following suit.³⁸ He argues that international lawyers did not “push” for human rights, but how could they? The legal profession needs food for thoughts in terms of conventions, decisions or other legal sources. Before these existed there could be no specific discipline of human rights law. Moyn omits this very simple explanation for the flourishing of human rights interest in international law. Surely, grass-roots movements such as Amnesty International accentuated the process.

In order to summarize our findings, we can thus outline the process of internationalization in five points:

1. 1948: The UDHR and related covenants are a consensus between several states.
2. 1970’s: Supra-national mechanisms for monitoring, investigating and attribution of blame.
3. 1970’s: Cross-border public awareness and interest in the state of human rights abroad.
4. 1970’s: Activism: People and grass-roots organisations address foreign countries directly.
5. 2000’s: Responsibility to protect doctrine: first incursion into state sovereignty.

Our conclusion will be that Moyn is overdoing the difference between earlier human rights and the events of the 1970’s. Earlier human rights are not more related to the state than human rights are today. In both periods human rights (natural rights, rights of man) are transcendent moral rules, supposed to be valid everywhere, and which has to be implemented by the state. Human rights now and then are neither more nor less the foundation of the state, in the sense of furnishing the moral foundation of government. The important difference between now and then is not the contingent relation to the emerging nation-states, but the very content of the declarations and their different philosophical assumptions.

²⁹ *Ibid.* P. 109.

³⁰ *Ibid.* P. 208.

³¹ *Ibid.* P. 38.

³² *Ibid.* P. 159.

³³ *Ibid.* P. 12.

³⁴ *Ibid.* P. 37. Cf. 39, 150.

³⁵ *Ibid.* PP. 121-122.

³⁶ *Ibid.* P. 128.

³⁷ *Ibid.* P. 129 ff.

³⁸ *Ibid.* P. 178.

2. The Perfectionism of the UDHR

In an earlier article in this Journal we have argued that the UDHR is imbued with perfectionism.³⁹ In short the argument is the following: First we deploy a distinction between permissive and perfectionist rights. The basic feature of the permissive conception of rights is choice. The rights holder can choose whether to exercise his right or not either as a liberty or as a right against a particular person whose actions he controls in certain respects. A collection of permissive rights would delimit a space of liberty, and we would tend to think that a collection of such rights would have as its purpose to delimit such a space and thus to define human liberty. The basic feature of the perfectionist conception of rights lies in the end that rights are supposed to enhance. Rights are generally about what the individual needs in order to attain perfection. Duty is not Kantian duty, since duty is also the individual's own interest rightly understood. For this reason duty does not demand difficult sacrifices, since people are somehow irrational if they do not do their duty. The underlying supposition is that this is actually what every reasonable person really wants. So it does not always seem necessary to specify that this right is also a duty. Perfectionist rights can, however, coexist with permissive rights, if certain liberties seem important for the acquisition of perfection. This would incline us to think that a collection of both permissive and perfectionist rights would indicate that they were all ordained to a perfectionist end, if they had to be understood as a unitary whole.

We then take the UDHR at face value in order to see what emerges from the text itself, and we realize that the economic, social and cultural rights make no sense, if they are understood as permissive rights, though they can very well be understood as perfectionist rights. Since a perfectionist end implies a perfectionist conception of rights, and such an end is present in the declaration in the form the development of the human personality, we conclude that these rights should be understood as perfectionist rights. Other rights in the UDHR could

be understood as permissive rights. Since all the rights in the declaration are not permissive rights, it is difficult to understand the end of the UDHR as the delimitation of a space of liberty, but a perfectionist end would not be incompatible with a mixture of permissive and perfectionist rights, since some kind of liberty could seem necessary to fulfil the end. In that case the perfectionist end of the UDHR would command all the rights, and the permissive rights should be used responsibly to attain this aim. We finally argue that an examination of the drafters' views consolidates our interpretation of the text, even though it has to be explained as an overlapping consensus between two types of perfectionism, namely full-blown perfectionism and social liberal perfectionism.

Broadly speaking, perfectionism implies some kind of substantial notion about how man should be, which the individual human being should strive to realise. It is understood that this notion is objectively true for all human beings. A full-blown perfectionism would then have a very dense⁴⁰ concep-

³⁹ Jacobsen, Mogens Chrom. "Ideology and the Universal Declaration of Human Rights", (2014) *Journal of Constitutionalism and Human Rights*, 1-2 (5): 8-30.

⁴⁰ A dense conception is one that details to a very high degree which qualities people should have and which kind of life they should live. An example of a dense conception of human perfection is Aristotle's definition of the good life: "Let us then define happiness as well-being combined with virtue, or independence of life, or the life that is most agreeable combined with security, or abundance of possessions and slaves, combined with power to protect and make use of them; for nearly all men admit that one or more of these things constitutes happiness. If, then, such is the nature of happiness, its component parts must necessarily be: noble birth, numerous friends, good friends, wealth, good children, numerous children, a good old age; further, bodily excellences, such as health, beauty, strength, stature, fitness for athletic contests, a good reputation, honour, good luck, virtue. For a man would be entirely independent, provided he possessed all internal and external goods; for there are no others. Internal goods are those of mind and body; external goods are noble birth, friends, wealth, honour. To these we think should be added certain capacities and good luck; for on these conditions life will be perfectly secure." (Aristotle. *Art of Rhetoric*. Loeb Classical Library 193 (Cambridge, Mass.: Harvard University Press, 1991), 1360b 3-4, 1.5, p. 47-49.)

tion of human perfection generally coupled with a strong moral dimension. The social liberal conception focuses on the other hand on liberty and its effective realization. Effective liberty depends on certain factors in the human personality which make life worth living. To make this kind of life possible for all, the state should intervene actively in society. The idea of effective liberty likewise implies a substantial notion of how man should be, that is, the qualities necessary to live the kind of life worth living. However, the social liberal conception is somewhat ambiguous on this point, since we do not always know exactly how dense their conception of man would be. As long as emphasis would be on liberty of choice, so that people should be empowered to the point where they could make a real choice about what they want to do with their life, they would more reasonably be called social liberals. If what really matters is to convert formal freedom of choice to effective freedom of choice, it will not be necessary to include a moral dimension in this conception of perfection. This would thus be the basic version of the theory, but we would probably have to envisage a continuum from this version to full-blown perfectionism in which the moral dimension could enter in varying degrees. A strong moral dimension means that duties to society flow from the very idea of perfection. Duties to society are part of man's realization of himself as a social being. Here duties to society needs no further explanation, while basic social liberals would need some other explanation, for example a social contract explanation.⁴¹

We have thus argued that the large majority of the drafters actually expressing themselves during the drafting process was to be found within this continuum, even though we could not always determine their actual position within it. This conception is different from the one we will find in the 18th century declarations, and these two kinds of conceptions have a very different potential for internationalization.

⁴¹ Cf. Jacobsen. "Ideology and the Universal Declaration of Human Rights". P.26.

3. Perfectionism and Internationalization

As we have argued elsewhere⁴² 18th century declarations of rights were based on the assumption that states were contingent entities created by the consensus of the particular associates and supposed to exercise the functions defined by a limited number of natural law rules. Each state having its own particular common good, the potential for internationalization is limited, since what can be internationalised is only the limited number of natural law rules, which are supposed to govern all societies, while utility is something different and contingent for each particular society. A perfectionist conception of human rights, as we have argued is that of the UDHR, will have a much larger potential for internationalization. The common good of each society is related to the flourishing of the individual human person taken as a social being. Man being social does not only mean that we need the assistance of other people and social institutions in order to flourish, but also that helping other people and contributing to the common good are to some extent (depending on how strong the moral dimension is) part of human flourishing. Since this human flourishing is supposed to be the same for all human beings, one would suppose there would also be a global common good. Since we should all promote the common good, it would seem that we would have obligations concerning people in other countries. If we did not, we would have to explain why. The burden of proof seems to lie on those who wish to limit obligation to national communities.

This can be made clear using the distinction Robert Nozick deploys between historical principles of distributive justice and current time-slice principles. According to the first kind of principle, a distribution is just depending on how it came about. On the other principle "...the justice of a distribution is determined by how things are distributed (who has what) as judged by some *structural* principle(s) of just distribution."⁴³ When a distribution is judged by a historical principle the state can reassure itself that its present wealth is due to its own "choices"

⁴² Jacobsen, Mogens Chrom. *Three Conceptions of human Rights* (Malmö: NSU-Press, 2011).

⁴³ Nozick, Robert. *Anarchy, State and Utopia* (Oxford: Basil Blackwell, 1980). P. 154.

(maybe not always a choice in the ordinary sense, but something which has emerged in the situation and to which peoples' mutual expectations has adapted) and it has no further responsibility for the fate of other nations, unless of course it has been acquired by illegal means, or the basic moral principles, for example, sanctions a right to life necessitating humanitarian aid. On this principle, it is relatively easy to limit state responsibility to the national territory. With a time-slice principle, this is more difficult. When we compare two distributions to see which one of them correspond better to the structural principle, we will have to ask the question; to whom we should apply the distribution. With a historical principle, this is given by the historical facts, but with a time-slice principle historical facts have no relevance. We should only look at how goods are distributed among persons at a given time, but which persons: the inhabitants of a particular country or all human beings? Here the burden of proof reverses. On a historical principle, one should show in virtue of which moral prescriptions one would be responsible for other people. With a time-slice principle, we will have to explain why we ought to limit its application to the inhabitants of a particular nation. Such a limitation will, however, easily seem arbitrary.

Perfectionism, as we have defined it above, has thus a strong potential for international responsibility transcending the national community and treating humanity as one global community. Having argued that the UDHR is imbued with perfectionism, one could expect that such an internationalist point of view would be expressed in the UDHR itself and during the drafting process.

4. The UDHR and International Responsibility

The UDHR is international in the sense that it was agreed upon by several different nations, but there is also an international perspective within the text. The preamble reminds us that the UDHR is a standard of achievement for peoples and nations, but respect for this standard should be promoted by progressive measures at both the national and the international level in order to assure effective recognition and observance. This provision is rather vague, but it does imply some role for international measures. Article 22 speaks about "national effort

and international co-operation" and this is probably what the drafters have in mind here. The UN instituted a long range of institutions to facilitate such international co-operation. Co-operation is generally conceived as voluntary and does not as such imply any particular duty, but combined with article 28 the result could very well be different: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."

This article indicates that everyone, and "everyone" here must mean the entire global population, is entitled to, that not only the national but also the international social order is such that the rights and freedoms of the UDHR can be fully realized. We assume that the duty bearers are still the individual states, but they have now become responsible for something beyond the state, namely the international order. A closer look at the drafting history will give us some additional clues.

Article 28 was a latecomer to the UDHR. It only entered during the third session of the Commission on Human Rights. The context for its insertion was the discussion of ESC-rights and more specifically the right to work. The idea is launched by the Lebanese representative Charles Malik. After the rights of the individual as such, they were now discussing the rights of the individual as a member of society. In this respect he called attention to "...the need for establishing the kind of economic and social conditions that would guarantee those rights." In order to do this, it was "...necessary to define the standard of an ideal society in which the individual could develop and in which his rights could be guaranteed."⁴⁴ The proposal was seconded by the Belgian representative and the Commission decided to set up a drafting committee to consider the question. The general assumption behind these words is that civil and political rights and ESC-rights would have different measures of implementation. The first rights would mostly depend on the existence of a working judicial and political system, while

⁴⁴ E/CN.4/SR.64 p. 17. The summary records from the drafting process are accessible at this website: <http://research.un.org/en/undhr>. We will use the UN document symbols. Explanation available here: <http://research.un.org/content.php?pid=320836&sid=2626142>.

the other rights would depend on specific social and economic conditions. The ideal society should indicate the totality of conditions (institutional, economic, social, cultural, etc.) necessary for the development of the individual and the guarantee of its rights. The perspective is very much of a perfectionist kind emphasising individual development and what kind of society would best promote such development.

The drafting committee came up with a proposal. The first paragraph was accepted unanimously, but the second paragraph was subject to discussion as to whether it should be inserted in the preamble or constitute a separate article.⁴⁵ Malik reiterates his worry thinking that it should be "...clearly stated somewhere in the Declaration that it was not enough to enumerate economic and social rights, but that society itself should be of such a nature as to ensure the observance of those rights. Favourable social conditions were necessary for that purpose."⁴⁶ He thought that an article of this nature should be inserted among the articles on ESC-rights. The Egyptian representative, Omar Loutfi, proposed to make such an idea a separate article placed before the articles on ESC-rights and this proposal was supported by Ronald Lebeau from Belgium. René Cassin still conceived this idea as a part of article 2 and he thought "...it was necessary to establish that the individual was entitled to demand that the State, society and international co-operation should guarantee the right in question."⁴⁷ (That is the right to work.) He therefore proposed the following amendment to paragraph 2: "...ensured by such measures taken by State and by international co-operation..."⁴⁸ Fontaina from Uruguay supported the French proposal which for him implied "...consultation with existing international organisations, in particular, with the International Labour Organisation".⁴⁹ Geoffrey Wil-

son (United Kingdom) asked for a decision whether this provision should stay in article 23 or constitute a separate article. Malik thought a provision stating that "everyone had a right to a good social order ensuring the enjoyment of..." could start or end the section on ESC-rights.⁵⁰ After a lengthy discussion, it was decided to set up another sub-committee to work out a special article "...concerning the measures to be taken in order to ensure the enjoyment of economic and social rights."⁵¹

The two ideas about necessary societal conditions and the international order were joined together by this subcommittee.⁵² The international order is apparently conceived as consultations within international organisations, but the interesting thing with Cassin's amendment is that international co-operation together with state and society "should guarantee the right in question", and "should" generally implies an obligation. The subcommittee proposed unanimously the following new article: "Everyone has the right to a good social and international order in which the rights and freedoms set out in this Declaration can be fully realized."

Cassin proposes another article to precede the section on ESC-rights in conformity with his earlier ideas: "Everyone as a member of society has the economic, social and cultural rights enumerated below, whose fulfilment should be made possible in every State separately or by international co-operation."

This last article will in revised form end up as article 22 in UDHR: "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."

The Cassin's proposal eventually adopted as article 22 is more limited in scope, confined as it is to ESC-rights. Even though it is originally formulated as an alternative between fulfilment by state or in-

⁴⁵ E/CN.4/114. "2. The enjoyment of these rights should be ensured by such measures (taken by the State or by society) as would create the widest possible opportunities for useful work and prevent unemployment."

⁴⁶ E/CN.4/SR.65 p. 3.

⁴⁷ E/CN.4/SR.65 p. 4.

⁴⁸ E/CN.4/SR.65 p. 4.

⁴⁹ E/CN.4/SR.65 p. 9.

⁵⁰ E/CN.4/SR.65 p. 5.

⁵¹ E/CN.4/SR.65 p. 11.

⁵² E/CN.4/120. The summary record states as members: F, Lebanon, UK, USSR and US, while the report states as members: F, Lebanon, UK, US and Uruguay.

ternational co-operation, it is finally conceived as a cumulative process between the national and international level. The obligation is also conditioned on each country's resources. The first proposal, on the contrary, comprises the whole panoply of rights and the entitlement people have to a "social and international order" is not attenuated by any conditions. A "good social and international order" refers to Malik's idea about an ideal standard for society, where the human being can flourish and realize its potentials.

The Indian representative, Mrs. Hansa Mehta, noted regarding the new article that the term "good" was redundant. An international order in which all the rights and freedoms was fulfilled must be a good one. The term "good" would imply that there could be a "bad or less good" order, where all rights and freedoms were fully realized.⁵³ This would, however, be the case if the rights were minimal personal guarantees and not perfectionist rights. Malik, though, wants to conserve the term "good", thinking that the phrase: "in which the rights and freedoms set out in this Declaration can be fully realized", defines the term "good".⁵⁴ Basically the same idea as the one advanced by Mehta. This discussion was taken up later when deliberation on this proposal resumed. Malik again emphasised "...the right of mankind to have a United Nations a world organisation, as well as a social order in which the rights and freedoms could be realized."⁵⁵ This seems to identify the world order with the UN. However, Alexei Pavlov, the Russian representative takes up the question relating to the term "good" again. The Russian representative has his own reasons for omitting "good", since "good" for him must be a socialist society.⁵⁶ For the moment he does not succeed, but in the Third Committee Pavlov reiterates the question and he gains the support of many other delegates, though not for the reasons he had given.⁵⁷

The article 26 (28 in the final text) is finally adopted by the Commission with six votes against three and six abstentions in the form proposed

by the sub-committee except that "has the right" is changed to "is entitled".⁵⁸ In the Third Committee the word "good" was deleted by 34 votes for and 2 against with 2 abstentions and the article 26 got its final form. Thereafter the article was voted in two parts. The first part was adopted by 32 for, 2 against and 4 abstentions, and the second part was adopted by 26 for, 2 against and 9 abstentions. The article as a whole was adopted by 25 votes for, 3 against and 8 abstentions.⁵⁹ Article 26 then becomes 29 by adoption of new articles.⁶⁰ During General Assembly deliberations article 3 is deleted and article 29 finally becomes article 28.⁶¹

The discussion of detail concerning the word "good" is interesting since it reveals some fundamental assumptions. If the UDHR consisted only of minimal rights protecting some basic interests such as the inviolability of the person, then the panoply of rights could very well be realized without having a good world order in the substantial sense of "good" as the ideal world order. If the world order realising the rights of the UDHR is good per definition, then this world order must be good in this substantial sense, and this corresponds very well to the perfectionist view that human rights are the basic goods needed for human flourishing. There is no distinction between the right and the good here. If one would object that "good" is used loosely here only to indicate that it is not bad, unjust or immoral, one should think about the argument of the Indian representative. She says directly that it cannot even be a "less good" order thereby implying some kind of degree; therefore the order in question must be the best. Combine this idea with later statements about what this world order should actually be: The Lebanese representative describes it as "...the ultimate conditions necessary for the realization of those rights."⁶² Cassin states that "...certain preliminary conditions had to be laid down to ensure the implementation of the rights contained in the declaration."⁶³ What they are speaking about here cannot be anything else than the entire economical,

⁵³ E/CN.4/SR.67 p. 2.

⁵⁴ E/CN.4/SR.67 p. 3.

⁵⁵ E/CN.4/SR.78 p. 9.

⁵⁶ E/CN.4/SR.78 p. 9.

⁵⁷ A/C.3/SR.152 p. 638 ff.

⁵⁸ E/CN.4/SR.78 p. 10-11.

⁵⁹ A/C.3/SR.152 p. 642.

⁶⁰ A/C.3/SR.175 ff.; A/C.3/400.

⁶¹ A/PV.183.

⁶² A/C.3/SR.152 p. 639.

⁶³ A/C.3/SR.152 p. 640.

social and political structure of the world society. We are not speaking about some formal restraints; these statements concern the very nature of society.

Chang, Malik and certain Latin American representatives want to go further. Chang thinks the Commission "...should affirm that it was the duty of all to contribute towards the establishment and maintenance of that order."⁶⁴ Malik agreed with the idea and realized its importance. For reasons of form he thought, however, that the Commission should not depart from the practice thus far followed and state duties in individual articles, but insert such a provision in the preamble.⁶⁵ In an answer to the Chairman, Chang specified that he distinguished between two kinds of obligations. On the one side the obligations the individual owes to his own state and fellow citizens and on the other side the duty to contribute to the establishment of the social order he has a right to demand. He emphasizes that this right depends on the fulfilment of the duty.⁶⁶ A similar idea is reiterated by the Uruguayan representative Fontaina emphasizing the "...duty of each individual to cooperate in achieving a society in which the rights and freedoms could be enjoyed."⁶⁷ There is thus both a right and a duty to the establishment of the order in question. Those who have the right to this order are also those who should establish it, which seems logical since we are speaking about the entire global population. How duties are distributed among individuals, states and other entities is not specified. It appears to be a purely individual duty. However it is, the order in question is both a right and a duty. From a perfectionist perspective rights can mirror duties in the way a right to food, existing because food is necessary to human flourishing, mirrors a duty to eat, existing for the same reason. In a parallel way the right to the establishment of a social order realizing the rights of the UDHR exists because this is necessary for human flourishing, and the duty to establish such an order exists for the very same reason. Since this social order is conceived both as national and inter-

national the individual has a right and a duty to the establishment of a world order realizing the rights and freedoms stipulated in the UDHR.

5. Post-war disenchantment

The UDHR has thus a very strong potential for internationalization implying rights to a world order consisting in a particular kind of judicial, political, economic, social and cultural structure capable of realizing other rights furnishing man with such qualities as seems necessary for human freedom and/or flourishing. This potential for internationalization did not receive much attention in the years following the adoption of the UDHR. In fact, the UDHR itself remained for a long time in the shadow of other events. The UDHR did not immediately have the impact it would get later on. First of all it was decided in 1947 that the Commission of Human Rights (CHR) could not investigate violations or receive petitions. The CHR was thus limited to elaborating norms and after the adoption of the UDHR, it concentrated its efforts on writing the conventions. This would by itself limit the impact that the CHR could have on public opinion, since one would expect public opinion to be more attentive to particular cases rather than abstract principles.

However, what probably contributed most to relegate the UDHR to a subordinate concern, and in particular to make its potential for internationalization irrelevant, was the emergence of the Cold War. Already during the drafting process tensions was visible between East and West. It became more and more evident that the promise of rallying the nations of the world around the idea of human flourishing would not transpire in the real world. In 1947 George Kennan's famous analysis of Soviet conduct points out that there cannot be any appeal to common purposes or common mental approaches. Only hard facts will impress the Soviet leadership and this leads Kennan to recommend the politics of Containment.⁶⁸ The assumption of perfectionism was, however, that people's true interest coincides with their moral interest in common perfection. If men by reason and education are made to un-

⁶⁴ E/CN.4/SR.67 p. 3.

⁶⁵ E/CN.4/SR.67 p. 4.

⁶⁶ E/CN.4/SR.67 p. 4.

⁶⁷ E/CN.4/SR.78 p. 10.

⁶⁸ Kennan, George F. "The Sources of Soviet Conduct", (1947) *Foreign Affairs*, Vol. 25, No. 4 (Jul., 1947), p. 574.

derstand this, there will be no reason for conflict between them. This assumption was now challenged as naïve, seemingly unrealistic, considering the ideological gap that had to be overcome. The contrary assumption that conflict is inevitable had for some time been stated forcefully by Reinhold Niebuhr beginning with his book, *Moral Man and Immoral Society: A Study in Ethics and Politics*,⁶⁹ written in 1932, and this thesis became influential at least in North America.

Niebuhr questions the assumptions concerning human nature made by many educators and moralists. They assume that a higher development of human intelligence and capacities will make it possible to overcome social conflict whether inside or between societies. He directs his critique especially against John Dewey. Dewey's faith in the possibilities of education and better institutions, ignores in his opinion, what Dewey himself terms "our entrenched predatory self-interest". Niebuhr acknowledges that individual man can be moral considering the interest of other men and preferring them to his own interests, but this is practically impossible when we speak about societies. Within societies coercion controls the impulse of self-interest, but between societies there is no such control. Dewey and like-minded people overestimate the moral potential in human beings. You can never harmonise the self-interest of men. People with power will use it in their own interest and justice can only be achieved by opposing power with power. Whatever the developments in human intelligence and science, they will never be able to abolish social conflict. Social conflict is inevitable, since human nature is evil and harried by self-interest, in spite of high minded moral codes. Pure ignorance, as educators seem to assume, cannot to any practical purpose explain the existence of social conflict.⁷⁰

6. John Dewey and Perfectionism

Dewey's alleged identification of evil with ignorance and true self-interest with the social interest points towards a perfectionist stand. Whether

Dewey actually embraced such a perfectionist stand is disputed. Rebecca Katz discussed the question in her Ph.D. dissertation.⁷¹ The discussion seems skewed by a conception of perfectionism considering the substantial notion of how man should be and strive to realise as something defined once and for all and in an absolute manner. This particular conception of perfectionism stems in fact from Dewey himself.

Dewey accuses perfectionism of the philosophical fallacy, which is to assume that what was true under certain conditions is universally so without any limits.⁷² According to him, we cannot assume that perfectionist's goals are fixed a priori.⁷³ This makes Katz say that perfectionism is immune to contextual variation.⁷⁴ Dewey might have met this view in his philosophical environment, but our definition of perfectionism implies no such thing. That the kind of qualities that man should possess is considered as objective does not imply that they are insensitive to circumstances. Aristotle, one of those supposed to have committed the philosophical fallacy, put forward both an empirical conception of happiness and a circumstantialist account of subordinate ends (ends-in-view according to Dewey). When determining the highest good, Aristotle says that "...the great majority of mankind are agreed about this; for both the multitude and persons of refinement speak of it as Happiness, and conceive "the good life" or "doing well" to be the same thing as 'being happy'."⁷⁵ This explanation is eminently empirical and can hardly be accused of "apriorism". "Happiness" is of course an abstract

⁶⁹ Niebuhr, Reinhold. *Moral Man and Immoral Society* (Louisville, Ky.: Westminster John Knox Press, 2013).

⁷⁰ Niebuhr. *Moral Man and Immoral Society*. Introduction.

⁷¹ Katz, Rebecca M. *John Dewey and Perfectionism: Difficulties Interpreting the Experimental Life*. Ph.D. Thesis (Stanford University, 2009): http://media.proquest.com/media/pq/classic/doc/1957930821/fmt/ai/rep/SPDF?_s=2hY7NMv9BF7uy5T%2FG2G%2FX-9MmKhg%3D (Consulted 14-04-2015)

⁷² Dewey, John. "Human Nature and Conduct". *The Middle Works, 1899-1924, Vol. 14: 1922* (Carbondale: Southern Illinois University Press, 2008). PP. 122-123.

⁷³ Dewey, John. "Democracy and Education". *The Middle Works, 1899-1924, Vol. 9: 1916* (Carbondale: Southern Illinois University Press, 2008). P. 63.

⁷⁴ Katz, *Op.cit.* P. 23.

⁷⁵ Aristotle, *Op.cit.* 1095a 15-20; p. 11.

term, which needs further elucidation. This is the role Aristotle assigns to prudence and about prudence he says that it concerns the affairs of men and things we can deliberate about. Prudence considers means to an end and this end is a good attainable by action (in last resort happiness), and he adds that these matters always vary.⁷⁶ For the very same reason Aristotle values the "...unproved assertions and opinions of experienced and elderly people, or of prudent men, ...for experience has given them an eye for things, and so they see correctly."⁷⁷ This approach is certainly not immune to contextual variation.

Dewey's position does not seem that different from Aristotle's if considered in the abstract. He agrees with Aristotle on several crucial points. Even though Dewey criticises "ideals of remote 'perfection'", he does not dismiss "the genuine ideal" brought out in special situations.⁷⁸ These special situations are also those which Aristotle would privilege emphasising that only the wise knows exactly what to do in such situations. This is a natural consequence of willing to realise certain kinds of ends like the common good, well-being or utility. What maximises these ends will depend on the circumstances in the particular situation.

Dewey and Aristotle both have a special focus on the common good. Dewey discusses it in these terms: "Such terms as 'general' and 'common' need, perhaps, even more careful interpretation. The words come easily to the tongue and too readily give a wrong impression. They do *not* mean sacrifice of individuality; it would be a poor kind of society whose members were personally undeveloped. It does not mean the submergence of what is distinctive, unique, in different human beings; such submergence would produce impoverishment of the social whole. The positive import of 'common good' is suggested by the idea of sharing, participating – an idea involved in the very idea of *community*. Sharing a good or value in a way which makes it social in quality is not identical with dividing up a

material thing into physical parts."⁷⁹

Dewey indicates that there is no conflict between personal development and the common good, a fundamental presupposition of Greek philosophy. Further, the individual does not have to conform to a fixed common model. Individual differences can mutually enrich each other and make the social whole something more than the addition of the individual parts. We think, Aristotle would not disagree with any of this. Aristotle determines the common good as happiness, and it is possible that Dewey would be more circumspect and determine the common good, in less unitary terms. He speaks more vaguely about growth, wellbeing, general welfare and the like.⁸⁰ More importantly, Dewey would submit this determination to historical change. He would emphasize that these general determinations would be elaborated further by each generation as a function of our growing scientific knowledge. Both would, however, agree that further sub-goals will be elaborated according to the circumstances. Apart from this abstract resemblance Dewey develops his own original theory of growth as the characteristic of life, with which we will not go into detail. Katz notes that this conception "...can perhaps be considered a view of human flourishing ...", but Katz adds that it cannot be perfectionist in any meaningful way.⁸¹ This last contention we will deny. Even if there is no static ends and ideals (apart from the abstract ideal of the common good, which Dewey himself subscribes to), Dewey would have to reckon with the present state of human enquiries concerning the proper conditions for the common good, growth or in whatever terms he would state the value that humans should cherish. He acknowledges in fact that we can safely say that certain goods are ideal mentioning expressly art, science, culture, interchange of knowledge and ideas. Past experience tells us that these values are "likely to be approved upon searching reflection". There are thus, he says, a presumption in their favour, though further enquiry can show that changed cir-

⁷⁶ Aristotle, *Op.cit.* 1141b 5-15.

⁷⁷ Aristotle, *Op.cit.* 1143b 10-15.

⁷⁸ Dewey, John and Tufts, James H. *Ethics, Revised Edition* (New York: Henry Holt and Company, 1932). P. 301.

⁷⁹ Dewey and Tufts, 1932. P. 383.

⁸⁰ Dewey, John. "Democracy and Education". *The Middle Works, 1899-1924, Vol. 9: 1916* (Carbondale: Southern Illinois University Press, 2008d). P. 46 ff.; Dewey and Tufts, 1932. P. 310 ff.

⁸¹ Katz, *Op.cit.* P. 145.

cumstances or the like would defeat this presumption.⁸² Even though the true good cannot be determined once and for all, we still have to determine it temporarily in some way in order to have any norm, from which we can act. Dewey thus has to propose some kind of substantial notion of man, though defensible, in order to indicate what would for now be the proper development of the human species. He says that "...Health, wealth, industry, temperance, amiability, courtesy, learning, aesthetic capacity, initiative, courage, patience, enterprise, thoroughness and a multitude of other generalized ends are acknowledged as goods."⁸³ However, their value is only intellectual or analytic, or should we say, indicative, to be adapted to actual circumstances. They can give us a lead when we try to eliminate perceived ills in the particular situation.⁸⁴ So this temporary specification does indicate some substantial human qualities perceived as helpful to cope with individual situations. These qualities would probably be different from the one Aristotle proposed, but the general idea is the same.

This general agreement also shows itself concerning the relation between desire and reason. Dewey states that there is no conflict as such between desire and reason considered as two independent motives of action. There can be a conflict between desire concerning the short sight and the long sight.⁸⁵ Reason is only illuminating desire telling it how its overall satisfaction can be best considered. This thesis is related to the thesis of identity between personal development and the common good. Overall satisfaction is best satisfied by the individual's insertion into the community: "In the realization of individuality there is found also the needed realization of some community of persons of which the individual is a member; and, conversely, the agent who duly satisfies the community in which he shares, by that same conduct satisfies himself."⁸⁶

⁸² Dewey and Tufts, 1932. P. 230.

⁸³ Dewey, John. "Reconstruction in Philosophy". *The Middle Works, 1899-1924, Vol. 12: 1920* (Carbondale: Southern Illinois University Press, 2008). P. 176.

⁸⁴ *Ibid.* PP. 176-177.

⁸⁵ Dewey and Tufts, 1932. P. 200.

⁸⁶ Dewey. *Outlines of a Critical Theory of Ethics* (Ann Arbor, Michigan: Register Publishing company, The

Reason thus tells the individual that overall satisfaction is best assured by satisfying the community, which satisfy the individual's realization in its turn. This complex standard of achievement gives a moral significance to nearly everything the person does. According to Dewey all acts are connected. We cannot consider morality in terms of the performance of isolated acts. Acts are connected in series with consequences for other persons and has to be considered in the light of these consequences. He thinks this solves the problem of indifferent acts, since "...every act has *potential* moral significance, because it is, through its consequences, part of a larger whole of behaviour."⁸⁷ In the end there are no indifferent acts, they all have some consequences which have to be considered in a moral light as far as they contribute to or subtract from what is considered valuable. For the same reason he also rejects fixed codes of conduct. They can only be looked upon as a source of data for reflective morals, having to determine what is right and good at this moment according to the reigning circumstances.⁸⁸

Katz concludes, rightly, that Dewey's view does not justify any "gut-reaction claim" that some particular right is violated.⁸⁹ Rights in the sense of permissions granted by fixed rules is not possible in Dewey's moral universe. Rights would rather be the rights Christian Wolf is considering being both duties and rights conducive to some perfectionist end. In the first edition of *Ethics*, he thus states clearly that the legal order should express the common good.⁹⁰ This will not, however, answer our question about what kind of perfectionist Dewey is: a full-blown perfectionist or a social liberal perfectionist?

The first edition of *Ethics* shows clearly that Dewey shares the particular concern for effective freedom with the social liberal: "Effective freedom. - Exemption from restraint and from interfer-

Inland Press, 1891). P. 131.

⁸⁷ Dewey and Tufts, 1932. P. 179.

⁸⁸ Dewey and Tufts, 1932. P. 191.

⁸⁹ Katz, *Op.cit.* P. 142.

⁹⁰ Dewey, John. "Reconstruction in Philosophy". *The Middle Works, 1899-1924, Vol. 5: 1908* (Carbondale: Southern Illinois University Press, 2008). P. 419. In the preceding pages, Dewey criticises taking goodness as a matter of obeying rules. *Ibid.* P. 418.

ence with overt action is only a condition, though an absolutely indispensable one, of effective freedom. The latter requires (1) positive control of the resources necessary to carry purposes into effect, possession of the means to satisfy desires; and (2) mental equipment with the trained power of initiative and reflection requisite for the free preference and for circumspect and far-seeing desires. The freedom of an agent which is merely released from direct external obstruction is formal and empty."⁹¹

Men should have some substantial qualities both externally in terms of material resources and internally in terms of a particular mental equipment. This concern for effective freedom is not missing from the 1932 edition, but there is much less emphasis on this question.⁹²

As explained above emphasis on effective freedom is not incompatible with full-blown perfectionism. We therefore have to determine whether there is a strong moral dimension in Dewey's conception of the common good. Does the common good in itself imply that individual realization takes place by being moral? The citation above concerning the realization of individuality seems to imply this, because the realization of individuality also realises a community and by satisfying the needs of the community it satisfies the needs of the individual. The needs of the individual must somehow be social and the realization of the individual therefore reinforces the community at the same time. Another indication of a more dense conception is the far-reaching moralization of ordinary life, making every act potentially significant from a moral point of view. The emphasis seems here to lie on the moral life of man and less on effective freedom.

7. Reinhold Niebuhr and Human Sinfulness

Niebuhr's critique of Dewey goes right to the heart of the perfectionist position targeting the identification between well understood personal interest and the common good. Niebuhr's assumptions being totally different. Natural impulses such as greed and will-to-power can never be fully controlled by reason or be made fully socially or cul-

turally acceptable.⁹³ Social conflict is inescapable.⁹⁴ The moralist believing in social intelligence and moral goodwill as a permanent solution for social problems ignores the underlying injustice and coercion in any actually implemented social peace.⁹⁵ This would mean that conflicting interests will not disappear, even though they are considered in the long run. People's interests are simply not such that they would be able to live in perfect harmony. They basically want to have more than other people, controlling them if they can, and these impulses can never be harmonised, they can only be repressed to some extent. Man is not basically social such that his true interests consist in concern for other people and the community. Man has genuine interests that cannot necessarily be harmonised with those of others. This is visible even in teaching. Facts and truths are suppressed consciously or unconsciously in order to influence pupils in a particular direction. This happens in all forms of communication, so education alone cannot resolve social conflict.⁹⁶ He cites Augustine for saying that the peace of the world must be achieved by strife.⁹⁷

Augustine is no doubt important for Niebuhr and a basic inspiration for him. He finds in the works of Augustine the conception of society, which he also expounds himself, bearing as it does the mark of faction, tension and competition. As he distinguishes himself from Dewey, he also seems to distinguish Augustine from the philosophies of the classical age and in particular Cicero, the preferred target of Augustine himself.⁹⁸ He explains the difference of viewpoint by their different conceptions of human self-hood. Augustine's view of self-hood is dualistic composed of mind and body. For him the seat of evil lies in the self and more precisely in the body as the origin of lusts and ambitions. The classics saw man as part of a fundamentally rational system of nature,⁹⁹ and, we assume, evil in ig-

⁹¹ *Ibid.* P. 392.

⁹² Dewey and Tufts, 1932. P. 408.

⁹³ Niebuhr. *Moral Man and Immoral Society*. P. 231.

⁹⁴ *Ibid.* P. 234.

⁹⁵ *Ibid.* P. 233.

⁹⁶ *Ibid.* P. 245.

⁹⁷ *Ibid.* P. 256.

⁹⁸ Niebuhr, Reinhold. "Augustine's Political Realism", *The Essential Reinhold Niebuhr* (New Haven: Yale University Press, 1986). PP. 124, 128.

⁹⁹ *Ibid.* P. 124-125.

norance about man's true nature. If man is part of a rational system of nature, men's interests cannot be conflicting assuming that contradiction is repugnant to reason. On the Augustinian view interest and reason have different origins and often do conflict with each other. That man is dominated by lusts and ambitions contrary to the dictates of reason is what Christians mean by man's inherent sinfulness. Niebuhr would take a middle stand here disapproving the concept of "total depravity".¹⁰⁰ Man has a moral capacity, but one should not forget that selfishness generally prevails. On this assumption, government can only be seen as a consequence of and remedy for sin. Political institutions establish peace through coercion in order to restrain human selfishness, but these institutions can be instruments of the very same selfishness, which makes counter-coercion necessary in order to re-equilibrate the consideration of the different interests.¹⁰¹ Augustine thus "...seeks to establish the most tolerable form of peace and justice under conditions set by human sin."¹⁰²

Niebuhr shares the dualistic assumptions of Augustine renaming body and soul as vitality and reason. He also emphasises the force of human sin – originating in vitality we assume - making man consider himself more important than others and prompting him to consider only his own interests. This tendency is so strong that moral and rational arguments cannot restrain people from doing this. Society must therefore be seen as a more or less stable or precarious harmony of these vitalities. This unstable and precarious harmony is propped by force establishing a balance of power between government and various destabilising forces coupled with a balance of power between the different vitalities or social forces within society.¹⁰³ Order in society is maintained through laws and the system of justice. Considerations of justice should be distinguished from the law of love. He will not exclude justice from the domain of love as he thinks both sectarian and Lutheran analyses does, but admits

that they have both a positive and negative relation to mutual love and brotherhood. They both approximate and contradict the idea of brotherhood. Justice merely approximates brotherhood because justice presupposes – or is made necessary by - human self-interest and greed. Fine distinctions between mine and thine are set to counteract these, and this might appease relations making them look like harmonious, but they do not express true brotherhood. They contradict the idea of brotherhood as far as conceptions of justice are imperfect and tainted by passion and self-interest. The determination of justice is no easy thing, and a fair and reasonable estimate is often skewed by particular interests and outdated institutions.¹⁰⁴

The highest morality is about unselfishness and disinterested motives.¹⁰⁵ Here Niebuhr rejoins a general Lutheran theme. Being perfect is to obey all the commands; turn the other cheek, go another mile, ...Perfection is about rubbing out self-interest altogether, and this ideal is obviously unattainable for man considering his sinful nature. Human justice can nonetheless be a slight approximation in Niebuhr's view, but this does not come about by itself. Those with vested interests will not give them up without a fight, so conflict is necessary in order to make this approximation. Still, there is no simple relation between justice and the law of love. In the 12th century Hugo of Saint Victor could assume that the law of love in its negative and positive form would express itself in the Commandments.¹⁰⁶ Niebuhr does accept that there "...are essentially universal 'principles' of justice moreover, by which the formulation of specific rules and systems of justice is oriented".¹⁰⁷ He speaks about the ideals of liberty and equality as the requirements of the natural law,¹⁰⁸ but their application will always be subject to the relativities of history. Abstract ideals must be translated into concrete norms and a generally valid principle gets an inevitable ideolog-

¹⁰⁰ *Ibid.* P. 123.

¹⁰¹ *Ibid.* P. 128-129.

¹⁰² *Ibid.* P. 131.

¹⁰³ Niebuhr, Reinhold. *The Nature and Destiny of Man, Volume II; Human destiny* (London: Nisbet & Co. Ltd., 1948). PP. 266-268.

¹⁰⁴ *Ibid.* PP. 260-261, 265-266.

¹⁰⁵ Niebuhr. *Moral Man and Immoral Society*. P. 258.

¹⁰⁶ Weigand, Rudolf. *Die Naturrechtslehre der Legisten und Dekretisten von Irnerius bis Accursius und von Gratian bis Johannes Teutonicus* (München: Max Hueber Verlag, 1967). P. 131.

¹⁰⁷ Niebuhr. *The Nature and Destiny of Man*. P. 263.

¹⁰⁸ *Ibid.* P. 290.

ical taint when applied to historical circumstances in this way.¹⁰⁹ Niebuhr explains that this is due to two or maybe three forms of corruption, which can be summarized as will-to-power, conflict of interest and lastly isolationism, which he in the end consider as a negative version of the conflict of interest.¹¹⁰ Even though there is no simple relation between abstract ideals and concrete norms, he does seem to conceive the last in terms of rules.¹¹¹ His idea of perfection does not imply any substantial qualities that humans should possess and strive to obtain, but rather the absence of something namely self-interest. Justice, on the other hand, should establish peace by arbitrating conflicting interests, and rules seems to be the chosen means to this purpose.

Nation states are generally performing this arbitration between interests and they are to that extent a check upon individual egoism, but a new form of egoism crystallizes around them in the species of patriotism.¹¹² Loyalty towards the community is a strong competitor to individual morality having a strong tendency to pacify moral criticism thus leaving little room for moral considerations between states. The particular groups in society controlling government for their own purposes will also enhance state egoism to the detriment of the type of moral considerations which has some force between individuals.¹¹³ The nagging consciousness of national egoism leads further to a pervasive amount of hypocrisy trying to coach patriotic ambitions in universal principles.¹¹⁴ In general terms Niebuhr explains the problem in this way: ethical action suppose self-criticism and self-criticism suppose the ability to transcend the actual and pose a critical standard, and this nation states are hardly capable of.¹¹⁵ Even though patriotism or group interests make self-criticism difficult, they do nonetheless seem to be able to pose universal principles

being it as a cover up for self-interest. It seems like, in Niebuhr's words, that man has a "...so strong sense of obligation to his fellows that he cannot pursue his own interests without pretending to serve his fellowmen."¹¹⁶ We conclude from this that the rules of justice apply to relations between groups, but they just have much less force to prevail in these relations.

The quote below shows that statesmen cannot pursue selfish interests unhampered. There is a due consideration to be taken in the interests of the rest of humanity. The difference between individuals and states lies not in the rules of justice that apply to them, but in the fact that individuals can decide to be wholly unselfish while states cannot.

"An individual may sacrifice his own interests, either without hope of reward or in the hope of an ultimate compensation. But how is an individual, who is responsible for the interests of his group, to justify the sacrifice of interests other than his own? 'It follows,' declares Hugh Cecil, "that all that department of morality which requires an individual to sacrifice his interests to others, everything which falls under the heading of unselfishness, is inappropriate to the action of a state. No one has a right to be unselfish with other people's interests." This judgment is not sufficiently qualified. A wise statesman is hardly justified in insisting on the interests of his group, when they are obviously in unjust relation to the total interests of the community of mankind. Nor is he wrong in sacrificing immediate advantages for the sake of higher mutual advantages. ...Nevertheless it is obvious that fewer risks can be taken with community interests than with individual interests. The inability to take risks naturally results in a benevolence in which selfish advantages must be quite apparent, and in which therefore the moral and redemptive quality is lost."¹¹⁷

Individuals as well as groups can pursue legitimate interests, but only individuals can choose to act unselfishly. Interests are legitimate within certain moral bounds, but people's incapacity to determine their legitimate interests correctly exacerbates conflict. Niebuhr nonetheless believes that

¹⁰⁹ *Ibid.* PP. 264-265.

¹¹⁰ *Ibid.* P. 275.

¹¹¹ *Ibid.* PP. 256-257 (rules and laws of justice), 259 (specific rules), 260 (rules of justice), 263 (principles of justice, prohibition of murder), 265 (absolute norms of justice, generally valid principle), 266 (rules, laws).

¹¹² Niebuhr. *Moral Man and Immoral Society*. PP. 91, 93.

¹¹³ *Ibid.* P. 89.

¹¹⁴ *Ibid.* PP. 89. 95 ff.

¹¹⁵ *Ibid.* P. 89. 88.

¹¹⁶ Niebuhr. "Augustine's Political Realism". P. 123.

¹¹⁷ Niebuhr. *Moral Man and Immoral Society*. PP. 267-268.

people should pursue these interests. Those who has acquired more than their due will not abandon these possessions voluntarily and conflict is inevitable. Both within and outside society the power of the one stands against that of another in a more or less precarious balance. Social groups and states should therefore pursue their interests with due concern for the legitimate interests of others. They should also prefer mutual interest in the long run for narrow interests on the short sight. However, these mutual interests in the long run are still particular interests; conflicts of interest cannot be erased altogether. The state should thus not unselfishly promote some higher ideal, probably because unselfish sacrifice is a personal choice one can only make for oneself. Unless the choice is made unanimously, which seems unlikely, a state cannot make such a choice. A basic assumption would be that the state is a contingent association made for the common interest of its inhabitants, and therefore such a choice would be contrary to its purpose. The majority is not mandated to make such choices. Perfectionists can on the contrary demand such 'sacrifices' because they believe them to be in the true interest of everybody. Dewey and like-minded people can therefore recommend "internationalist" schemes implying such sacrifices, and we believe this is also the tenor of the UDHR. From Niebuhr's point of view the UDHR would thus be less interesting. This could give us a clue to why the UDHR slumbered for so long after its drafting.

8. Hans Morgenthau and George Kennan

Niebuhr's outlook inspired or was shared by an important school within international relations namely the realist school. Prominent realists such as Hans Morgenthau and George Kennan had close relations to Niebuhr. Kennan is supposed to have said that "Niebuhr is the father of us all" allegedly referring to the realist school.¹¹⁸ The relation to Morgenthau is more ambiguous, since they both admitted being inspired by the other. It is unclear how much new inspiration Morgenthau found in Niebuhr and how much he just found a kindred

spirit in him.¹¹⁹

Realism is known for leaving very little room for moral considerations in foreign policy. Hans J. Morgenthau and George F. Kennan, both distinguished realists, leave, however, some room for moral considerations. Kennan distinguishes between two ways, how moral considerations enter foreign policy. There is the behaviour of foreign governments on the one side and the behaviour of the national government on the other side. Concerning the conduct of national foreign policy, he will not deny that there are some negative strictures on behaviour, and he mentions the Ten Commandments as an illustration of his point. He specifies later that "excessive secrecy, duplicity and clandestine skulduggery are simply not our dish ...because such operations conflict with our own traditional standards and compromise our diplomacy in other areas." Morgenthau states for his part that no human action can evade being judged morally, since this goes with being a human being. Foreign policy is no exception. Morgenthau quotes Churchill reporting from the Teheran Conference in 1943, where Stalin proposed to execute about 50000 German officers and technicians. Churchill answered that the British Parliament and public opinion would never accept this and he said further that he would rather be shot right now in the garden than sully his own country with such an infamy. Morgenthau gives other examples of statesmen having refrained from certain actions on moral grounds. He concludes that foreign policy is not devoid of moral significance, but like Kennan, he would distinguish between the judgement applied to ourselves and the application of these standards to the action of others.¹²⁰

There are then limits to what a state legitimately can do when pursuing its national interest. The national interest Kennan defines as "...its military security, the integrity of its political life and the well-being of its people." He insists that these "needs" as he calls them has no moral quality. They cannot be said to be "good" or "bad", since they are inherent in the very existence of the national state.

¹¹⁹ *Ibid.* P. 145 ff.

¹²⁰ Morgenthau, Hans J. *Human Rights and Foreign Policy* (New York: Council on Religion and International Affairs, 1979). PP. 1-3.

¹¹⁸ Rice, Daniel F. *Reinhold Niebuhr and His Circle of Influence* (Cambridge: CUP, 2013). P. 12.

Even though they can be “questioned from a detached philosophic point of view”; they must be the basis for any foreign policy. In sum, any foreign policy must pursue these ends subject to certain moral strictures. What Kennan disapproves is an “unduly legalistic and moralistic” approach to the behaviour of other governments. Various interventions have been made under the banner of democracy, human rights, majority rule, fidelity to treaties, fidelity to the UN Charter, etc. If any behaviour on the part of foreign governments seriously injures American interests, there will be reason to react, but a mere injury to their moral sensibility will not justify such reaction. Concern about the moral behaviour of other states might even jeopardise American interests and he adds that the defence of American interests will leave very little energy and attention to such matters.¹²¹

Morgenthau makes clear, however, that we are not speaking about ethical relativism, since he believes himself that there is only one moral code. Such a code would need a theological foundation, and in his opinion, this code would be something objective. He assumes that certain basic moral principles apply to all human beings and mentions as an example the preservation of life, though subject to certain qualifications. This would not for that reason entitle a nation to impose its own moral principles on other nations, and this is actually what human rights are about. Quite apart from the fact that Morgenthau would object to the concept of right, which in his view only applies to a society, where these rights are allocated and protected, so he would also object to our wish to present these to other nations for acceptance and not for imitation. In his view we are not morally justified to proceed in this way, but he also thinks this is infeasible. It is impossible to enforce this regime, and at the same time such a tentative would conflict with other interest, which in his view are more important. Human rights are one interest in US foreign policy, but not the most important. The prime business of US foreign policy is not to defend human rights.¹²²

¹²¹ Kennan, George F. “Morality and Foreign Policy”, (1985) *Foreign Affairs*, Vol. 64, No. 2 (Winter, 1985), pp. 205-218.

¹²² Morgenthau. *Human Rights and Foreign Policy*. PP. 10, 25, 15, 4-7.

We must assume then, that the prime business of US foreign policy is to defend American interests within the moral limits that Americans impose on themselves.

These moral limits Morgenthau describes elsewhere as “certain moral rules of conduct which interpose an absolute barrier against a certain policy and which do not permit it to be considered at all from the point of view of expediency.”¹²³ Further on in the same article he considers the policy of mass extermination and concludes that such a policy is limited “...by virtue of an absolute moral principle the violation of which no consideration of national advantage can justify.”¹²⁴ Here national interest is sacrificed and he emphasizes that expediency does not impose such limits.¹²⁵ Dewey would on the contrary, maintain that such a policy was not expedient, because it is contrary to man’s moral interest in society and the growth of all mankind. Morgenthau seems to assume a different kind of moral philosophy deploying rules forbidding particular kinds of action. A moral conception supposing the classical dichotomy between self-interest and moral imperatives. As a consequence everybody is free to pursue their self-interest within the strictures of some basic moral imperatives. If the moral strictures are rather limited in number, it would signify that the pursuit of self-interest is legitimate to a very high degree. A few interdictions such as not to commit mass exterminations or not to assassinate foreign heads of state, would imply nearly no responsibility for what happens in other states. In Kennan’s words “...the most significant possibilities for the observance of moral considerations in American foreign policy relate to the avoidance of actions that have a negative moral significance, rather than those from which positive results are to be expected.”¹²⁶ The state is not obliged to labour for the best possible situation according to some moral ideal. This seems intelligible if we consider that the state on this conception is the outcome of a contingent historical process. Whatever the way it was actually constituted, it has by now established

¹²³ Morgenthau, Hans J. “The Twilight of International Morality”, (1948) *Ethics* Vol. 58, No. 2 (Jan.). P. 80.

¹²⁴ *Ibid.* P. 82.

¹²⁵ *Ibid.*

¹²⁶ Kennan. “Morality and Foreign Policy”. PP. 205-218.

decision-procedures enabling collective action, and the state's actual situation is conceived as the result of the "choices" it has taken in the past. Each state organises itself in the preferred way and leave other states to do the same. If breaches of moral principles have enriched a country illegitimately, reparations can come into question, but otherwise no redistribution is envisageable. The behaviour of other states is only morally pertinent to the extent that it injures other states. So the way a state treats its own citizens has little import for another state's foreign policy, and Kennan can in this way relegate human rights to the category of "high-minded but innocuous professions".¹²⁷

9. Institutionalism: Opening Up New Possibilities

Critics of realism have emphasised that the definition of state interests is subjective. What matters is what states perceive as their interests. Keohane notes that the idea of self-interest is elastic. It is difficult to draw a sharp distinction between egoism and altruism. Since egoism can be both far-sighted and short-sighted, altruism can often be hard to distinguish from far-sighted egoism. It is also possible to conceive self-interest in terms of moral principles, people preferring to sacrifice their own life or well-being rather than breaking a moral principle or let someone else suffer. In this case one's self-interest is a moral one.¹²⁸ Donnelly reiterates this view observing that state interests are not given objectively. Individuals are seen as moral agents with a potential for moral action, so why not conceive states in a similar way. Why should states be bound to act selfishly? In their view, this is rather a realist vision about what should be valued in foreign policy and as such a normative stand. Even if one should be careful about moralistic excesses, there "...is no reason why states cannot, if they wish, define their national interest (in part) in moral terms."¹²⁹ This point of view would exclude a conception of morality that conceives morality as strictures on

a predefined self-interest. However, even on this view self-interest can conform to moral prescriptions, but self-interest cannot be moral as a motive, that is, we cannot define our self-interest morally. Self-interest can conform to moral strictures, but it cannot as such be moral. When we follow Keohane and Donnelly, morality and what is perceived as self-interest can of course conflict, but they can also coincide; that is, we can take morality as our interest or identify true self-interest with morality. This move opens the gates for a different conception of morality.

According to a perfectionist conception of morality, true self-interest coincide with morality. The perfection of the human being is conceived as something objective, which is not only our moral objective, but also our true self-interest. Not pursuing this end only testifies to our ignorance about our own good. Donnelly seems to subscribe to such a view, at least in his early days. He notes that the basis for human rights is a "moral account of human possibilities". The state plays a determining role in the realization of these potentialities and the object of human rights is "the most complete possible realization of that potential, and their protection and implementation would 'create the envisioned person'". Human rights endeavours "to establish and guarantee the conditions necessary for the development of the human person" so conceived. Donnelly calls this theory constructivist,¹³⁰ but we would rather call it perfectionist. If we allowed everybody to construe the human potential in just any way human rights would be perfectly void. There should at least be a general theory on the basic features of human perfection even if this theory is defeasible in the way Dewey thought it was.

Keohane is less precise concerning his moral affinities. Citing Peter Singer, he rejects utilitarianism on the ground that it is too demanding, since "...it appears to imply an almost unlimited moral obligation to anyone, anywhere, who is less well-off than oneself."¹³¹ He also invokes against utilitarian-

¹²⁷ *Ibid.*

¹²⁸ Keohane, Robert O. *After Hegemony, Cooperation and Discord in the World Political Economy* (Princeton, New Jersey: Princeton University Press, 2005). P. 122.

¹²⁹ Donnelly, Jack. *Realism and International Relations* (Cambridge: CUP, 2000). PP. 71, 165-166.

¹³⁰ Donnelly, Jack. *The Concept of Human Rights* (Beckenham, Kent: Croom Helm, 1985). PP. 31-32.

¹³¹ Keohane. *After Hegemony, Cooperation and Discord in the World Political Economy*. P. 250.

ism that it is insufficiently strict, since it is possible to justify the sacrifice of innocent people in order to attain the greatest happiness for the greatest number of people.¹³² A government acting on such a conception would have to assign a rather low priority to national interest (in the realist sense). If the country of this government or some elements of it were the one to be sacrificed, it would have to reduce more or less substantially the happiness of their own country. This is of course absurd on realist premises taking Kennan as the representative of this position. Within the limits of basic decency the government should pursue the wellbeing of the state, since it has been instituted for that purpose, and this is perfectly legitimate from this point of view. A government conducted according to utilitarian principles would have a different relation to national interest. It could hardly argue that the utilitarian principle would never interfere with the advantages the state could otherwise hope for. On the realist position, morality would also limit national interest to some extent, but it would not replace it by the interest of the greatest number. What the realist terms the national interest is illegitimate for the utilitarian.

Keohane is more tempted by another position inaugurated by John Rawls, but made global by Charles Beitz. Beitz apply the "veil of ignorance" and the resulting difference principle on a global level.¹³³ In this hypothetical situation interest and moral concern are supposed to coincide. Each and everybody is here assured the best possible situation, whatever their initial capacities. Social and economic inequalities should benefit the least advantaged members of society. In the real world, it would probably mean a rearrangement of the existing patterns of distribution, and this might upset the expectations of the more wealthy societies. Still the possible consequences will probably be less radical for the individual society than what is suggested by the utilitarian theory. However, he uses both the utilitarian principle and Rawls' difference principle in order to evaluate the existing interna-

tional institutions. In his view, there is little difference between them in what concerns their practical implications. He largely defends the beneficial effects of liberal institutions within the advanced industrial countries, but recognises that they show insufficient sensitivity towards disadvantaged people in the Third World. The principles might be morally deficient, but this does not imply that the institutions should be abandoned. His conclusion would rather be that citizens of the advanced industrialised countries should labour to modify these principles. In order to do so they should not ignore self-interest, but define their self-interest in a less myopic manner and in a more empathetic way.¹³⁴ The bulk of Keohane's contentions is based on realist assumptions of self-interest, but he considers in the end of his work the possibility of transcending self-interest altogether through empathy. How empathy relates to the utilitarian principle or the difference principle is not quite clear. Should empathy motivate people to act according to any of these principles? This is of course possible, but it seems in no way necessary.

Whatever the hesitations Keohane might have concerning his moral theory, it is quite clear that he wants to open the field for a different kind of moral theory than the realist one. A theory which implies a greater responsibility towards other nations and their populations. This aim Donnelly shares with him, but their common critique of the realist stand on self-interest seems somehow beside the point. The realists cannot appreciate this critique, since self-interest on their moral assumptions cannot be anything different. Self-interest can of course be more or less myopic, but it cannot assume a moral character. The dispute around self-interest is a dispute about moral theory. Keohane seems to suggest something like this, when he opposes the doctrine of the morality of states with the cosmopolitan perspective, but we believe he is not quite conscious about the basic moral assumptions at stake.¹³⁵ So we cannot just as a matter of fact note that the idea of self-interest is elastic or subjective. Perceptions of self-interest vary of course, for the

¹³² *Ibid.* P. 250.

¹³³ Beitz, Charles R. *Political Theory and International Relations, with a new afterword by the author* (Princeton, New Jersey: Princeton University Press, 1999). P. 169 ff.

¹³⁴ Keohane. *After Hegemony, Cooperation and Discord in the World Political Economy*. P. 252-257.

¹³⁵ *Ibid.* P. 248.

reason among others that people hold different conceptions of morality.

This position had to be argued in order to break the way anew for an internationalist conception. Internationalism is nothing new and did not come into being with the UDHR, but the internationalist potential of the UDHR would likewise need this argument to overcome realist hesitations. The success of the human rights movement would eventually make the argument necessary, liberating the potential. However, it appears that the success of the human rights movement did not do this right away. Moyn argues that initially it was anti-political and minimalist and this was the key to its success.

Conclusion: The Human Rights Movement of the 70's

Moyn describes how the human rights NGOs working mainly within the UN system failed to capture the imagination of the larger public, and how Amnesty International (AI) managed to do this relying on people rather than governments.¹³⁶ Moyn quotes Peter Benenson, the founder of AI, speaking about the first campaign in 1961 and explaining how he hoped to create a common base for the idealists of the world gathering them around this cause.¹³⁷ For Moyn, this is a strong indication that the human rights movement was at first intended to go beyond politics.¹³⁸ The utopia offered for idealists was thus a minimalist one claiming a large consensus. Therefore the self-imposed limitation to subjects such as torture, political prisoners, forced disappearances. The movement was intended as "...a new venue for idealism..." and this presupposed the waning of the ideological struggle of the Cold War.¹³⁹ Moyn explains that several catalysts were at work in facilitating the success of the human rights movement in the 70's: European efforts for unification, the work of East European dissidents following the Helsinki-process, President Carters focus on human rights in his foreign policy, de-colonization, but in Moyn's view the best explanation for the success of the human rights movement was the collapse of

alternative utopias.¹⁴⁰ The human rights movement succeeded because there was no other rallying point for idealists.

There is much good sense in this explanation, but we are less convinced by his explanation of how the human rights NGOs adopted a maximalist stand. Moyn considers it unlikely that human rights could have remained a "minimalist utopias of anti-politics". The pure moral vision was suddenly less attractive, and answers to a whole range of questions made it necessary to have a political agenda and a programmatic vision.¹⁴¹ This explains the venue of the ESC-rights. Because "...totalitarianism and authoritarianism waned, social and economic rights consciousness could not help surge."¹⁴² It is possible that ESC-rights was seen as the answer to many questions that the earlier minimalist approach had left unanswered, but they are also unavoidable if one had to embrace the UDHR. In the 1993 Vienna Declaration and Programme of Action it was rammed home that: "All human rights are universal, indivisible and interdependent and interrelated."¹⁴³ It was henceforth clear as crystal that you could not pick and choose. According to David Petrasek the adoption of ESC-rights was motivated by the concern for intellectual coherence and pressure from the "global south" emphasising interdependence and interrelation.¹⁴⁴ This seems very logical if we consider the UDHR as essentially perfectionist. The different rights are all ordained to the same end, which is human flourishing, and in order to promote this end they will work together, constrain or presuppose each other. If the NGOs wanted to lean against the UN system in order to strengthen their work they had to take it all or work on a philosophical basis totally different from the one reigning in the UN system. To all appearances there was no real choice for the NGOs. They had to embrace the UDHR in full and realise its internationalist potential.

¹³⁶ Moyn, *Op.cit.* PP. 126-128.

¹³⁷ *Ibid.* P. 130.

¹³⁸ *Ibid.* P. 132.

¹³⁹ *Ibid.* P. 131.

¹⁴⁰ *Ibid.* P. 8.

¹⁴¹ *Ibid.* P. 218.

¹⁴² *Ibid.* P. 223.

¹⁴³ A/CONF.157/23: I.5.

¹⁴⁴ <http://humanrightshistory.umich.edu/files/2012/08/Petrsek.pdf> (consulted 15-04-2015).

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