Working Paper 30

Human rights or social justice?
Rescuing human rights from the outcomes view
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The support of UCL Friends Programme is gratefully acknowledged.

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Date: August 2011
Note: This is a position paper. It sets out a view with regard to human rights, in contrast with other contemporary views and gives some reasons for rejecting the kinds of approaches that would act as obstacles to holding this view. The different arguments sketched are each the subject of longer papers, and the overall view the subject of a book. The position paper is a way of staking out ground for that view rather than fully defending it.

**Human rights or social justice? Rescuing human rights from the outcomes view**

S. Meckled-Garcia

Are human rights standards the same as principles of social justice, just under a different name? Are they only a subset of the former? Or are they different kinds of standards altogether? There are political theorists who make the distinction, in order to assert that claims under one heading entitle the claimants to less than under the other. Yet demands for an internationally just order are increasingly framed in terms of human rights. At the same time one genre of theoretical writing on human rights treats them as a concept worthy of independent attention, but develops no detailed analysis of the relationship between them and social justice. Even within the practice of international human rights standard-setting there are both assertions of a distinctive core of minimum standards and appeals to principles of equity. So it is surprising that human rights theorists have tried to settle conceptual human rights questions by looking at human rights practices, or even intuitions about those practices, without first settling whether there might be two concepts in play which could get regularly confused by participants in the practice itself or in people’s intuitions about the practices. It may seem that by asking these questions I am raising little of importance, after all what does it matter if we list an entitlement under the heading of justice or as a human right? My contention here is that the choice of moral standard one employs matters very much as different types of accountability will direct us to different types of agent, types of obligations and distributions of obligations. It is therefore important to know what kind of standards

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1 Thanks are owed to George Letsas, Matt Kramer, Rowan Cruft, Julio Montero, David Karp, and participants at the UK ALPPC, for comments.
4 (Gewirth, 1983); Griffin assumes they are different, but does little to explain how, (see esp. J. Griffin, 2008, pp. 17, 41, 65); (Tasioulas, 2010, pp. 647-678), see also (Tasioulas 2002, p. 89), where it is suggested human rights are a subset of all the rights of justice.
5 In clarifying Article 12 of the International Covenant on Economic Social and Cultural Rights, General Comment 14 of the Committee on Economic Social and Cultural Rights refers to non-discrimination (CESCR, 2000, sections 12(b), 18 and 34) and core obligations (ibid, section 43) but it also states that the distribution of health resources, and their costs, should be according to the ‘principle of equity’ (ibid, section 12 (b)).
6 So, I am here explicitly rejecting approaches like that of Charles Beitz (2010, pp. 8 & 9). I also reject ‘intuitionist’ approaches to moral conceptual analysis, given intuitions over cases will not sort themselves into distinct moral concepts unless we already have a sense of which cases are covered by each concept.
one is invoking.

In this paper I will propose a distinctive role for human rights standards setting them apart from questions of social justice and from moral criminal prohibitions. Social justice standards guide adjustments in social institutions that affect the distribution of socially available goods, and the costs of supplying those goods, across members of a society. They encompass contribution as well as access to goods and they focus on accountability of institutions to a political community. At the same time, as private agents we are subjects to prohibitions on harming others that, when sufficiently serious, constitute moral crimes for which they can be held accountable to a relevant community. By contrast, I will argue, a distinctive role for human rights standards is to constrain the actions of public bodies, rather than private agents, towards individuals, whether or not they are members of a political community. There are abuses private bodies can commit which cannot adequately be addressed as matters of social justice or as privately commissioned crimes. When political institutions command torture, starvation or disappearance, there are the crimes of the individual performers and commanders to contend with, but even after doing so there is a remainder: the accountability of public authority itself and the empowering role of political institutions and offices. The criminal model of accountability is not appropriate for a system of laws or a government, precisely because there is no private personality to hold to account. A special kind of standard is needed for that. At the end of the paper I suggest a substantive theory of human rights that fits with this distinctive role account.

In section I below I introduce the notion of a role for a moral principle. By this I mean what types of relationships and actions that principle is designed to constrain or regulate, defined in terms of the types of goods and costs it regulates, the type of agent to whom the principle allocates obligations which affect the distribution of these goods and costs, the types of obligations it allocates, and the kind of moral value that explains the way the principle distributes those obligations. I call these the dimensions of a principle. The role of a principle, in this sense, is just as much in need of explicit justification as is the principle itself. One cannot, in fact, supply an adequate justification for the adoption of a principle unless one also justifies its role. Admittedly, it could turn out that human rights standards are either confused ways of articulating social justice standards or rhetorical ways for making these standards more palatable to a wide audience. The challenge, then, is to see if we can find a non-redundant role for human rights standards, and so

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7 This has elsewhere been called the ‘distinctiveness approach’ to moral methodology (e.g., Meckled-Garcia, 2009, pp. 262 ff.).
vindicate them as a distinct moral concept. I then illustrate the adopted ‘distinctiveness’ approach, in part II, by proposing a distinctive role for principles of social justice, in contrast with other standards. The chief question for human rights theory, then, is what significant and valuable role these standards play in our moral repertoire which is not already occupied by these principles and in particular by social justice. In section III I consider one key objection to the view that we need to find a contrasting, non-redundant, role for human rights in terms of dimensions such as responsibility and agency. This I call the ‘Outcomes View’. This ubiquitous view holds that the distinctiveness of human rights standards lies in the value of a set of outcomes they identify: e.g., the advancement of key interests or the securing of a ‘minimally decent’ life. The dimensions of agent type, form of responsibility, and distribution of obligations, are on that view conceptually secondary when identifying human rights standards. I show there are three crucial reasons to reject the view: (i) on it human rights standard will tend to collapse into principles of social distributive justice, and so do not have a distinctive role; (ii) it ignores the difference between goods for persons and genuine (action guiding) moral values; and (iii) it cannot coherently integrate responsibility theory into an account of human rights. Setting aside this view I return, in IV, to consider candidates for the distinctive role of human rights principles articulated in terms the dimensions of these principles. I consider the ‘political view’ of human rights as a candidate for their distinctive role (human rights standards as setting a threshold for permitted international intervention). A problem with this view is that it does not explain their distinctive role in a way which also explains the specific dimensions of human rights principles, but rather focuses on an ‘extrinsic’ feature. In conclusion, I outline a candidate account of the distinctive role of human rights standards and their principle dimensions as well as a role-justification for these. I also offer a sketch of a substantive account for human rights that fits with this distinctive role.

I A Note on Methodology

What is a principle?

In what follows I outline a deontological approach to moral value concepts, articulated as principles. By principles I mean the part of political morality, which can be used both to guide action and to judge the quality of actions. If moral principles are guides to action, then they do so by assigning moral obligations, and sometimes the rights correlative with them. They indicate how obligations should be distributed, who they should be distributed over (which agents or agent

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8 I do not here mean that principles necessarily assign decisive obligations to act, all things considered. I also take obligation to be a more basic concept than permission: they imply the presence of a special type of reason, and permissions the absence of that type of reason. The notion of permission is therefore conceptually dependent on the notion of that special type of reason.
types), and what kind of obligations are involved. Moral imperatives in this way direct the distribution of moral obligations (and rights) in a given sphere of human relationships and can be said to thus regulate that relationship. For example, principles for familial relationships, or friendship relationships, or the running of a university, or interactions between private persons will assign moral obligations to those involved in those interactions as family members, friends, members of university faculty and private persons.

Social moral value concepts, such as social justice or promissory justice, can be articulated as this kind of principle for a specific relationship. Moral values such as fairness or cooperation, on the other hand, are used to justify the distribution of obligations in regulating those relationships. Moral principles and moral values are in this way distinct from aims. Unlike an aim, principles guide action by assigning obligations. Aims on the other hand describe states of affairs that persons find desirable as means or ends. The aim of a ‘more equal’ society, as morally worthy as it is, does not by itself tell us who is responsible for bringing it about and what responsibilities they have. It is not, in that sense action guiding, at least not until we propose a principle assigning obligations for bringing it about.

Whilst moral principles might at times direct their agents to bring about a state of affairs or achieve a given aim, they are distinct from descriptions of desirable states of affairs. This is because the point of principles: that which makes sense of their specific role in practical reason, is to guide action or to guide our judgements of actions, and to do so justifiably. Certainly, the description of a state of affairs might also describe the outcome of a principle’s correct operation. But one cannot identify a principle by describing resulting states of affairs, because that does not identify the relevant obligations. Principles of social justice cannot, then, be solely identified in terms of a state of affairs in which, for example, there are equal life prospects, or weighted benevolence, but must rather identify which responsibilities there are to produce those states of affairs, on whom they fall, and why.

**Dimensions of principles**

On this approach, then, principles have dimensions and when stating a principle these dimensions need to be made explicit if we are to say we are stating a complete principle, rather than an aim or good. Key dimensions defining a principle are:

1. The types of obligations and entitlements that the principle distributes (which includes the
types of responsibility and accountability involved)
2. The types of goods and costs that the principle aims to distribute (through the distribution of obligations and entitlements).
3. The type of agent which is charged with the obligations in question (as well as any agent with correlative entitlements)\(^9\)
4. The distribution of obligations
5. The regulative value expressed in, and justifying, the distribution of obligations

I am assuming there is no natural or ‘default’ option for principles in any of these dimensions. Rather, if we aim to justify a principle then we must explicitly justify assigning any of these dimensions a particular content. In so far as we are dealing purely with conceptual questions: what kind of social moral value a principle expresses (e.g., social justice v familial responsibility v promissory duty) then we must focus on 1–3. A substantive theory for regulation of any one of these spheres, on the other hand, will need to also offer an account of 4 and 5 in addition to justifying its choice of 1-3; competing theories will especially need to justify their choices of regulative value as better than rival accounts.

I take dimensions 1-3 to constitute the *differentiae specificae* for types of moral principle, which also stake out their appropriate domain. That is, by identifying, for example, the type of agent the principle is directed at, we identify the area of morality to which the principle applies. Moral principles that are offered up without specifying the choice for these dimensions (1-3) can be said to that extent to be incomplete, as per the following constraint:

**Completeness Constraint:** Without a specification of any one of these dimensions, and a justification for that specification, a candidate principle can be said to be incomplete or not a principle at all but at most an aim or a good.

Consider the notion of ‘Equality’, but without specifying which goods and costs equality ranges over, which responsibilities there are to bring about equality, in which sphere of life (in familial relationships? in friendship relationships? in doctor-patient decisions? in all personal interactions?), and on which agents these responsibilities fall (on parents as such? on friends, as such? on doctors as such? on any individual as such?). That would not be a complete principle of equality but at most

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\(^9\) Rawls refers to the agent of a principle as its ‘subject’ (Rawls, 1993, pp. 41–82 at pp. 43 ff., 46; 2001, ‘subjects’; also 1999, pp. 69, 85 ff).
some notion of an aim.

It is also important that the type of regulative value proposed should be appropriate to the kind of relationship these dimensions define. If we do not assume that there is only one type of regulative value, then this dimension too needs to be specified, and it needs to be justified when proposing a principle. But even if one holds that there is indeed only one regulative value, or set of regulative values, it nevertheless needs to be shown how and why this value is relevant to regulating a particular type of relationship and the goods available within it.

One reason for this is that we need to be on the look out for potential value incoherence. A regulative value would not be appropriate if it distributed obligations in a way that undermined the very goods, which motivate us wanting to know how to regulate the relationship and its goods and costs. Consider a regulative value, such as impartiality, but proposed for all private interpersonal interactions, including our friendship relationships. This would make friendship goods, such as committed reliability, loyalty, constancy, and being favoured in someone’s attention, difficult if not impossible to enjoy. It would be inappropriate for this sphere of morality, as would any resulting principle. For that reason, I also take the following, value coherence constraint, to operate for the formulation of moral principles:

\[ VCC: \text{a proposed principle for the regulation of a given relationship (for regulating its distinctive goods and costs) will be inappropriate as a principle for that relationship, if following that principle would make it impossible to enjoy, and distribute, the types of good that the relationship makes available.} \]

The form of responsibility also needs to be specified. Obligations can take the form of perfect duties or imperfect duties, and whether either or both are appropriate in a principle will require some form of explicit justification. Similarly, whether responsibility takes the form duties to protect or advance some human good, or duties of accountability to be answerable to specified others also needs to be determined and justified. In some instances it might be appropriate that I hold myself morally accountable to a specific other person for my failing in my duty, whether or not the accountability element affects my performance of that duty.

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10 This is not to say that the requirements of such a relationship outweigh our acting on any impartial requirements from other moral spheres, ‘all-things-considered’.
On this approach responsibility is also complex in terms of the role of responsibility. A principle regulates a relationship through the obligations it assigns a specific agent. Yet there can be second-order obligations (obligations for others regarding this agent’s obligations) to avoid interfering, undermining, or even to support, the primary agent in her performance of first-order obligations. These obligations are explained by the value of respect for agents undertaking legitimate, first-order, moral obligations. Whilst spouses’ obligations of marital fidelity towards each other regulate their marital relationship, others nevertheless have duties (not regulative of marriage itself) to respect their carrying out their duties to each other.

Here it may be objected that some accounts of political, and other, morality do not differentiate spheres of morality and so do not need to specify dimensions 1-3. Their principles apply to all agents and relationships, so no explicit statement of moral sphere is needed. Whilst some moral theories have this character, classical utilitarianism being a prime example, the commitment needs justifying. That is, these theories nevertheless need to justify the choice of all agents as subjects of their principles, given the specific types of goods available in different relationships, such as the specific goods of friendship. They are not entitled to this commitment by default.

Nevertheless, it might still be asked why this approach assumes the explanation of the role of a principle must focus on dimensions 1-3, rather than on valuable aims or sets of desirable goods for persons? This is because of one more methodological constraint I subscribe to, and in fact take to be an axiom of deontology:

DA: No human goods present in a state of affairs can be action-guiding when considered independently of the costs of bringing about this state of affairs (including the duties that would need to be assigned in order to bring it about)

The intrinsic value for persons of a given state of affairs is not sufficient to create obligations to bring it about. Bringing it about may be costly, and costs must be included in a determination of agents’ obligations. Before one can talk of action-guidance, then, one needs to have some idea of how to weigh goods against costs for persons, in order to distribute them appropriately. For that one needs a special kind of value, which I called a regulative value above. Regulative values contrasts with goods or values for persons; by which I mean goods that are desired as well as goods that are generally desirable. A regulative value indicates how goods and costs for persons should be weighed against each other, and so how they should be distributed, through the distribution of obligations.
Examples of candidate regulative values are the values of fairness, reciprocity, equal concern, special concern (as expressed in friendship) and different forms of respect. Whilst regulative values, or theories for any one regulative value, tell us how to distribute goods and costs for persons in a given sphere, goods-for-persons, and their associated costs for persons, are not (morally) action guiding. They are part of the question for which moral principles, with their relevant regulative values, represent candidate answers. In a social set up, the value of socially produced goods-for-persons does not itself tell us how these should be distributed, and at what cost. A value like equal respect or fair treatment is needed for this task.

An aim can only convert into a principle if one introduces notions of appropriate goods and costs, appropriate obligations, agents, and an appropriate regulative value proposed to guide distribution of these obligations. Types of principle are distinguished in terms of the settings for these dimensions and their justification as regulating a specific sphere of human relationships.

**Justifying the scope of principles**

If, as I have implied, a case can be made for different relationships with their own distinctive goods and costs and agents, then, on this view, it makes sense to speak of having different moral principles and imperatives. In which case any theory for an area of morality will need to specify the dimensions of a principle it proposes (its sphere of application), and justify those dimensions as defining that sphere, as well as justifying its proposed substantive distribution of obligations in that sphere (its proposal for, and interpretation of, the most appropriate regulative value). As I have said, conceptual disputes or misunderstandings will range over dimensions 1-3 above, whilst substantive disputes will involve theories with different candidate regulative values and their resulting distributions of obligations.

So what, on this approach, would justify having a distinctive type of principle applying to a given sphere of human relationships? The answer is that having a regulative principle for a particular sphere must add something of value to our moral repertoire, and do so non-redundantly. This means we can supply moral reasons for why having this concept is important, why the types of judgement it makes possible matter, reasons making out its important role in practical reason. Distinctive principles regulating friendship, family or private interpersonal relationships, add value to our repertoire because they take into account different types of goods and costs available in those relationships, as well as different types of agent involved in taking on those goods and costs. If an area of judgement is already adequately covered, in terms of goods, costs, types of obligations and
agents, by an existing type of principle, then a proposed new type of moral principle for that sphere can be said to be redundant for practical reason. Call this the Non-redundancy Criterion:

**NRC:** The introduction of a proposed *type* of moral principle must be justified on the basis of its making a valuable contribution to our moral repertoire.

If a principle or standard is proposed which serves no distinctive point and purpose in this way, which has no added value for our moral repertoire, then that is good reason to think that a distinct moral concept is not in play. The case for a principle’s non-redundant role in our moral repertoire is what I call its ‘point and purpose’.

Nothing I have said should be taken to be a ‘practice-based’, ‘practice-dependent’ way of arriving at moral standards (though some commentators have mistakenly grouped this approach with practice-dependent views). The only way that a ‘practice’ can matter in the development of moral principles, on the proposed view, is by making certain types of goods and associated costs available, and so liable for moral regulation. That is a relatively uncontroversial role for a practice in a theory. However, practices do not by themselves justify adopting any one moral principle over any other for the distribution of these goods and costs.

**II Social Justice**

I have elsewhere argued that the special role played by principles of social justice lies in the importance of what I call ‘background adjustment’, which contrasts with ‘horizontal impact’. The innocent actions of persons interacting in a variety of ways can over time lead to disparities in wealth and life prospects. Yet assigning private agents the responsibility for designing and developing personal life choices that continuously adjust for and address these disparities would be deeply problematic. All adjusting actions will in-themselves alter the distribution, given they will themselves imply costs. Furthermore this presents an irresolvable problem of action-guidance for individual agents given competition with other legitimate moral responsibilities and legitimate commitments that reasonably guide their life choices.

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12 (Meckled-Garcia, 2008, pp. 252 & 257 ff). There are of course other accounts of the distinctiveness of social justice as based in, say, coercive institutions or the distribution of special types of goods. These do not, however, focus on justifying the role of justice standards understood in terms of the dimensions of principles I have highlighted.

Furthermore, people’s actions and choices that are in-themselves perfectly innocent can nevertheless have cumulative negative and pervasive effects on access to socially available goods. The morality of individual wrongs (of holding people’s actions individually accountable for their effects) does not seem best suited to this kind of case. Principles identifying obligations not to intentionally perpetrate wrongs against others fail to adequately capture this notion of the accumulated effects of innocent actions.$^{14}$ Moreover, the idea that any party involved in the complex causes (and absence of causes) that produce these effects should bear personal responsibility or remedial action for any specific outcome, as with direct wrongs, seems out of place. It is more appropriate to frame the issue in terms of a duty of care falling on any power that can stand back from those causes and effects, and adjust for them through the distribution of social rights and duties against which background individual choices are made. Principles of social justice are more appropriately understood as applying to this kind of special agent, capable of adjusting for accumulated effects of innocent actions by adjusting rights to property, duties of taxation, and institutional provision, and which has no other legitimate commitment or responsibility than this. The actions of such an agent, in terms of its allocation of these rights and duties define a special form of fairness, and where the distribution is wrongly conceived, unfairness.

To be subject to the duty of care, then, an agent must have the moral power to assign rights and duties so as to continuously adjust for accumulated effects of individual choice. That means being in possession of political authority to distribute socially disposable goods and socially disposable costs, opportunities and responsibilities. This is an agent capable of ‘background adjustment’ in the sense of an activity both adjusting for, and distinct from, the cumulative effects of peoples’ everyday innocent choices.$^{15}$ This agent, due to these powers, is in a special relationship with those over whom it exercises the power—the members of the political community. It is accountable to them for its part in the relationship. That means that its responsibilities must include at least a core of perfect duties: duties over which it has no wide discretion, given wide discretion can act as a shield from others’ scrutiny.

Principles designed for regulating this domain will, then, be principles for the assignment of rights and duties by a background adjusting authority in a political community. These are principles for a

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$^{14}$ I take the difference between contributing to a collective perpetration of a direct harm and the accumulated negative effects of innocent actions to lie in that for the former there must be an independently identifiable wrongful action (albeit a negligent one), which individuals can intentionally support in various ways. With mere accumulated effects, even if individuals recognise and foresee the effect, there is no independently identifiable wrongful action to which they choose to contribute.

$^{15}$ (Meckled-Garcia, 2008, p. 258).
special form of cooperation, with its special goods and costs, and candidate regulative values need
to be appropriate for that form of cooperative activity. In fact it is the existence of that relationship,
that form of agency and authority that produces the need for the special moral principles we call
principles of social justice.

Principles of social justice, as I have characterised them, do not relate individuals directly to each
other. Rather, individual relationships are mediated through membership of the political community
and the agency of its institutions. Individuals must adhere to the distributively just decisions of
these public institutions, and they are not held individually accountable (and liable) for the
cumulative effects of their (innocent) actions on each other’s prospects. They are held accountable
for adhering to institutional requirements, as they have contribution responsibility, a form of
second-order responsibility. First-order responsibility, in this case agency responsibility, for social
justice falls on public institutions with assignment jurisdiction. Whether a person is or is not the
direct cause of another’s disadvantage is not the basis of her duty to contribute to institutional
measures in favour of social justice. This also distinguishes social justice from the morality of
interpersonal wrongs.

The possible harms and benefits we can individually, and directly, visit on each other need a
separate set of principles. These are the duties and responsibilities of inter-personal morality. I will
not go into the details of that category of moral principle here. However, a sub-category of
interpersonal duties has an important status. This regards potential wrongs that are serious enough,
or harmful enough, so as to justify intervention, and to make the perpetrator accountable to properly
constituted third parties for their actions. These types of wrong, which I shall call moral crimes for
brevity, are wrongs for which there is individual-to-community accountability: the relationship is
not mediated in the above sense. The principles identifying those wrongs constitute part of penal
justice theory. A just penal order will employ, in part, justified principles relating to what
constitutes a moral crime and what the public response to such crimes should be. What is important
for my purposes is that this is a field of moral judgement that is set apart from standards designed
for background adjustment. Penal justice tracks questions of individual accountability to the

16 The idea that justice is a mediated relationship is present both in Rawls (1995, ‘The Basic structure as subject’,
Lecture VII) and in Dworkin (e.g., 2011, pp. 327ff).
17 Accounts of some of these principles have been worked out clearly in distinction from social justice (Scanlon, 2000,
pp. 224-26, 295 ff).
18 Whilst this is a role for the category of moral crime, it is not a substantive theory of crime and/or punishment, as it
does not supply the full content of the relevant principle.
19 Other parts of penal justice deal with non-compliance with political authority. There is also that part of legal justice
relating to remedies for inter-personal harms, which will have its own principles.
political community, and the part of penal justice dealing with moral crimes tracks directed wrongs involving individual choices and intentions. Social justice, on the other hand, focuses on what institutions must do for citizens whether or not their interpersonal interactions constitute moral wrongs.

III Human Rights Standards and the Outcomes View

Given the above contrasting standards, what distinctive, non-redundant, role can human rights standards play? To establish whether competing theories of human rights are better or worse at identifying their content, extent and limits, we will first need to have a clear view of their distinctive normative point. Such standards may overlap to some extent with other standards, such as social justice, in some of the aims served, or interests advanced by following them. A distinctive point and purpose, however, must identity their role in terms of the agent, responsibility, goods and costs, and regulative values that define them in distinction from those other types of moral standard.

If it cannot be shown that there is a specific and distinctive role for human rights standards in these terms then, on the methodology I am proposing, there is no normative space for a distinctive concept at all. Human rights could just be a rhetorically useful term for standards already covered by social justice, whilst not actually being distinct morally standards (in terms of the dimensions I have identified). However, I am not aware of an argument showing that human rights standards must be a rhetorically useful repackaging of other standards, and nothing more.

Before looking at ways that human rights might differ from standards of social justice (candidate accounts of their special role), I need to consider an important objection to this project. This accepts that human rights and social justice, and other moral standards, might be different, but holds that we can establish what these standards are without first engaging in discussions about the dimensions I have mentioned, especially the agency dimension. This challenge is based on a common understanding of human rights, which I call the ‘Outcomes View’. It maintains that we can have clear human rights standards, and a clear concept of human rights as identifying core human goods without having to deal with the responsibility question up front. This view, which exists as an approach to social justice as well as an account of human rights, is concerned with valued outcomes for persons, and treats the other dimensions of principles as conceptually secondary. It can be summed up as follows

OV: Human rights standards, and their content, can be identified prior to, and
independently of, addressing the question of which types of agents have obligations and which types of obligations they have, with regard to the achievement of these standards.

Outcomes are not here restricted to objects, ‘fulfilled interests’, welfare goods, or simple states of affairs. An outcome on this view can include a state of affairs where ends or aims are protected if others adhere to a certain form of behaviour; where opportunities are secured; or where morally relevant values, like autonomy, are advanced. The important point is that the view defines human rights in terms of what final human good is advanced or protected, and how much, and seeks to differentiate the standards in this way. The responsibility element is taken to be consequential, flowing from the outcome aimed at. It is for that reason treated as conceptually secondary.

This means that outcomes views have a different order of justification from the approach to principles I sketched in section I. That approach looks at distinct human relationships in terms of the goods, costs and agents available within them, and then develops principles by proposing regulative values appropriate to those relationships. Applying the principles might lead to certain outcomes, but the duties the principle allocates are not justified by the outcomes but by a regulative value (such as reciprocity). Outcome theorists, whether it be in the field of human rights or social justice theory, aim to identify desirable outcomes independently from the specifics of any such relationship, including who the agent producing the outcomes might be, and look to justifying duties falling on types of agents after the ‘entitlements’ (outcomes) have been identified.

Much of the language used in contemporary political philosophy which refers to human rights as ‘protecting fundamental interests’ echoes this view, given that the justification of the protection (and who should do the protecting) is given in terms of the interests protected, and the responsibility question is taken to be conceptually secondary to the question of what people are ‘entitled’ to have protected.

Examples of this view are, as I have said, ubiquitous, but it is worth citing a few: Martha Nussbaum explicitly states that: “we can give a pretty clear and definite account of what all the world’s citizens should have, what their dignity entitles them to, prior to, and to some extent independently of, solving the difficult problem of assigning duties.”

Henry Shue, too, sees human rights as a goal “for everyone to enjoy everything they have a right to enjoy,” with the task of figuring out “how this

can be arranged and how to allocate the tasks involved” coming “next.”21 James Griffin, and James Nickel, both move rapidly from the value for persons of certain agency-enabling goods to this value grounding entitlements to those goods, and they do so in that order.22 If we interpret the interest theory of rights as holding that human rights are grounded in important interests and that these interests, and their importance, can be identified prior to having to settle the question of which obligations there are and who has them, then interest theory is a version of the outcomes view.23

The outcomes view is pervasive in the documents of the international human rights movement, manifested in claims that access to certain goods or outcomes constitutes fulfilment of a right and lack of access constitutes a human rights deficit: “Human rights are fulfilled when the persons involved enjoy secure access to the freedom or resource covered by the right”24 This goes hand in hand with a vocabulary of human rights as being “realised” or “fulfilled” through the presence of certain states of affairs and their absence constituting “a denial” (in the passive voice) of those rights.25 This vocabulary has been somewhat uncritically imported into ‘cosmopolitan’ literature on human rights. The outcomes view is also ubiquitous in the field of social justice theory. Nussbaum makes little distinction between a theory of social justice and her schedule of capacity-based ‘rights’, and does not incorporate a principle of obligation distribution in either case. There is also a large part of egalitarian theory that identifies social justice with the goal of ‘Equality’ or ‘Weighted beneficence’, without explicitly stating and justifying agency and responsibility scope for those goals.26 Responsibility is treated as derivative of those goals. In other words, these views treat justice as a set of aims, in the sense I described in section I above, and principles of justice as serving those aims. Similarly, those theorists whose view of global justice refers to actions that further or ‘promote’ ‘global egalitarian aims’ also articulate an outcomes view, given their view of justice begins from aims rather than specified agents and obligations.27

On this type of view, both the work of differentiating standards and the work of justifying the responsibility side of the equation must be done solely by reference to the valued outcomes in

21 (Shue, 1996, p 161).
23 (Raz, 1986, pp. 183-5).
25 For more of this ‘passive voice’ reference to human rights ‘denial’ (without a denier) in UN documents see Hunt, Osmani, and Nowak (2004, Sections 15, 29 and 45).
26 For G. A. Cohen (2008, pp. 7, 121, 122, 126, 136, 396, 395) just aims include “to enhance the position of the worst off” or achieve certain patterns of distribution, see. For Liam Murphy social morality is “based on some principle of beneficence. That is, on this view distributive justice is about benefiting people, increasing their well-being.” (Murphy, 1999, p 262).
27 (Barry & Valentini, 2009, p. 15).
question. This gives rise to deep problems for this view. I will now highlight three objections to the outcomes view that are of special pertinence to human rights theory, and which I think are decisive against it.

**Problem (i) Collapse into Social Justice Theory**

The view immediately threatens a collapse between human rights standards and social justice standards. As soon as we try to move from identifying valued outcomes to a justified distribution of these outcomes we face the question of costs. Securing outcomes for some will imply costs (in terms of these very same valued outcomes) for others. That means we will need a principle of distribution telling us how to weigh those goods and costs, and consequently how to distribute them. And without identifying a special agent, relationship or form of responsibility regulated by human rights standards, it would seem natural to appeal to cooperative values and principles, such as those of fairness, reciprocity or equal concern. That is, principles of justice in distribution: principles of social justice. Without assigning some special point to human rights standards, reflected in appeal to some special regulative value pointing to a distribution that is different in kind from that of social justice, we would seem to be replicating its work. There is nothing in the character or nature of valued outcomes themselves that prevents that collapse.

Of course, outcomes theorists can reply that they are only interested in a special set of values when talking about human rights. These are values that are fundamental, or key, or most important to the living of a ‘minimally decent’ life, or ‘basic’ goods, or interests that are ‘so important’ that they can generate duties for others (meaning, I guess, they can play a role in the justification of such duties). However, this does not fix the problem. The value of an outcome good alone is never a sufficient basis for establishing what others must do. There is nothing in the mere importance or goodness of an outcome for a person that has action-guidance built into it. At least not if we accept the DA, because the costs associated with the bringing about the outcome will always introduce the question of fairness in distributing these costs and goods. Once those questions are introduced, how much access to necessary goods people have will depend on how we weight those goods against relevant costs, and how we do that requires appeal to a relevant regulative value. If there is no other reason to think that the regulative values of social justice miss something in this case, then the

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28 Onora O’Neill criticises theories that emphasise rights rather than obligations, yet her account of obligations, and her critique, focuses on the capacity of agents to contribute to justice as a goal or aim. This makes her an outcomes theorist (viz. O’Neill, 2001, pp. 192-4). That is, whilst she challenges an over-emphasis on rights over duties, her challenge is not to the definition of human rights in the outcomes view.

importance of the goods in question will not hold off human rights standards collapsing into those of social justice. Furthermore, without appeal to a different type of regulative value, there is no reason why the human good underlying appeals to these interests should be restricted to a minimum threshold of any kind, rather than expanding to whatever distribution is consistent with a reasonable distribution of costs according to some cooperative value—i.e., standards of social justice.

Consider a basic good for persons, like that of life. The outcomes associated with this good will coincide with differing costs for others. In some instances, these will simply be the opportunity costs associated with avoidance of harm, but in other instances they will involve the costs of protection, of institution building, of improving the conditions and even the quality of life. How far should these enhancements go, and what is a reasonable balance of costs against them? Even common and garden policy decisions, such as whether to increase or decrease the highway speed limit or numbers of hospitals, will affect this good (viz. numbers of accidents, numbers of lives that could have been saved/improved), so what principle directs us on how to weigh those effects against other costs such as transport efficiency, or directing resources into university education? To say that there is a minimal or minimum set of entitlements that we should aim for, for all persons, whilst citing a value like the ‘minimally decent life’, does not convert this value from an aim into a principle, because it does not tell us how much cost must be borne by others, and by which others, to secure the aim. Without appealing to a regulative value beyond the value of life for persons there is no determinate moral answer to that question. Without appeal to a distinctive domain with its agents, types of goods and costs, and necessarily distinct regulative value nothing separates these matters from those matters dealt with by the values defining social justice.

Some theorists attribute a special or central role to certain individualisable values, such as autonomy, ‘personhood’, agency, or dignity.\(^30\) The idea is that these values must be capable of generating special reasons for others to act, and it is the centrality of these reasons that sets human rights standards aside from more general considerations of fairness. But again, both the protection and advancement of autonomy has associated costs, and an account of how much autonomy should be advanced requires of us an account of what costs can be imposed.\(^31\) That in itself requires an account of how much is too much or for that matter enough. The values of autonomy or agency do not by themselves tell us how much must be given up by some to secure these for others. To know that would be to be in possession of a regulative value that tells us how to weigh these goods against

\(^{30}\) Griffin, op cit., p. 33 ff.; Gewirth, 1996, pp. 13 ff.).

\(^{31}\) Griffin brands these conceptual problems matters of “practicality” and implementation (op cit. pp. 37 ff.), which identifies him straightforwardly as an outcomes theorist.
their associated costs.

The natural option, in lieu of a special regulative value, is once again to appeal to those regulative values associated with distributive justice, such as fairness and equal concern. And indeed, justice theorists do incorporate these special values into their theories of just distribution. The liberty element in justice theories is indeed given a special role in liberal theories, but this is still in function of distributive cooperative values such as fairness and equal concern. Basic liberties work to secure citizens as free and equal participants, so that they may be part of a fair scheme without fear of political moves to undermine their citizenship status and participation. Furthermore, citizens are guaranteed a system of equal basic liberties rather than an absolute amount, with an eye always on securing their position as free and equal in the scheme. The entitlements available to individuals under such a scheme will be open to expansion as the distributive values dictate (the more basic liberties that are compatible with everyone having an equal scheme, the more the values license). For example, how many participatory rights a person has will depend on what fair distribution of rights is possible, and that could expand beyond minimal rights and include rights to resources for communication and participation. So, even appeal to key individualisable values can be accommodated into the special structure of a theory of social justice. That appeal cannot, then, furnish us with a distinctive role for human rights standards.

Perhaps the idea is that human rights are a ‘special subset’ of these liberal rights. However, there would need to be a justification for treating a subset differently: a notion of special importance beyond their role in a fair scheme of distribution. Otherwise they cannot be prevented from expanding to the full list of liberal rights, and for that matter to encompass all the requirements of liberal distributive justice more generally. Both elements of liberal justice are after all explained by the same values. Conceptions of special or important goods, then, are missing an important ingredient if they are to set aside a special and privileged set of entitlements we can call human rights. They are missing an account of a distinctive role and a correspondingly distinctive regulative value to explain and justify different types of moral obligations to those of justice, with a different point. Focus on outcomes alone, and consequently on fair costs, prompts a collapse into distributive justice.

33 On Rawls’ view, “No basic liberty is absolute...It is the whole scheme of basic liberties that has priority.” (Ibid. p. 104); The equal basic liberties are defined in terms of their role in securing the powers of citizens as free and equal, an expansion of liberty wider than this is not warranted (Ibid. pp. 111 ff.).
Problem (ii) Failure to distinguish goods-for-persons from regulative values

One explanation for the adoption of an outcomes view is a failure to distinguish values for persons from regulative values. As I have said, identifying important human goods might seem to be sufficient to identify moral standards but ignores the question of costs, and how these are to be weighed against the outcome values. Once we introduce the cost question, it becomes clear that we need a different order of values, which I have called regulative values, to direct us in weighing goods-for-persons against costs for persons and in assigning obligations to take them on.

Recognising the conceptual need for this distinct category of value raises a further question. That is whether different types of regulative value might distribute obligations for different types of relationship. Even where similar outcomes are sought or produced, these might be at the service of different principles in that sense. So, a person might offer assistance to another as an expression of an imperfect duty of interpersonal morality, whilst a requirement of social justice might require a government officer to offer assistance to a citizen because that satisfies a perfect duty of distributive impartiality. Different types of moral principle may overlap on similar outcomes. It is, however, the existence of different regulative values (and the principle-dimensions to which they are appropriate) that makes it possible to say that different principles are separated by something other than their consequences.

Any theory of human rights, then, needs to do more than state which goods-for-persons are dealt with by such a theory. It needs to supply a persuasive account of a distinctive regulative value. That requires an account of appropriateness: which special goods, costs, agency and responsibility, this distinctive regulative value appropriately governs. Merely identifying important types of outcomes, on the other hand, does not identify what is distinctive about human rights standards.

Problem (iii) Inability to integrate responsibility theory

As I have said, outcomes views take the question of responsibility to be conceptually secondary to that of identifying entitlements and aims. Before showing that this is deeply problematic, I should be more precise about what it means. The idea that one can specify human rights standards without having to specify responsibilities can be interpreted to mean any one of the following:

a. X’s entitlement to outcome O correlates with an imperfect duty on the part of other agents to contribute to supplying X with O.

b. X’s entitlement to outcome O correlates with the responsibility of specified types of agent
to supply O, but does not necessarily identify a specific person (which could only be identified by supplying some additional contextual premises)

c. X’s entitlement to O implies and highlights a set of reasons that can underpin obligations for others, depending on other morally relevant premises (context and capacity)

d. X is entitled to enjoy outcome O does not, conceptually, imply anything about who should provide O (in the absence of a theory of responsibility, as well as practical considerations)

e. X is entitled to enjoy outcome O means there is a reason for someone to enjoy O, but not the kind of reason that also implies an obligation for someone to supply O

Neither (a) nor (b) are outcomes views. Principles imposing imperfect obligations give special discretion in the performance of duties, whilst nevertheless identifying agents to whom the duties apply.\(^{35}\) Similarly, if human rights principles explicitly assign obligations to a type of agent, and that assignment is justified by something other than outcomes, then responsibility is not conceptually secondary to identifying human rights in (b). That is because an account of human rights which justifies a type of agent having responsibility must explain why it is acceptable that these costs fall on them. This means some regulative value is involved beyond the desirability of the outcome, a value such as fairness or a form of respect.

Position (e) is an outcomes view but inert as it cannot assign any obligations based on human rights standards. Certainly it cannot guide action in the absence of a regulative value that directs how to balance these reasons against others, such as costs. Whilst I think many theorists have stated positions that sound like (d), I do not think they would be content with such an inert view of human rights. The point of talking of an entitlement in the first place is because it can play a role in guiding actions and judgements and defines accountability.

If the additional premises mentioned in position (c) include an account of responsibility, then (c) and (d) are equivalent.\(^{36}\) They imply that we can offer a theory of responsibility, explained by additional moral premises, but that this is distinct from the theory of human rights. So this would

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35 The UNDP, claiming inspiration from Sen, confuses discretion on performance of duty with non-specificity as to the duty-bearers (UNDP, 2000, pp. 25-26).
36 Sen seems to imply this kind of view, and implies capacity (being “in a position to help...”) is the basis for responsibility (Sen, 2004, p. 319).
seem to be an outcomes view proper. A number of theorists have tried to supplement human rights theory with responsibility theory, which seems to imply that they accept a conceptual independence between the two: human rights can be identified without having to identify responsible agents; the latter work can be done after we identify the entitlements.

Three accounts come to mind. Firstly, the you-break-you-pay (YBYP) model, for which contributing causally towards a loss gives rise to an obligation to repair for that loss (to the degree one has contributed to it).\(^\text{37}\) Secondly, there is the Capacity model, where any agent’s capacity to affect outcomes for a person implies responsibility (to the extent of one’s capacity) for those outcomes.\(^\text{38}\) Thirdly, we have the best-placed-at-least-cost (BPLC) model, where the agent best placed to secure the outcome, at the least cost, has the central responsibility to secure it.\(^\text{39}\)

Each of these views purports to give an account of who should supply the ‘content’ of human rights (the relevant outcomes) separately from the (prior) account of the outcomes the right holders are entitled to have. Yet this is also their central fault. That would imply the content of agent responsibilities, whosoever the theory may tell us is the relevant agent, was settled. To identify those who must take on producing the required outcomes, or best placed at least cost to bring about those required outcomes means we must have an account of what counts as a genuine loss or a required outcome. That is, we need a notion of legitimate and illegitimate losses for persons to suffer according to human rights standards—what constitutes a human rights loss for which an agent can be held responsible. That in turn needs an account of what goods persons should have and what costs people should bear for them to have those goods. For any person, say, Paul, what he is entitled to depends on an account of how to weigh a gain for him against the cost to, say, Peter, of securing that gain. Paul’s loss is only a genuine human rights loss when he is entitled to Peter bearing a cost he has failed to bear, which in turn implies a principle for weighing goods and costs that obliges Peter to bear such costs. A clear idea of what Paul is entitled to, then, requires such a principle that thereby integrates responsibility. Responsibility must be an integral part of the same account as the account of human rights standards themselves. After all, whom it is that secures any aim will make a difference to the goods and costs balance. The only way to integrate this is with an account of the appropriate regulative value, which tells us how to weigh and distribute obligations in human rights standards. The BPLC model cannot, in other words, treat human rights standards as a ‘black box’, unaffected by choice of agent for these standards.

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37 E.g., Christian Barry (2005a; 2005b).
39 See Wenar (2007).
Similarly, the YBYP model suffers from the problem of defining what duties an agent has before assigning to them responsibility for other agents’ outcomes. As I have said above, that means we need a principle telling us how to weigh costs and benefits, in the assignment of obligations to specified types of agent.\textsuperscript{40} To appeal to the model of causal responsibility present in the YBYP view foregoes that work and so foregoes explaining exactly for which outcomes one should be responsible. Again, given the costs of responsibility, it too will need to be integrated into the account of how to weigh costs and benefits, rather than being settled after the fact. The same is true of views that try to base responsibility on capacity, as they must first identify what exactly what Paul should have before asking if Peter is capable of supplying or securing it. But once again, that means considering how to weigh goods-for-persons against costs for persons, a matter that would no doubt integrate capacity, but among other considerations. Again this means having a principle for human rights standards that integrates responsibilities when indicating to us how to weigh goods and costs.

Any principle telling us how to weigh goods and costs will also need to tell us what kind of goods and costs are in question, and for whom. In identifying a relevant agent for a principle a case must be made that this agent is appropriate. That case cannot be made solely on the basis of this agent being best placed, or capable of supplying certain outcomes. The outcomes that must be provided are an output of a principle, not a condition on designing it. There are considerations of agent-specific costs. Some types of agents will have other moral responsibilities and legitimate ends, which must be taken into account as types of costs, when determining whether these are appropriate agents for a given principle. Elsewhere I have argued that making individuals responsible for the continual background adjustments associated with social justice undermines their ability to fulfil other moral responsibilities and self-regarding imperatives, such as familial and friendship responsibilities and developing a plan of life.\textsuperscript{41} These considerations too need to be integrated into a principle with a regulative value appropriate to them.

In summary, outcomes views fail to distinguish human rights standards from other moral standards, such as those of social justice, to warrant a separate concept. They also fail to distinguish values for persons from regulative values, and even identify human rights standards with values for persons. If human rights are indeed a distinct set of standards then we need a distinctive regulative value and

\textsuperscript{40} For a similar, and I think definitive, rejection of Barry’s YBYP view, see (Montero, 2008, pp. 612–620 and Montero, 2009, 79-92).
\textsuperscript{41} (Meckled-Garcia, 2008, pp. 253-5).
sphere of application for them, not simply a set of valued outcomes. Additionally, outcomes views imply adding a separate account of responsibility, separate from the human rights standards themselves. Yet, questions of responsibility and agency cannot be kept separate from defining human rights, given the definition must tell us how to weigh goods and costs against each other and which agents should carry the costs as obligations. A genuine answer to these questions calls for an account of a specific and distinctive role for human rights standards, and a regulative value appropriate to this role.

IV A Distinctive Role for Human Rights Standards?
If we reject the outcomes approach both for human rights and for social justice, we are left with one important desideratum for a successful theory of human rights. Such a theory would have to show how human rights principles make a distinctive contribution to practical reason, fulfilling a special and valuable role not covered by recognisable types of principle, such as those of social justice. It must show how they fill a considerable moral gap, or blind spot, in our practical reason.

We can, then, reinterpret many accounts of human rights as trying to identify just such a special role, and judge their adequacy in terms of their ability to supply an account of this special role. There are at least three of these present in Rawls’ law of peoples: human rights as those commitments that a wide consensus of political communities can accept without having to accept the philosophical prerequisites of liberalism; human rights as setting the limits to international toleration, the violation of which can permit some form of intervention; and human rights as those standards which indicate when a society is a genuine political community (a ‘people’) rather than held together purely by violence and coercion. The latter is similar to Dworkin’s account of human rights as standards by which we can judge whether the actions of a political order represent a good faith, even if erroneous, attempt to show equal concern towards its citizens.

It is important to add a caveat here that speaks against some ‘special role’ views that have come to be called ‘political views’ of human rights. Any candidate role for human rights standards needs to show this role to be the intrinsic point of having such a standard rather than an extrinsic role they might also play. Intrinsic here means a role that guides and justifies our choice of the dimensions of human rights principles. The political view takes human rights to be those entitlements that when violated permit an international response. Yet this already assumes there are such entitlements and

43 (Dworkin, 2008, p.35 and 2011, pp. 335 ff).
that they are justified as entitlements and simply adds that their violation can justify intervention. It implies that we have two overlapping standards: those defining the violation of an entitlement (presumably as a wrong), and those defining when the violation of an entitlement justifies intervention. The existence of the first type implies there is a role for this type of entitlement (defining unacceptable behaviour, ‘violations’, by states towards citizens) that is independent from setting thresholds for justified intervention. In fact it would make no sense to set the threshold of intervention at any level whatsoever unless there was this prior rationale for having the standards in the first place. That rationale needs to be intrinsic to the account of human rights whilst the intervention-permitting rationale is extrinsic: it does not tell us why human rights principles have the dimensions they have. Such extrinsic accounts, then, are not really accounts of human rights standards, only of a collateral role that human rights standards might serve.

Of course, one could hold that the intrinsic role of these rights is to define when an international response is appropriate, and that this shapes their content: the dimensions of the principles in question. But why would one hold that there should be an international response relating to the violation of a standard if one did not also hold that it is important for states to uphold those standards in the first place? Without an account of what value is served by specifically individual-focused standards any set of standards could potentially play that role, including those associated with inter-state aggression, undermining international peace and security and piracy. There are reasonable rationales for all of these items in terms of what can be tolerated in international relations. There are other roles too, which are worthy at the international level, and which define legitimate international responses, such as standards helping states establish cooperative agreements (e.g., *pacta sunt servanda*), or principles for adjudicating disputes on states’ obligations under such agreements. A theorist proposing this response to the distinctiveness question for human rights standards would, then, still owe us an account of the distinguishing special role human rights standards are meant to play at the international level, which sets them aside from this list.

A current alternative to ‘political views’ are those views described as ‘naturalistic’, in that they abstract away from specific political roles for human rights identifying them roughly with some contemporary equivalent of natural rights. These are distinguished by their scope: moral rights possessed by human persons as such. Some theorists add that the scope is wide on the responsibility side too; the corresponding responsibilities must apply to all. Whichever version of the scope

44 Cf. the international set of norms known as *jus cogens*.
definition one adopts, the problem with this kind of view is its absence of a rationale for this
categorical definition. The virtue of having such a separate standard cannot lie simply in its wide
reach. It must lie in some conviction that such a wide reaching standard is needed to make up for
judgements otherwise unavailable. Yet that story needs to be told: in addition to the duties of equal
concern owed to citizens by public institutions, and the duties of individuals not to commit moral
cri mes against other persons (for which they can be publicly held to account), and the duties
emerging from private interpersonal relationships (promise-based obligations, contractual-duties,
imperfect duties of assistance, perfect duties of humaneness, partial obligations of friendship and
familial responsibilities), and other special, practitioner-focused duties such as those of medical
ethics, what extra and necessary role could human rights standards play? My impression is that
most naturalistic theories are straightforwardly outcomes views, and so have no notion of a special
role for human rights aside from identifying favoured outcomes.

**Rescuing human rights**

To rescue human rights as a moral category, then, means identifying a specific intrinsic role for
these standards. Are there distinctive goods and costs and forms of agency not fully captured by
social justice standards or other types of standards such as those of penal justice? I do not aim to
give a full answer to that question here, which requires a separate exposition of a positive theory of
human rights. However, we can identify some features by using social justice and penal justice as
relevant contrasts. As I have proposed, what gives social justice its specific point in moral theory is
the existence of a special type of agent, with the power to assign rights and duties to a specific
group of persons, thereby adjusting the distribution of socially available goods and costs. The
relationship here is between the authoritative institutions of the political community and individual
citizen members. Accountability runs from institutions to citizens. Principles for penal justice
regulate the accountability of individuals to the political community for transgressions and
interpersonal principles, including those of promise keeping, refraining from harms, and remedying
damages, identify standards between private persons as such.

Public institutions are accountable to citizens for failings as agencies of social justice. Non-
members, or those who have been excluded from the political community, cannot appeal to these
standards of moral accountability. And whilst there are ways that state agents can act which are
covered by criminal responsibility, such as corruption, murder and theft, there are transgressions not
fully addressed as individual wrongs. Consider cases where the perpetration of a wrong involves not
only the action of individuals but also the assignment jurisdiction of a public authority. That is, a
wrong is directed by a publicly constituted authority, sanctioned by constitutional or legislative power. In these cases the wrong is perpetrated by and through the powers of the constituted authority. Individuals involved in perpetrating that wrong will be liable for moral crimes. However, appeal to this type of accountability alone will miss the liability of the offices and institutional provisions making such transgressions possible. That is, by focusing on individual punishment alone, we will be missing a form of corporate responsibility for the actions of political authority. There is a difference between prosecuting every individual in a chain of command, and responding to nefarious legislation and governance institutions that make that chain possible. The special role of human rights standards can be seen as standards specifically designed to hold political institutions and public actions, rather than individuals and private actions, to account, and for that accountability to be to individual persons as such.

Let us call a person’s ability to obtain accountability from a set of political institutions for the character of their actions towards that person, ‘public remedy’. The role of public remedy is to have standards for individuals, as individual persons, to hold public authorities to account, rather than as citizens or members of the demos. This relationship between individuals and state power applies irrespective of whether the individual is a citizen or not, and it serves a special purpose: it regulates the behaviour of public orders towards individuals as such.

Necessarily this form of accountability must deal with direct wrongs perpetrated by and through the use of political authority (whether wrongs as actions or purposeful omissions). That distinguishes this form of accountability from the subject matter of social justice. The latter, I proposed, is concerned with background-adjustment for the accumulated effects of innocent actions. It is also focused on the goods and costs of cooperation. A distinctive role for human rights standards, then, would not focus on the fair distribution of cooperative goods and costs amongst co-operators. Nor would it focus on an appropriate cooperative regulative value, such as reciprocity. Instead it would focus on wrongs that can be perpetrated against a person by public bodies as such, irrespective of whether she is in a reciprocal relationship with the political community in question.

The need for such standards is highlighted in cases where the institutions of a political community intentionally wrong non-members, or members not fully participating in a social justice scheme (such as convicted felons), but it is not limited to those cases. Where states devise policies purposefully undermining individual lives for political ends, whether by torture or starvation, we need a standard of wrong and accountability in addition to standards of social justice.
Accountability here can be to a community for failings in distributive justice and moral crimes. But the political wrong has an additional element, not fully picked out as a failure to assign rights and duties in a fair way across members of the political community, or as violating the liberties necessary to be a free and equal participating member of scheme of cooperation, or as intentional private acts of harm (though it may overlap with all those types of wrongs). The additional wrong is the public wrong of institutions and authorities acting as instruments of harm to persons. When assignment jurisdiction is used in this way, irrespective of whether those people are citizens, persons without the full rights of citizens (such as criminals), or far away foreigners, we have a particular sort of wrong. Institutions which permit and authorise political decisions, and their accompanying assignment of rights and duties, which include the intent to harm or undermine, or treat negligently, commit these particular wrongs. They must be accountable for those actions, as institutions. In this sense human rights can identify intrinsically political wrongs and full accountability must reflect that intrinsically political nature of these wrongs.

Whilst this is the beginning of an account of a special role for human rights, it is not a substantive theory. A full theory would have to specify which kinds of political action constitute a wrong for which public authorities should be accountable towards individuals as such. After all, this cannot be just any action causing or contributing to just any disadvantage for a person—that would not allow enough of a contrast with other standards. The central question for a substantive account of human rights standards would be what constitutes a breach of duty on the part of a political authority towards individual persons as such. To answer that we would need to identify a regulative value that tells us the obligations of states in this case. All I have wanted to do here is lay out the conceptual work identifying a distinctive role for those moral standards.

Just to give some substance to how such a view might proceed, I will briefly describe one view, without developing or defending it here. This is that the regulative value in question is a special form of respect—respect for human integrity. This is the sovereignty of individuals over the exercise of their capacity to adhere to their life concerns in the face of political action. That form of respect requires something less that commitment to maximising the advancement of personal autonomy, but something more than the mere avoidance of moral crimes. It is a specifically political value focusing on attempts to arrogate sovereignty over people’s capacity to adhere to claims and aims (whether these be to persons in relationships, to habits, or to moral ideals). When political authority is exercised over this faculty, when it seeks to decide what persons can and cannot be attached to, what they can and cannot be in that sense, then we have a special form of disrespect.
That is not as rich an idea as the notion of autonomy, as it does not require that attachment be rational or informed or free of prejudice and dogma. Nor does this notion imply the faculty of attachment is a value that should be advanced and expanded in any way. The regulative value is not the pursuit of attachment, which would be an outcomes view, but rather respect for individuals’ sovereignty over this faculty in a way that can only be shown by political institutions. The exercise of political authority means that unlike a moral crime, where murder is just murder, assigning obligations to state actors to murder implies a claim of political sovereignty over the victim’s faculty of attachment (in this case to expunge it). This kind of disrespect—disrespect for human integrity—is not limited to justifying ‘civil and political’ or ‘liberty’ type rights alone. Public authorities can use access to goods and services, discriminatory behaviour, the alteration of status, and other actions beyond violence and coercion, in attempts to arrogate sovereignty over person’s faculty of attachment. Finally, political accountability in relation to the faculty of attachment focuses neither on capacity nor exercise, but rather on sovereignty: do state policies and actions work in ways that imply a claim of sovereignty over this faculty? Public respect, in this regard, is not an outcome but a relationship, in which the primary agent, the political authority, is accountable to individual persons for its exercising its authority and whether this is done in a attempt to arrogate sovereignty over individual’s faculty of attachment.

However, this is just one account, and my main work in this paper has been to propose proper terms on which competing accounts should compete. Even leaving aside the work of setting out a substantive theory of human rights, there is a great deal we can say conceptually, having proposed a special role for them. Firstly, we can say that these standards do not focus on cooperative relationships, and the goods available within them. For that reason, their basis could not be a cooperative value, such as reciprocity. Certainly, reciprocity implies that benefits from a scheme depend on contributing to that scheme in some way. This is clearly the sphere of morality covered by social justice. A key role for human rights standards, then, would be to regulate non-cooperative relationships, even between persons who are otherwise in cooperative relationships. That is why they can extend beyond membership of a political community, and beyond questions of consent and contract. Political authorities are charged with background adjustment (adjustment for the accumulated effects of innocent actions), and accountable to the political community for their assignments of rights and duties, there is a question as to the absolute (non-relational) obligations owed to persons: obligations which, when breached, can be said to be direct wrongs. And we can add to this, that whilst punitive justice deals with moral crimes against person and personal accountability to the political community, there is a question as to what standards of accountability
cover the actions of public authorities towards persons. A role for human rights, in summary, is that they give us moral standards for regulating relationships between public authorities and individuals as such. They are the standards wherein individuals can hold public authorities accountable for breaches of duty towards them (public remedy), and the duties they identify are not aimed at background adjustment, cooperative values for members, or individual accountability. In short they are the standards describing the accountability of public bodies to all persons.

**Conclusion and international law**

As I asserted at the beginning of this paper, the moral standard one chooses when judging a given action matters very much, because different standards direct us to different types of agent, goods and costs, types of duty and concomitant forms of accountability. That is a difference in practical reason. Who we identify, and how we identify them as committing a wrong, is in the balance. That is, unless one holds an outcomes view, and I hope to have shown that is not an advisable view to hold. I have sought to highlight what it would mean for human rights to be a distinctive category of moral standard. The field of international human rights law and campaigning is dominated by unreflective adoption of the outcomes view, a tendency partly resulting from a diminished understanding of the importance of social justice. Running together human rights and social justice standards not only blurs their distinctive features, it diminishes their distinctive contributions to our moral repertoire. By reinstating a distinctive role for human rights, then, we would be doing an additional service: reinstating the distinctive moral importance and value of social justice.

**Reference List:**


