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## **Beyond Claim-Rights: Social Structure, Collectivization, and Human Rights**

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### **1. Introduction**

The Universal Declaration of Human Rights identifies a range of requirements that its authors agreed should be met for every human, out of respect for their inherent dignity (United Nations General Assembly 1948). Since the Declaration, the term “human right” has been used to identify particularly significant, normative requirements of universal concern that should be met for individuals everywhere, which should take priority over most other moral and political concerns. Yet many philosophical accounts of the concept of a “right” struggle to accommodate all of the requirements identified in the Declaration. These accounts take human rights to be Hohfeldian claim-rights: claims to action or omission owed by some agent (or agents) to the right holder, such that the fulfillment of the correlative duty (or duties) constitutes the fulfillment of the right (Hohfeld 1913, 32; O’Neill 2005, 430, Cruft 2012, 137, Collins 2016, 701). When understood to be interpersonal claim-rights, the difficulty comes in identifying which persons have the correlative duties (O’Neill 2005), whereas when understood to be claim-rights held by each individual against their own government, the problem is that many governments lack the ability to fulfill all of these claims for all of their residents (Cranston 1983).

In response to these difficulties, this paper argues that human rights should not be understood to be Hohfeldian claim-rights (Hohfeld 1913) and instead proposes the adoption of an account of the concept that does not tie these rights *directly* to duties owed to the rights holder. According to this account, recognizing certain requirements to be a matter of human rights entails two things. First, that the importance of the individual interests that these requirements protect is sufficient to justify governing agencies prioritizing the social guarantee of these standards over most other concerns. Second, that the importance of meeting these standards equally for every contemporary person is sufficient to justify weighty pro-tanto duties on all moral agents to make considerable efforts to achieve and maintain a sociopolitical order in which they are socially guaranteed for everyone.<sup>1</sup> It is noted that such an approach can include social structural standards as human rights requirements: recognizing a subset of the requirements of structural

justice that are of particular moral significance, warrant universal concern, take relative priority, and should be socially guaranteed equally for individuals everywhere due to their inherent dignity.

The paper makes two points in favor of this understanding of human rights over Hohfeldian claim-right approaches. First, the approach recommended here can include all of the human rights recognized in the Declaration and thus does a better job of reflecting how the term is used in contemporary times. Second, the account does not lead to the exclusion of human rights that it will take collectivization to achieve for all humans in contemporary times.<sup>2</sup> Thus, the account proposed here avoids restricting what can be recognized as a particularly significant, normative requirement of universal concern that should be socially guaranteed for individuals everywhere, and which should take relative priority over most other concerns (the role that human rights have come to play in contemporary discourse) on the basis of what can currently be achieved for every contemporary human without the development of new agencies.

The paper challenges those who favor a Hohfeldian claim-right approach to human rights to take up one of the following options. First option: adapt their account so as to be able to recognize important individualistically justified priorities of justice that at present require collectivization to be fulfilled for all contemporary humans. Second option: come up with a justification for the prioritization of the individualistically justified requirements of justice their accounts do recognize over basic requirements of social justice, that should be secured for individuals everywhere, that currently require collectivization to be achieved for every contemporary human.

### *1.1. Preliminaries*

This paper considers how the concept of a human right should be understood: what it means to claim that something is a human right and what role these claims should play in normative reasoning. The grounds on which something can be established to be a human right are deliberately left open: the paper does not seek to explain the form that a justification of a human right must take.<sup>3</sup>

It is human rights as moral rights rather than legal rights that this paper is concerned with. The Universal Declaration is interpreted as aiming to identify pre-existing moral rights that are not dependent on a particular legal convention for their validity (in keeping with Raz 2010; Collins 2016).

The criteria used to evaluate the concept of a human right in this paper will now be given. The aim of this paper is to come up with a morally appealing concept that can make sense of the Declaration and contemporary discourse, hence *fidelity* is identified as a virtue. However, this does not exclude the possibility that a philosophical conceptualization of the concept of a “human right” can require some reform of how the term is currently used (following Tasioulas 2012). In addition, an account of the concept must be *consistent* (not internally contradictory) and *morally plausible* (must give intuitive rulings with regard to what constitutes the violation of a human right, and so on). Finally, the concept must have some valuable role to play in our normative discourse and social practices (*utility*).

## 1.2. Structure

The paper begins by offering evidence that the term “human right” is currently used to identify particularly significant, normative requirements of universal concern that should be met for individuals everywhere, and which should take priority over most other moral and political concerns. It then outlines how, in philosophical literature, human rights are often taken to be universal Hohfeldian claim-rights. Sections 4 and 5 outline interpersonal and governmental Hohfeldian claim-right accounts of the concept, respectively, and note the difficulties they face in recognizing all of the human rights identified in the Declaration.

Sections 2-5 together argue that, given the current usage of the term, accepting either of these Hohfeldian claim-right accounts results in the restriction of the list of particularly significant, normative requirements of universal concern that should be met for individuals everywhere (out of respect for their inherent dignity), which should take priority over most other moral and political concerns. These sections suggest that if having adequately specifiable correlative duties—the fulfillment of which constitutes the fulfillment of the right—is an existence condition for a human right (as the Hohfeldian Claim-Right account suggests), we must reject a large number of the human rights listed in the Declaration and Covenants.<sup>45</sup>

In response to this problem, it is then proposed that instead of rejecting many of the human rights currently recognized (as O’Neill 2005 recommends) the idea that human rights must be Hohfeldian claim-rights should be rejected (contra Cranston, O’Neill, Tomalty, Cruft and Collins). The paper then suggests that we understand human rights to be particularly significant, individualistically justified, requirements of justice which take priority over most other normative concerns. According to this account, stating that meeting these standards is a matter of human rights involves two claims. First, it means that the significance of the interests that these requirements protect for every contemporary human is sufficient to justify governing agents prioritizing the social guarantee of these standards for everyone. Second, that meeting these requirements for every contemporary person is important enough to justify demanding that other moral agents make considerable efforts to secure and maintain a sociopolitical order in which these standards are socially guaranteed.<sup>6</sup>

It is then noted that such an understanding allows us to include as human rights, standards that currently require coordinated action to be achieved for all contemporary humans. It is pointed out that the proposed account is not limited (in the recognition of what individuals should have as a matter of human rights) by the abilities of existing agents acting unilaterally. However, it is noted that it is restricted by what existing agents can be reasonably expected to achieve through coordination and collectivization in the medium term. It is then pointed out that the proposed account can include social structural requirements within human rights: recognizing a subset of demands of social structural justice that are of particular significance, are of universal concern, that should be met equally for individuals everywhere and should take priority over most other moral concerns.<sup>7</sup>

The relationship between human rights and duties is then explained before the account is defended from objections.

## 2. Human Rights Discourse

The Universal Declaration of Human Rights states that the “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,” and that “it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.” This implies a need to secure human rights through law and links the denial of human rights to extreme forms of injustice. The NGO Amnesty International takes its central mission to be “campaigning for a world where human rights are enjoyed by all,” in focusing their humanitarian efforts around working toward the universal fulfillment of these rights they recognize the importance and priority of these rights (2015; 2017).<sup>8</sup>

Article 2 of the Declaration states that “everyone is entitled to all the rights and freedoms set forth in the Declaration without distinction of any kind,” and notes that the nationality and jurisdiction in which an individual resides cannot be used to exclude them from having equal rights. This point is reiterated by the Commissioner’s office describing human rights as rights “that all are equally entitled to without discrimination” (United Nations Human Rights Office of the High Commissioner 1996–2020). Later in the Declaration, Article 28 outlines that everyone is entitled to a “social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

Article 29 specifies that “in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society,” implying that human rights are of relative priority: that they should only give way to other human rights or other extremely weighty common moral concerns (United Nations General Assembly 1948).

This suggests that human rights are understood by the Declaration’s authors, international governance agencies and NGOS to be particularly significant requirements of justice, of universal concern, that should be fulfilled for individuals everywhere without discrimination, as a matter of inherent dignity, that take relative priority over other normative requirements, and should be protected by law.

## 3. Hohfeldian Claim-Rights

Many philosophical accounts of human rights take them to be Hohfeldian claim-rights: claims to action or omission owed by some agent (or agents) to the right holder, such that the fulfillment of the correlative duty (or duties) constitutes

the fulfillment of the right (O'Neill 2005, 430, Cruft 2012, 137, Collins 2016, 701). This means that "whenever a claim-right is invaded a duty has been violated" (Hohfeld 1913, 32). In the sections that follow, two possible versions of the Hohfeldian claim-right approach to human rights are discussed. The first account (discussed in Section 2.2) identifies human rights as interpersonal claim-rights that correlate with duties for other individuals. The second account (discussed in Section 2.3) identifies human rights as claims that state governments must fulfill. These sections show how both accounts have difficulties accommodating the full set of rights recognized in the Declaration.

#### **4. Interpersonal Accounts**

Interpersonal accounts take human rights to be a subset of interpersonal moral claim-rights that are defined by some aspects of their nature. They recognize the primary correlative duties with regard to these rights as falling on other individuals. According to this approach, human rights are claims that every individual can make which correlate with duties that are owed to that individual by other individuals. Interpersonal accounts typically recognize governments as having secondary duties to enforce the primary duties that correlate with rights (O'Neill 2005). This approach is known as traditional when it is coupled with the idea that what justifies these rights is some empirical fact or facts about humans or humanity (Tasioulas 2012).<sup>9</sup>

The following section identifies how interpersonal accounts restrict what can be recognized as being a human right in such a way as to exclude many of the rights identified in the Universal Declaration, and thus fail to reflect practice. It then argues that this approach, in combination with the way the contemporary discourse understands the term, leads to the prioritization of some requirements of justice over others.

##### **4.1. Problem**

Interpersonal accounts can easily recognize human rights that correlate with negative duties to refrain from taking action, such as rights to be free from slavery, torture, and religious persecution, which correlate with universal negative duties not to keep slaves, torture, or persecute based on religion. Broader interpersonal models can also recognize human rights that correlate with positive duties to take action, as long as it is clear who must act and how they must act so as to fulfill the right. Such accounts require that we can identify duty bearers for each right and indicate what the right requires them to do (Tomalty 2014). Thus, it appears that such accounts can recognize the socioeconomic rights recognized in the international Declaration. However, on closer investigation it becomes clear that some of these rights cannot meet claimability requirements for all contemporary humans (Tomalty 2014; Collins 2016). To see why, consider the human right to health. When an individual suffers from a health problem, it is not always

clear who should fulfill their claim to healthcare, how they must fulfill the claim, nor the extent to which they must do so. This is in part because how an outcome should be achieved depends on concrete circumstances: what healthcare facilities exist in the local area, who has the requisite skills to provide treatment, and what the cost of taking the action required is for different agents (O'Neill 2005). In some cases, it can even be sensible for some conveniently placed individual to take immediate action, and then for others to compensate that individual later in order to prevent them being unfairly worse off as a result (Barry and Øverland 2009). These complications make it difficult to specify duty bearers and duties in advance (Shue 1988). The existence of some identifiable duty bearer and identifiable duties (the fulfillment of which constitutes the fulfillment of the right) are necessary for there to be a human right according to the interpersonal claim-right account. Thus, it restricts what can be identified as a human right. This means that interpersonal accounts cannot reflect contemporary human rights discourse and practice in recognizing a broad range of rights.

To resolve this problem, governments could be recognized as needing to allocate duties to various individuals to educate, sanitize, provide healthcare and contribute to the costs of providing these services.<sup>10</sup> However, this cannot resolve the issue with the interpersonal account of human rights because it means that in the absence of government allocation there will be no correlative duties and subsequently there will be no rights. Currently, in some regions of the world, duties to provide these things have not been allocated by authorities (O'Neill 2005). From this, it follows that not all contemporary humans have these rights. This is both inconsistent with the meaning of human rights identified in Section 2.1 and morally problematic.

We could attempt to solve the problem by identifying governments as having the correlative duties with regard to human rights (Nickel 1993; Beitz 2009; Tomalty 2014). Adopting such an approach moves us away from the interpersonal account and toward a governmental account (the subject of Section 5).

#### **4.2. Analysis**

As shown in Section 2, in contemporary times, human rights are understood to be significant normative requirements of universal concern that should be met for individuals everywhere (out of respect for their inherent dignity), which take priority over most other moral and political concerns. This understanding, coupled with the interpersonal claim-right account, means that the list of normative priorities worthy of universal concern that should be fulfilled for individuals everywhere without discrimination, as a matter of inherent dignity, are restricted on the basis of a technical requirement regarding the form these requirements must take. This is done without substantive argument being given as to why only these requirements should be recognized as priorities of justice that should be fulfilled for individuals everywhere that are of universal concern. In response to this problem, supporters of interpersonal claim-right accounts need to give a

substantive argument regarding why it is that only requirements that can fulfill the interpersonal claimability requirement can be recognized as particularly significant requirements of justice, of universal concern, that should be fulfilled for individuals everywhere without discrimination, as a matter of inherent dignity, that take relative priority over other normative requirements.

In response to this challenge, they could argue that, in moral discussion, we need to distinguish threats to inherent dignity that result from impermissible actions and omissions from those that do not result from some individual not fulfilling duties they owe to particular others. However, recognizing this fact does not mean that addressing threats to individuals that result from the impermissible action or omission of another agent should always take priority over addressing threats that do not originate in duty violation by some identifiable individual. Nor does it give us any reason to think that only these sorts of problems are of universal concern.<sup>11</sup>

Another response open to the defender of an interpersonal approach is to suggest that human rights do not outline all of the demands of justice owed equally to individuals everywhere that are of international concern, are required as a matter of inherent dignity, and take priority to some extent over other aims and ideals. Along these lines, O'Neill calls on people to recognize that the demands of social justice that are not a matter of human rights are important and can be global in scope (O'Neill 1986; 2016). Similarly, Griffin explains that the term "human right" does not capture all priorities of justice owed to individuals of international concern but instead specifies a set of demands that fall into a category historically understood to be important (Griffin 2001). Such approaches are morally plausible and internally consistent; however, they require us to diverge significantly from dominant contemporary understandings of what human rights are. These accounts do not recognize human rights as outlining all the particularly significant, normative requirements of universal concern that should be met for individuals everywhere (out of respect for their inherent dignity), which should take priority over most other moral and political concerns. In doing so, they exclude many of the internationally recognized human rights listed in the Declaration and covenants. Thus, they betray fidelity: they are not accounts of the concept appealed to in contemporary documents, discourses and practices.<sup>12</sup>

## **5. Governmental Accounts**

In response to these problems, an approach that recognizes states as the correlative duty bearers with regard to human rights could be adopted (as recommended in Tomalty 2014).<sup>13</sup> Doing so reflects important aspects of contemporary human rights practice (Beitz 2009): UN institutions hold governments responsible for the state of human rights in their territory, requiring them to meet many human rights standards, and criticizing any regression on human rights under their rule (Brems 2009), while NGOs use human rights standards to hold authorities to account (Amnesty International 2015).<sup>14</sup>

It may appear that an account that recognizes the government of a jurisdiction as holding the correlative duties with regard to the human rights of residents can include more of the rights recognized in the Declaration and thus better reflects the concept appealed to in contemporary discourse. We can require governments to socially guarantee a range of interests. We often expect governments to protect people from threats, organize society so as to secure certain goods are available to everyone under their jurisdiction, provide decent social conditions and opportunities for all residents, and ensure that individuals are not vulnerable to being treated by other agents in ways that undermine their inherent dignity.<sup>15</sup> However, once we move away from an idealized understanding of government to examine the political reality, we can see that this approach (insofar as it insists human rights are Hohfeldian claim-rights) must either restrict what can be recognized as a human right in a way that excludes many internationally recognized human rights (undermining fidelity), or lead to morally implausible conclusions that conflict with key elements of the concept recognized in international practice (undermining fidelity and moral plausibility).

### **5.1. Problem**

The key problem with understanding human rights to be Hohfeldian claim-rights, which correlate with governments' duties, is that many governments lack the ability to fulfill all of the requirements outlined in the Declaration and covenants for all their residents (Cranston 1983). A government's power is always limited by internal and external factors; due to the level of restriction they face, the governments of many states are unable to fulfill all of the rights recognized in the Universal Declaration and claimed across the world.

Some governments lack the ability to effectively fulfill any human rights: for example, since 1991, Somalia's central government has lost the ability to enforce law and thus has little chance of securing any rights (Menkhaus 2003; 2007). When it comes to socioeconomic human rights such as health and education, many lower income governments face immense difficulties in fulfilling these rights for every person under their jurisdiction. In 2016, 40 countries had a Gross National Income per capita below 7,500 dollars, and 22 below 2,000 dollars (World Bank 2017). These low national incomes make it impossible for governments to run adequate basic health and education systems for their population without outside assistance.

Even when state populations have sufficient income to provide basic health-care and primary education for all residents, doing so may still be impossible for their governments. Research indicates that only 25% of countries collect tax payments effectively, due to: having few resources and personnel, the informal nature of their economies, tax competition between states and difficulties attracting sufficient investment (Dietsch and Rixen 2014; Carnahan 2015; Dietsch 2015; Laborde and Ronzoni 2015; Van Apeldoorn 2018). This suggests that state governments are unable to collect sufficient taxation to fulfill human rights. In

these states, residents could directly pay for health, education, and sanitation services, but this would require the existence of suppliers selling these services at affordable rates and all residents having sufficient income to purchase such services. This is unlikely without redistributive taxation and widespread education (Gustafsson and Johansson 1999), which in turn requires a state able to tax and redistribute income.

## **5.2. Responses**

An advocate of a governmental account could recognize a severely truncated list of human rights requirements that every government can reasonably be expected to comply with, sacrificing many of the rights outlined in the convention on economic, cultural, and social rights.<sup>16</sup> This involves a substantial shift away from the existing use of the term, undermining fidelity (Valentini 2012). Worse still, it involves restricting what can be required as a matter of human rights on the basis of the limits of what all existing governments can reasonably be expected to achieve through unilateral action.

In response to the problem of inability, we could instead adopt an account of human rights that includes the concept of “progressive realization”: recognizing that state governments which are unable to fulfill human rights in the short term should just work toward their full realization over time. In addition, we could identify a “common core” of human rights that all state governments must immediately fulfill.

This strategy offers a promising route for identifying the duties that state governments have with regard to the human rights of their residents. However, it is not acceptable as an account of the human rights themselves, because it creates a two-tier system in which some humans have immediate claims to healthcare and education while others only have claims to efforts toward improving access to healthcare and education long-term. If we understand human rights to be Hohfeldian claim-rights owed by governments to their residents and recognize poorer state governments as having only duties of progressive realization, then it follows that people in poorer countries do not actually have human rights to health or education but only human right to governmental efforts to improve health and education.<sup>17</sup> Understanding socioeconomic human rights as claims to fulfillment in some cases and claims to progressive realization in others undermines the idea that all people have a right to equal human rights. As shown in Section 2.1, the fact that human rights should apply equally to all people regardless of nationality or state of residence is an important aspect of these rights. An account that recognizes some as having a right to health and education and others merely a right to efforts to improve health and education means that what an individual has a right to depends on whether a person’s state is rich or poor. This sort of inequality is explicitly ruled out in the Declaration. Thus, progressive realization as an approach to human rights (understood to be Hohfeldian claim-rights) moves us away from an important and morally appealing aspect of human rights.<sup>18</sup>

Instead of lessening rights when we lessen our expectations of state governments, we could instead use human rights standards as a means of critiquing the existing system and the limited power to bring about basic standards that some governments currently have within it. We should use human rights to criticize the status quo and demand reform so that the rights and freedoms set forth in the Declaration can be fully realized for every contemporary human, as Article 28 requires (Pogge 2000).

Another possible solution to the inability of some states' governments to provide basic rights for their citizens is to recognize that when state governments are unable to fulfill human rights duties, powerful collective agents, such as NGOs, foreign governments, or transnational corporations, have a responsibility to step in and fulfill rights.<sup>19</sup> This means human rights are claims against state governments (owed to rights-holding residents) unless the government is unable to fulfill these claims in which case they pass to any existing collective able to fulfill them.

It is plausible to suggest that powerful collective agents have moral reason to step in and deliver human rights in times of crisis. However, it is not clear that just any collective able to fulfill a human right for a person, who lacks a government able to deliver that right, has a correlative duty to fulfill the right that is owed to the rights holder. Furthermore, in some cases, there will be no collective agent situated so as to be able to fulfill human rights, while discharging their other duties. This means there are likely to still be cases in which people have no agent from which to claim their right and thus will have no right on a Hohfeldian claim-right understanding. A final problem is that NGOs, multinationals, and foreign governments are not appropriate permanent deliverers of human rights: they do not meet procedural standards required to legitimately fulfill human rights. Thus, although recognizing that powerful agents have duties to assist fulfillment in times of state failure is plausible, it is not a strategy that can be used to rescue the idea that human rights are Hohfeldian claim-rights held by all contemporary humans.

## 6. Beyond Claimability

In light of the difficulties identified with interpersonal and governmental claim-right accounts, we could embrace an approach that does not require human rights to be Hohfeldian claim-rights. I propose that we instead understand human rights to be, individualistically justified priorities of justice that our systems of governance should be reformed in order to socially guarantee for every human. According to my account, meeting these standards for every contemporary human is important enough to justify burdensome duties to work with others to establish and maintain a political order in which these standards are socially guaranteed for every human. In an extension of Raz's understanding of the term "right," according to this account, when we recognize a human right we recognize that an agent able to have rights has an interest<sup>20</sup> that is significant enough to indirectly justify duties for other agents (Raz 1984).<sup>21</sup>

The discussion of human rights discourse in Section 2.1 suggested that human rights are particularly significant requirements of justice, of universal concern, that should be fulfilled for individuals everywhere without discrimination, as a matter of inherent dignity, that take relative priority over other normative requirements, and should be protected by law. The account I am now proposing specifies that these requirements of justice protect individual interests that are significant enough to justify weighty duties to act responsively with a view to securing their fulfillment by creating, reforming, or supporting governance-arrangements that socially guarantee these rights.

According to my account, the primary duties that human rights ground are *pro-tanto* collectivization duties. Collectivization duties require agents to respond intelligently to each other's actions so as to achieve a particular state of affairs (Collins 2013). In the case of human rights, collectivization duties require people to act responsively with a view to socially guaranteeing the right in question. A right is socially guaranteed if—and only if—social institutions avoid depriving people of the substance of a right, reliably protect people from being deprived of the substance of their right by other agents, and reliably ensure that people enjoy the substance of their right (building on Shue 1996, 17, 75).

As collectivization duties do not specify what each individual must do, the rights that give rise to these duties cannot meet claimability requirements (see Collins 2016). However, this lack of specificity does not mean we cannot assess whether or not the individual interests that ground human rights are important enough to justify weighty collectivization duties.

The collectivization duties individuals have with regard to human rights must be *pro-tanto* duties because, in some circumstances, agents will have good reason *not* to work toward securing an order that socially guarantees these rights. For example, individuals cannot be reasonably required to make such efforts when they live under an oppressive government that persecutes human rights advocates.

The account proposed here is in keeping with Shue's recommendation that we recognize "indirect duties" falling on individuals, to support, reform, or design and create institutions that fulfill human rights (Shue, 1988, 696–97, 703). The major advantage of the approach is that by understanding human rights as primarily grounding collectivization duties we do not restrict what can be counted as a human right on the basis of what existing agents can be expected to achieve without coordination or the creation of new collective agents.

### 6.1. Social Structural Standards

The proposed approach can include social structural requirements within human rights, even when some contemporary humans lack legitimate governing agents able to immediately secure these standards for them. In including requirements for social structures, the account follows domestic accounts of justice in focusing on the way in which major social practices come together to have a pervasive impact on peoples' lives (Rawls 1972): affecting their opportunities,

conditioning their probability of success, and attaching different weights (benefits and burdens) to the choices available to them (Olsaretti 2009). Social structure is as “a way of looking at the whole of society rather than a particular part of it” (Young 2011), a “basic sociology of a society” (Julius 2003) that persists over time as it is reproduced (often unconsciously) by the actions of individuals who are, for the most part, pursuing their own projects within the existing structure.

Structural human rights requirements recognize a subset of requirements of social structural justice that are particularly significant, justified on the basis of the interests of individuals, are owed equally to all individuals as a matter of inherent dignity, take relative priority, and are significant enough to ground weighty pro-tanto collectivization duties to socially guarantee them.

By including social structural requirements within human rights, we can recognize that the human right to health requires that no human is positioned within the social structure in such a way as to make them unacceptably vulnerable to ill health. This means that they must have secure and robust access to adequate health care services, sanitary living conditions, safe working conditions (or other safe opportunities to make a living), and a natural and social environment that does not undermine their health.

The proposed account of human rights can include the full range of rights outlined in the Declaration and covenants: identifying the social conditions in which humans should live, the goods and services they should have secure access to, the status and treatment they should be afforded by legal and political systems, and the standard threats to inherent dignity from which they should be robustly secure.<sup>22</sup> Furthermore, it means that whether or not these rights should be recognized can be determined by considering whether we have good reason to think that they are individualistically justified, priorities of justice that should be fulfilled for individuals everywhere due to their inherent dignity, that are of universal concern, and are sufficiently important to justify weighty collectivization duties to socially guarantee their fulfillment as a priority.

The account shares similarities with the institutional approach advocated by Pogge, in that it recognizes that human rights concern social organization and require institutional orders to fulfill certain standards (Pogge 1995; 2008; 2010).<sup>23</sup> It is in keeping with the idea that recognizing a human right to X means recognizing that society should be organized so that all humans have secure access to X (Pogge 2008, 70). The account proposed here recognizes that individuals have duties to work toward ensuring social and political institutions are such that rights are secure, although these duties do not correlate with rights in a straightforward way.

Pogge recognizes human rights as concerning the nature of institutional order and holds state governments (and the citizenry or at least the more powerful members of the citizenry) to be responsible for securing human rights in their territory (Pogge 1995; 2008, 64). However, he also identifies the imposition of the global institutional order as an institutional violation of the human rights of the global poor by the G7 and their citizens (Pogge 2008, 178–83; 2010, 10–56). The

approach proposed here suggests that, in addition to recognizing that domestic and international institutional orders should not cause avoidable human rights deficits, we need to ensure that the global social structure that emerges from domestic, international, global, and transnational practices, trends, and rules is such that it does not violate rights (Ashford 2018). This means we need to ensure that it does not make individuals vulnerable to threats to their interests in a way that undermines their inherent dignity. The account proposed suggests that our primary focus should be on how the social structure positions agents. This structure results from practices, policies and trends that are domestic, international, transnational and global.

### ***6.2. Non-Correlative Collectivization Duties***

According to my account, human rights do not straightforwardly correlate with duties for agents. This means that human rights are not valid claims to the performance of a duty, or a number of duties, the performance of which is owed to the right holder. However, part of recognizing that individuals have a human right to these standards being met, is acknowledging that the importance of meeting these standards for everyone is significant enough to justify requiring moral agents to take on significant burdens. This looser understanding of the connection between human rights and duties allows us to recognize multiple duties with regard to any particular right (in keeping with Shue 1988; 1996).

Individuals cannot, on their own, fulfill or violate structural human rights requirements. However, groups of individuals can influence the fulfillment or violation of these standards. The primary duties individuals have with regard to structural human rights requirements are collectivization duties. These require moral agents to act responsively with a view to establishing and maintaining collective agencies that socially guarantee these rights, or to act upon existing collective agencies so that they socially guarantee these rights.

The term “collectivization duty” recognizes that agents can be morally obliged to take responsive steps with a view to addressing a morally pressing circumstance. This can be done either by transforming an existing collective, creating a new collective or coordinating action in a looser fashion. Collins develops the concept of a collectivization duty in order to explain the duties of moral agents in cases where collective action is required to resolve a morally urgent circumstances, no collective agent exists who is able to address the circumstance, and the circumstance cannot be addressed without either coordinating action, forming a collective agent with a decision-making mechanism or reforming an existing collective so that it addresses the circumstance (Collins 2013).<sup>24</sup>

This paper proposes that, with regard to social structural human rights requirements, individuals primarily have collectivization duties. These duties require individuals to act responsively with a view to addressing the fact that human rights are not socially guaranteed for some contemporary people. Doing so will require bringing about collective agent(s) able to legitimately regulate and

intervene, so as to ensure that social structures do not place any social group in a position in which they are vulnerable to being deprived of the object of their human rights. Individuals also have duties to discharge any reasonable duties allocated to them by governing agents in order to meet human rights standards. But, according to my account, individuals also retain duties to monitor collective agents charged with socially guaranteeing human rights and collectivize to act upon these agents so as to ensure they discharge their duties as necessary.<sup>25</sup>

In justifying what human rights there are, there is a balance to be struck between what it is important for people to have as a matter of inherent dignity, and what it is reasonable to expect people to socially guarantee through collectivization, and the formation and maintenance of political and social institutions. This balance requires (at a minimum) that the duties to work toward collectively securing human rights, in combination with other moral duties and reasonable ethical commitments, do not undermine any individual's inherent dignity.

These collectivization duties are not correlative with human rights because it is not the case that an individual person's individual human right is a claim on all obligated others to take action to collectivize so as to ensure the right is socially guaranteed (as would be the case if the rights were a species of Hohfeldian claim-right). This is because an individual's right is a claim to the actual social guarantee of their interest and not merely a claim to others making efforts to try to establish, maintain and support such a guarantee. It is also because it is not the importance of one individual's human right that justifies each other person's duties to work towards a socio-political order that socially guarantees human rights. Rather, it is the total of all the human rights of all people that justify each person's duty to collectivize so as to establish and maintain a sociopolitical order in which all human rights are socially guaranteed for all.

In addition, all moral agents will have duties not to take actions that threaten or violates human rights. Although individuals acting alone cannot threaten the structural aspects of human rights, individuals acting together, and powerful collective agents, can act in ways that undermine the fulfillment of structural human rights requirements. Thus, it is important to recognize that these agents have duties not to do so and individuals have duties not to take part in collective action that undermines the fulfillment of structural human rights requirements, at least when they can reasonably avoid doing so. 'These duties are in addition to their basic duties not to violate human rights interactionally or institutionally as proposed in Pogge (2010).'

State governments have duties not to violate human rights. Where state governments are effective and strong (and thus have the ability to regulate action and provide services so as to socially guarantee human rights), they have duties to ensure human rights standards are socially guaranteed for all those who are resident within the territory they rule. They also have duties not to take actions or adopt policies that undermine the ability of other governments to socially guarantee rights within their own jurisdiction. In addition, they have duties to act responsibly with a view to establishing an international order in which rights can

reliably be delivered by legitimate authorities across the world. Where state governments lack the ability to socially guarantee human rights for their residents, they have progressive realization duties that require they act responsively with a view to coordinating with other agencies in order to establish conditions in which they can effectively socially guarantee human rights in their jurisdiction.

## 7. Objections

Non claim-right approaches to human rights have been accused of outlining utopian goals rather than rights proper (Cranston 1983). It has also been suggested that these purported rights are superfluous to moral reasoning because they play no distinct normative role (Tomalty 2014), that they do not constitute full moral principles (Meckled-Garcia 2009; 2013), and that they cannot properly accommodate the notion of violation (Tomalty 2014). Below it is explained that the account proposed does indeed subvert the meaning of a “right” in a way that falls foul of some but not all of these accusations. However, it is argued that despite this, such rights serve a useful function in our contemporary discourse and thus the use of this moral concept can in fact be justified.

The approach proposed recognizes that the social guarantee of human rights will take sustained collaboration from multiple parties to be achieved. Socially guaranteeing these rights is a goal that individuals and collectives have duties to work toward together. It is worth noting that this fact does not put the concept at odds with how the term “human right” is utilized outside philosophical circles: the Declaration makes it clear that various agencies should work toward the fulfillment of rights, recognizes their fulfillment to be an “aspiration” and notes that they represent a “common standard of achievement” that should be pursued in cooperation with the United Nations (United Nations General Assembly 1948). This suggests that fidelity actually gives us reason to embrace an account of human rights that identifies the social guarantee of these rights as an important goal for individuals and agencies (Beitz 2001).

However, it is vital to note that conceding this does not make human rights merely *things it would be good to achieve*. Under the proposed account, human rights are defined as especially significant normative standards required out of respect for each individual’s inherent dignity that take relative priority, are of universal concern, and are sufficiently weighty to justify a range of burdensome duties falling on a range of agents. It is also worth noting that this understanding does not make human rights a comprehensive utopian vision of the best society (thus making theories of justice redundant): these standards can be met in a number of different ways, and thus, they permit diversity of social formation.

The account of human rights supported here identifies them as justified in light of particularly important individual interests that are together sufficient to ground burdensome collectivization duties to establish and maintain an order in which they are socially guaranteed, as well as duties on governing agencies to socially guarantee these rights to the extent that they are able to do so.

It could be objected that recognizing the rights themselves is redundant: we could simply identify a set of particularly significant human *interests* alongside a set of pressing duties to promote these interests in various ways (Tomalty 2014). However, human rights have an important role to play in moral practice: they offer a common language with which individuals around the world can articulate the serious injustices they face as individuals that require urgent attention from others around the world. Human rights are a set of standards that have been agreed to be of vital importance, which are sufficient to ground weighty duties to secure them by establishing and maintaining political institutions that socially guarantee them as a priority. These features of human rights have been established through a long and painful history and would be lost by changing how we refer to them.<sup>26</sup> It would be absurd to undermine this highly successful moral practice by talking only about interests and duties in order to be more ontologically minimalist. The moral utility of the practice of identifying individualistically justified, particularly important requirements of justice, gives us strong reason to continue the practice.

Furthermore, human rights discourse delivers something that talk of “universal human interests” does not. It recognizes that the importance of these interests requires that certain standards are *socially guaranteed* for each individual as a priority, notes that their not being guaranteed constitutes a grievous injustice and an affront to the rights holder, and that having these standards socially guaranteed is important enough to ground burdensome duties on others to work together to achieve it.

However, without an account of the burdens agents must assume in order to bring about these standards, it could be claimed that a human rights do not constitute a full moral principle (Meckled-Garcia 2009; 2013), and that without knowing who is obligated to do what with regard to socially guaranteeing them, we cannot assess whether it is reasonable to require they are socially guaranteed. Each of these problems will be considered in turn.

The account proposed here means that human rights do not constitute “full moral principles.” However, as *requirements of justice*, they are complete. Furthermore, the fact that they are not moral principles is a strength rather than a weakness of the account, or so I will argue.

There are several different accounts of the relationship between morality and justice that have been proposed in normative theory. According to one picture, implied by Kant’s *Metaphysics of Morals*, morality concerns the norms individuals should follow. These rules can be broken down into: those rules that should not be coercively imposed (norms of virtue) and those that should be coercively imposed (norms of justice) (Kant 1996).<sup>27</sup> In contrast to this approach, the picture of the relationship between morality and justice endorsed here recognizes them to be two different types of *normative evaluation*. Morality is primarily concerned with evaluating the behavior of persons, whereas justice is primarily concerned with evaluating social structure. According to this account, justice primarily concerns the way human actions and institutions come together to put groups into different positions in a social schema. This social structure has a pervasive impact

on peoples' lives: constraining and enabling in ways that give advantage to some and disadvantage others and providing the backdrop within which they interact (Rawls 1972; Pogge 1989; Julius 2003; Young 2006).

At the very least, we need accounts of justice that can *include* the evaluation of social structure. This excludes adopting an account of justice that is restricted to evaluating individuals and collective agencies (including governments). Requiring that all demands of justice be "full moral principles" would prevent us from identifying cases of structural or background injustice whenever collective agents capable of regulation were yet to exist (Young 2006; Ronzoni 2009).

It is important to note that the account proposed here does not posit rights that have no connection at all to the duties. Recognizing something to be a human right involves recognizing that it is sufficiently important to ground duties for other agents (including collectivization duties that require responsive action aimed at establishing an order able to socially guarantee the right in question). Thus, the human rights discussed here do have an effect on the duties of agents; it is just not as direct as the connection between rights and duties posited by a Hohfeldian claim-right approach. When we evaluate the actions of individuals, we should consider what duties they have in relation to the social structures they live within and help to reproduce and when we evaluate governing agencies, we must evaluate their efforts to regulate social structure.

Furthermore, what can be recognized as a human right according to the account proposed here is constrained by what it is reasonable to demand that people achieve: we cannot recognize human rights that it would be unreasonable to expect people to collectively secure either because the necessary collectivization efforts are too burdensome or the burdens that governance agencies would need to assign to secure structural change would be too burdensome. Thus, what can reasonably be demanded of agents still restricts and limits what can be demanded as a matter of human rights. The difference is that what can be reasonably demanded includes collectivization and the creation of new agencies. Thus, what can be required is not restricted by what existing agents can reasonably be expected to achieve through un-coordinated action. Instead, we can recognize that existing agents should work together to achieve rights fulfillment even if this requires the creation of new agencies to be achieved.

One final worry about the proposed structural human rights is that for these rights there is often no agent who can be identified as a violator when they are not fulfilled. We might be concerned that losing the concept of violation undermines a powerful and vital part of human rights practice: holding authorities to account for human rights violations (Forst 2001; Ignatieff and Gutmann 2003; Amnesty International 2017). An approach that identifies state governments as primary duty bearers can hold government responsible for any failures to fulfill human rights standards within their jurisdiction, and it can use a human rights deficit to identify a state government as failing in its required role (Tomalty 2014).

When a social structure does not meet standards that are owed to individuals, as a matter of human rights, the structure can be said to "violate" human

rights (Ashford 2018). This indicates that urgent reform is needed and suggests that agents must take action to reform the structure. However, the violation of a structural right does not always single out any agent as responsible for the failure: in cases where government lacks the ability to fulfill the standard, this approach does not isolate any party as being solely responsible for the deficit or its removal.

However, structural human rights standards do still lead to significant duties for governing agencies in all cases. These agencies must ensure domestic social structures meet human rights standards, as far as this is within their power to permissibly do so, alongside working with other agents to bring about an international institutional order in which these standards can be fully met everywhere. Compliance or non-compliance with these duties can be monitored, and governments who fail in these duties can be criticized and held to account even if they cannot be held solely responsible (see Brems 2009).

Traditionally, human rights have played the important role of protecting populations from abuses of power by governments. The approach proposed here suggests that human rights, properly understood, should also protect individuals from social structures in which their most fundamental needs are insecure as well as those in which they are vulnerable to being subjected to treatment that undermines their dignity. This is a complex task that sometimes requires significant collaboration between various agents in order to be achieved. Where agents fail to fulfill the duties they have with regard to socially guaranteeing structural human rights requirements, they should face criticism, thus these rights still offer a means of criticizing governments (and other agents) that fail to fulfill their duties with regard to guarantee these rights, or take action that undermines these rights.

## 8. Conclusion

This paper has proposed that human rights are individualistically justified priorities of justice, of universal concern, that need not correlate directly with duties. According to this account, human rights outline: the social conditions in which agents must live, the goods and services they must be able to access, the standard threats they should be reliably protected from, and the procedural requirements governance systems must meet out of respect for their inherent dignity. These requirements are particularly significant, and warrant social guarantee as a matter of priority. They generate weighty pro-tanto collectivization duties for all other agents to work toward ensuring their social guarantee, as well as duties on governing agencies to provide such a guarantee to the extent that they are able to do so.

This paper has argued in favor of this account of human rights over a Hohfeldian claim-right approach, on the basis that it does not restrict what can be recognized as an individualistically justified normative priority of universal concern which warrants social guarantee, on the basis of the limits of the abilities of existing agents working unilaterally. It challenges those who favor an account that requires human rights to be direct specifiable claims to action or omission

from existing agents, to either adapt their accounts so they can recognize the full list of human rights identified in the Declaration, or come up with a substantive argument in support of the prioritization of the normative standards owed to individuals that they do recognize over other claims of fundamental justice owed to individuals everywhere that their model cannot include.

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### Notes

<sup>1</sup>Building on Shue (1988 and 1996).

<sup>2</sup>For a definition of collectivization, see Collins (2013).

<sup>3</sup>Although the concept and grounds of human rights should be combined in full accounts of human rights, it is my contention that they can be disentangled (in keeping with Tasioulas 2012). The paper notes that the declaration appeals to the idea of “inherent dignity” to distinguish human rights. However, it does not explore how to identify which rights are a matter of inherent dignity.

<sup>4</sup>Unless we adopt a more complex Hohfeldian claim-right account that is different to the interpersonal and governmental approaches explored here.

<sup>5</sup>Some constitutional and legal human rights as well as many socioeconomic human rights must be rejected under the interpersonal and governmental accounts. This point was helpfully drawn to my attention by an anonymous reviewer.

<sup>6</sup>The account endorsed here, has much in common with those proposed by Ashford (2006) and Shue (1996). Ashford’s suggests that we recognize positive and imperfect duties with regard to human rights. Adopting her account requires a different understanding of the relationship between rights and duties to the claim-rights approach.

<sup>7</sup>Elizabeth Ashford has proposed there can be structural human rights violations (Ashford 2007)

<sup>8</sup>This point was helpfully drawn to my attention by an anonymous reviewer.

<sup>9</sup>The interpersonal account focusses on *interactional* violations of human rights by other persons (Pogge 1995; 2010).

<sup>10</sup>Goodin suggests that morally important imperfect duties often should be turned into perfect duties by ‘institutionalizing’ them so they become perfect duties (Goodin 2017). This institutionalization makes them claimable.

<sup>11</sup>For a defense of the strength and priority of some imperfect duties (that are taken to not correlate with rights) over perfect duties, see Goodin (2017).

<sup>12</sup>Buchanan argues that we should not assume that our favored account of moral human rights should dictate how the contemporary international practice of human rights must be, suggesting the current legal concept need not mirror a traditional moral concept at all (Buchanan 2013). In contrast to my approach, Buchanan takes human rights to be legal rights created by international covenants, declarations, and practices rather than taking the Declaration and covenants as seeking to outline pre-existing moral rights.

<sup>13</sup>Tomalty suggests they are claims against states—this proposal is interpreted here as recognizing human rights to be claims against state governments. Alternatively, it could be that the citizenry rather than the government is the agent obliged to act. Many of the critiques of the

government approach discussed below also apply to this alternative interpretation.

<sup>14</sup>I am grateful to an anonymous reviewer for bringing this to my attention.

<sup>15</sup>These agencies can be connected to accounts of individual duties by recognizing individual duties to promote and support justice-ensuring institutions (Rawls 1972). The connection between collectives, institutions, and individual duties will be discussed later in the paper.

<sup>16</sup>Rawls' account of human rights includes only a short list of demands and does not include many of the socioeconomic human rights recognized in the Declaration or conventions. His theory gives an account of what to do with burdened societies which cannot fulfill these rights (Rawls 1999).

<sup>17</sup>Collins suggests that the need for claimability in combination with the limitations of current governments means that rather than a human right to subsistence we have a right to socioeconomic consideration (Collins 2016).

<sup>18</sup>Raz's discussion of human rights suggests that people everywhere do not have all of the rights listed in the Declaration or at least do not have them equally. His account links there being a right to it being desirable that the right be legally recognized and coercively enforced by existing institutions. He points out that differences in institutions' current abilities mean that what should be legally enforced is different in different locations, while the need for differences in delivery in different locales makes international adjudication unattractive (Raz 2010).

<sup>19</sup>These are sometimes referred to as a secondary duties in a different meaning to that proposed by O'Neill (see Nickel 1993; O'Neill 2005). I am grateful to the anonymous reviewer who pointed out this option.

<sup>20</sup>I am using the term "interest" broadly. I am not advocating a well-being account over an agency account but remaining neutral on this question. For more on this debate, see Nickel 2019.

<sup>21</sup>However, this account is not compatible with Raz's own account of human rights insofar as he ties them to the state system and links the existence of a human right to the desirability of making them coercively imposed, justiciable, legal rights enforced by existing governments (Raz 2010).

<sup>22</sup>The idea that human rights concern *standard threats* comes from (Shue 1996) and is recognized in (Beitz 2009).

<sup>23</sup>Pogge's revised account (2010) recognizes that human rights can be violated interactionally (when an individual violates a right) as well as institutionally (when an individual makes uncompensated contributions to the coercive imposition of an institutional order that foreseeably produces avoidable human rights deficits). The account proposed here recognizes these possibilities but also recognizes that human rights can be violated structurally (in keeping with Ashford, 2018). Unlike the account proposed here, Pogge's account considers official disrespect of human rights to be especially significant (2008).

<sup>24</sup>The account of collectivization duties with regard to human rights proposed here does not require there to be no collective able to address the circumstance in order for there to be collectivization duties.

<sup>25</sup>The proposed account differs from that outlined in Collins (2019).

<sup>26</sup>This point was helpfully brought to my attention by an anonymous reviewer.

<sup>27</sup>See (Miller 2007). Other approaches identify demands of justice as normative principles that governments (or other agents that claim to "act in the name of the people" or "have a monopoly on legitimate violence") must fulfill (Blake 2001; Nagel 2005). A third approach identifies demands of justice as principles that coercively imposed institutional orders should fulfill (Pogge 2008; 2010). It is worth noting that the approach described here is Kantian too, along the lines of Kant's argument regarding the duty to put oneself under a common law (see Reglitz 2019).

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