

## Why Human Rights? Because of *You*\*

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Many, if not most, contemporary theorists think that the basic justification of human rights is instrumental, as efficient means for protecting or promoting the theorist's preferred ultimate value or values.<sup>1</sup> Of course, instrumentalist theorists will disagree about the nature of the ultimate value, proposing a wide array of candidates: the morally basic goods of normative agency,<sup>2</sup> human functioning and capabilities,<sup>3</sup> a minimally good and decent life,<sup>4</sup> or the satisfaction of urgent human interests.<sup>5</sup> But this

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<sup>1</sup>For a discussion of the contrast between instrumentalist and non-instrumentalist accounts, see James Nickel and David Reidy, 'Philosophy', in D. Moeckli et. al. (eds.), *International Human Rights Law* (Oxford: Oxford University Press, 2010), pp. 39–63. For similar formulations of instrumentalism, see Rowan Cruft, 'On the non-instrumental value of basic rights', *Journal of Moral Philosophy*, 7 (2010), 441–61; and Thomas Nagel, 'Personal rights and public space', in *Concealment and Exposure: And Other Essays* (Oxford: Oxford University Press, 2002), especially pp. 34–5.

<sup>2</sup>James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2009).

<sup>3</sup>Martha Nussbaum, *Women and Human Development* (New York: Cambridge University Press, 2000); and Amartya Sen, *Development as Freedom* (New York: Knopf, 1999).

<sup>4</sup>John Tasioulas, 'The moral reality of human rights', in Thomas Pogge (ed.) *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?* (Oxford: Oxford University Press, 2007), pp. 75–101.

<sup>5</sup>Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009); Allen Buchanan, *Human Rights, Legitimacy, and The Use of Force* (Oxford: Oxford University Press, 2010); James Nickel, *Making Sense of Human Rights*, revised ed. (Baltimore: Johns Hopkins University Press, 2007); Thomas Pogge, *World Poverty and Human Rights* (Cambridge: Polity Press, 2002); and Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, 2nd edition (Princeton, NJ: Princeton University Press, 1996).

important disagreement also masks an important shared agreement about the broad contours of the basic kind of justification of human rights. Human rights matter because they are tools in the service of morally basic goods intelligible independently of the concept of rights.

The assumption that the basic justification of human rights is instrumental is initially plausible, for two kinds of reasons, one negative and the other positive. The positive reason is that instrumentalist accounts offer a clear justification based on largely uncontroversial values, as even non-instrumentalist theorists like Thomas Nagel recognize.<sup>6</sup> The negative reason is that, by comparison, non-instrumentalist models seem paradoxical and viciously circular.<sup>7</sup> A non-instrumentalist account takes human rights as morally basic rather than derivative. Human rights matter, say, because they are necessary aspects of our inviolable moral status as persons. But if this status is itself constituted by human rights, it can seem that a non-instrumentalist justification moves in a tight and unilluminating circle, from status to rights and back to status again.

My aim in this article is to tackle the negative reason and argue that a non-instrumentalist approach, and in particular one I will call a 'relational' one, need be neither empty nor viciously circular.<sup>8</sup> A relational approach contrasts with instrumentalist accounts in virtue of its deontological character. But it also contrasts

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<sup>6</sup>Nagel, 'Personal rights', pp. 34–5.

<sup>7</sup>In response to Nagel, Tasioulas argues that a non-instrumentalist account is viciously circular. See John Tasioulas, 'Human dignity and the foundations of human rights', in C. McCrudden (ed.) *Understanding Human Dignity* (Oxford: Oxford University Press, 2013), pp. 291–312, at p. 300.

<sup>8</sup>In a companion piece I tackle the positive reason. I argue that instrumentalist accounts do not offer as clear a justification of human rights as is standardly assumed. In a nutshell, this is because instrumentalist accounts face structural difficulties accommodating the categorical duties often thought to correlate with human rights. The exclusive focus of the present essay, then, will be the negative reason: showing that a non-instrumentalist account need be neither empty nor viciously circular. So in this article I will not argue against instrumentalism and will not seek to show that a non-instrumentalist account is superior to an instrumentalist one. That is the task of the companion piece. See Ariel Zylberman, 'Human rights, categorical duties: a dilemma for instrumentalism', *Utilitas* (forthcoming).

with more familiar versions of deontological accounts, which take as basic non-relational deontic norms, such as intra-personal coherence or a rational process of universalization. A relational approach takes as basic a deontic *and* relational norm. I will call this norm *Reciprocity*, the principle that every person has a basic claim right to independence and respect against every other person.

So understood, a relational approach to human rights can avoid emptiness and circularity without collapsing into a non-instrumentalist model. By showing that *Reciprocity* cannot be conceived independently of the concept of rights, the relationship between human rights and their normative point remains non-instrumental. By not taking for granted the validity of any specific human rights and showing how they can be developed out of a simple relational norm, this approach avoids the charge of *vicious circularity*. And by generating from *Reciprocity* a robust system of human rights, the relational approach avoids the charge of *emptiness*.

## **I. Mind the Gaps: A Dilemma for Non-instrumentalism**

Let me begin by sharpening the challenge for any non-instrumentalist account. First I introduce two generic and preliminary conditions for a notion of human rights, that is, human rights are categorically binding and universal rights. Then I show how a non-instrumentalist account faces a dilemma when seeking to accommodate these two features. The rest of the article will show how a relational approach promises to solve this dilemma.

In order to fix ideas, let us state two preliminary conditions for a human right. First, a human right binds *categorically*. The notion of a categorical duty is not without controversy, but the broadly accepted view is that a duty binds categorically just in case

it *typically* suffices to override considerations of other kinds. A categorical duty need not be absolute, but may be 'near-absolute'.<sup>9</sup> Second, human rights are *universal* in scope—all natural persons have them—and function as *rights*. The universal scope of human rights means that the bearer of human rights cannot be restricted to a sub-class of persons, such as those who believe in a specific creed, belong to a specific nationality, bear a specific ethnicity, and so on. That human rights function as *rights* means that they have a *deontic* structure correlating with duties of others. In this sense, rights contrast with mere goods to be promoted or goals to be realized.<sup>10</sup>

Now, how do philosophical accounts explain these conditions? We should begin by distinguishing *evaluative* from *deontic* judgments.<sup>11</sup>

A

B

It is good that *X* happen.

It is right/permissible for *A* to do *X*.

It is bad that *X* happen.

It is wrong/forbidden for *A* to do *X*.

It is indifferent that *X* happen.

It is a duty/obligatory for *A* to do *X*.

A-type judgments are *evaluative* and seem to form an interdependent inferential network. That it is good that *X* happen entails that it is not bad that *X* happen;

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<sup>9</sup>Here is how Nagel puts the point: 'while in some cases a right may justifiably be overridden by a sufficiently high threshold of costs, below that threshold its status as a right is insensitive to differences in the cost-benefit balance of respecting it in each particular case.' (Nagel, 'Personal rights', p. 32) See also Alan Gewirth, *The Community of Rights* (Chicago: University of Chicago Press, 1996), p. 12. But non-instrumentalist thinkers are not alone in attributing to human rights a categorical binding force. See also Cruft, 'On the non-instrumental value', p. 441; and Tasioulas 'Human dignity', p. 296.

<sup>10</sup>James Nickel, *Making Sense of Human Rights* (Oxford: Blackwell Publishing, 2007), ch. 2.

<sup>11</sup>My discussion of this distinction is indebted to Christine Tappolet, 'Evaluative vs. deontic concepts', in H. LaFollette (ed.), *International Encyclopedia of Ethics* (Wiley-Blackwell, 2013), pp. 1791–9.

conversely, that it is bad that  $X$  happen entails that it is not good. And so on. B-type judgments are *deontic* and seem to form an interdependent inferential network as well. That it is permissible for  $A$  to do  $Y$  entails that it is not forbidden for  $A$  to do  $Y$ ; conversely, that it is forbidden for  $A$  to do  $Y$  entails that it is not permissible for  $A$  to do  $Y$ . And so on.

But if human rights are to be understood as *rights*, this distinction is not enough to represent a judgment of human rights. We should distinguish, then, two kinds of deontic norms, relational and non-relational norms. A relational duty is *directed*, *owed to another*.<sup>12</sup> Directed duties have three key features.<sup>13</sup> First, that a duty is directed entails that its violation is a *wrong* to another. By contrast, I can violate an undirected duty—for example, my failure to appreciate the aesthetic value of the Mona Lisa or to avoid polluting the environment—without wronging anyone in particular. Second, violations of directed duties typically warrant a demand for apology and reparation. By contrast, I can violate an undirected duty without owing an apology to anyone—certainly not to Mona Lisa. Third, and crucially, directed duties appear to be essential to the notion of a claim right. For me to have a claim right to something entails and is entailed by the correlative directed duty of another. By contrast, undirected duties need not correlate with rights. My duty to appreciate beauty need not entail the right of the beautiful to be appreciated.

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<sup>12</sup>Although the grounding of directed duties remains elusive, its nature has received more attention recently. See the volume edited by Rowan Cruft, *Symposium on Rights and the Direction of Duties*, *Ethics*, 123 (#2) (2013); and Michael Thompson, 'What is it to wrong someone? A puzzle about justice', in R. Jay Wallace, P. Pettit, S. Scheffler and M. Smith (eds.), *Reason and Value: Themes from the Moral Philosophy of Joseph Raz* (Clarendon Press, 2004), pp. 333–84.

<sup>13</sup>My discussion here follows Rowan Cruft, 'Why is it disrespectful to violate rights?' *Proceedings of the Aristotelian Society*, 113 (2013), 201–24, at pp. 201–2.

Following Michael Thompson, we can represent these two types of deontic norms by subdividing our B column into relational and non-relational normative concepts.<sup>14</sup>

**B<sub>non-relational</sub>**

**B<sub>relational</sub>**

It is right for *A* to do *Y*.

*A* has a right against *B* that *A/B* do *Y*.

It is a duty for *A* to do *Y*.

*B* has a duty to *A* to (not) do *Y*.

It is wrong for *A* to do *Y*.

*B* wrongs *A* in (not) doing *Y*.

As earlier, each column seems to form an interdependent inferential network. That *A* has a right against *B* entails that *B* has a duty to *A*, and vice-versa. And so on.

This distinction in two kinds of deontic judgments, relational and non-relational, is necessary to represent the basic judgment of human rights. If human rights are *rights*, then the basic judgment of human rights is **B<sub>relational</sub>** rather than **B<sub>non-relational</sub>**.

Distinguishing these three kinds of normative judgments enables us to draw a contrast between instrumentalist and non-instrumentalist accounts. To draw this distinction, consider the following remark by John Tasioulas: 'We should not accord rights a foundational role in ethical thought: Rights are derived from (certain of) our interests that can be specified independently of the concept of a right.'<sup>15</sup> The mark of an instrumentalist account of the justification of human rights, as I shall understand it, is the attempt to ground human rights in a norm 'that can be specified independently

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<sup>14</sup>Thompson, 'What is it to wrong someone?', sections 1–2.

<sup>15</sup>Tasioulas, 'The moral reality of human rights', p. 88.

of the concept of a right'. By contrast, a non-instrumentalist account 'accord[s] rights a foundational role in ethical thought'. Our distinction in three kinds of normative judgments suggests that an instrumentalist theory may take one of two forms. A teleological theory will seek to ground human rights in A-type judgments, judgments about the good. A non-relational deontic theory will seek to ground human rights in  $B_{\text{non-relational}}$  judgments, judgments about the permitted and the forbidden. To the extent that these deontic concepts can be specified independently of the concept of a right, a deontological account that grounds human rights in  $B_{\text{non-relational}}$  judgments will also be instrumentalist.

Although each column seems to constitute an inferential network, the inferential relations from left to right are not straightforward. Indeed, instrumentalist accounts will have to bridge one or two conceptual gaps in order to ground a judgment about human rights.

Teleological theories will first have to bridge the gap from merely *evaluative* judgments about the good to *deontic* judgments about the permitted and the forbidden. Bridging this gap is difficult. For instance, there is no straightforward inference from the judgment that it is bad to suffer or be in pain to the deontic judgment that *it is categorically forbidden to torture*. Difficult as it may be, bridging this gap is not enough to get us to a judgment of human rights, for such judgment, we have seen, is not merely deontic, it is also relational.<sup>16</sup>

Both teleological and deontic accounts, then, need to bridge a second gap, this time between non-relational and relational deontic norms. Bridging this gap is also

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<sup>16</sup>In the companion piece I argue that it is more difficult than has been appreciated for instrumentalist theories to bridge the gap from evaluative judgments to relational deontic ones in order to accommodate the directed categorical duty to respect human rights. See Zylberman, 'Human rights, categorical duties'. But my focus in this article is exclusively on non-instrumentalist theories, so I will neither assume nor seek to show why teleological accounts face difficulties bridging these gaps.

difficult. As we have seen, non-relational duties typically do not entail relational ones. The judgment that it is forbidden to pollute the environment, for instance, does not entail that one wrongs anyone in breaching such a duty. As Christine Kosgaard acknowledges, that I owe it to myself to treat you in a certain way 'does not by itself get us to the idea that I owe a certain kind of treatment to you'..<sup>17</sup>

To illustrate this difficulty, consider Alan Gewirth's celebrated justification of human rights and a familiar objection made to it. In a nutshell, Gewirth seeks to ground the judgment '*I have rights to freedom and well-being*' in the judgment '*I must have freedom and well-being*'.<sup>18</sup> And Gewirth justifies the latter judgment as the necessary presupposition of being an active agent. Grant Gewirth his presupposition about being an active agent and, further, grant that he can deduce specific human rights from a right to freedom and well-being. Even so, the crucial inference to rights is problematic. As Nickel and Reidy put the point, the problem is that Gewirth equivocates on the term 'must' in his basic premise that '*I must have freedom and well-being*'.<sup>19</sup> On the one hand, if the term 'must' is simply evaluative, meaning something like 'it would be truly bad if I did not have freedom and well-being', such a judgment would not, by itself, suffice to entail the claim *I have rights to freedom and well-being*. On the other hand, if the term 'must' is deontic, meaning something like '*it is impermissible for me to not have freedom and well-being*', it has two kinds of problems. First, it would no longer be clear how this would be a presupposition of any successful acting. Second, and more problematic still, such a claim would still fail to entail a judgment of rights. That *X* is impermissible (say,

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<sup>17</sup>Christine Kosgaard, 'Autonomy and the second person within: a commentary on Stephen Darwall's *The Second Person Standpoint*', *Ethics*, 118 (2007), 8–23, at p. 11.

<sup>18</sup>See Alan Gewirth, *The Community of Rights*, pp. 8–30.

<sup>19</sup>Nickel and Reidy, 'Philosophy', p. 51.



it is impermissible to pollute the environment or to fail to appreciate aesthetic beauty) does not, by itself, suffice to grant anyone rights. If Gewirth's inference to a judgment of rights does indeed fail in these ways, it illustrates Gewirth's failure to bridge the two conceptual gaps I have made explicit.

In sum, it looks as if, in justifying human rights instrumentally we need to bridge one or two gaps to get to a judgment of human rights, either from a teleological judgment about values or from a deontological judgment about non-relational duties. A more promising avenue may be to sidestep the need for bridges altogether by staying within the relational deontological column.

Indeed, although he does not characterize it this way, Thomas Nagel's justification of human rights can seem to take this shape. Nagel links human rights to the inviolability of the person. He says:

The status is that of a certain kind of inviolability, which we identify with the possession of rights, and the proposal is that we explain the agent-relative constraint against certain types of violations in terms of the universal but nonconsequentialist value of inviolability itself.<sup>20</sup>

In a word, we justify human rights as aspects of the status of inviolability, and we defend this status by appealing to the non-consequentialist, intrinsic value of inviolability itself. In grounding human rights in the status of inviolability of any person, Nagel appears to offer a non-instrumentalist account. An attractive feature of such a non-instrumentalist proposal, then, is that it would bypass the need to bridge the two conceptual gaps we have just identified.

But this proposal attracts an obvious objection: the account appears viciously circular. This objection has been nicely articulated by John Tasioulas:

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<sup>20</sup>Nagel, 'Personal rights', pp. 36–7.

[On Nagel's account] human rights are grounded in our status as members of the moral community, but that very status is a matter of possessing certain rights. This circularity might be thought a steep price to pay in order to secure the resistance of human rights to trade-offs.<sup>21</sup>

If human rights are grounded in the moral status of inviolability, and if the status of inviolability is one, as Nagel puts it, 'which we identify with the possession of rights', it seems that inviolability is incapable of offering a justification of human rights.<sup>22</sup> Instead, it offers merely a restatement of them.<sup>23</sup>

But Nagel's account can find a way out of the charge of circularity by emphasizing that inviolability is not simply an abstract moral status constituted by rights. Instead, it is a distinct kind of 'non-consequentialist value'. More refined, then, the proposal is that human rights are grounded in the intrinsic value of inviolability. And once human rights are grounded in a kind of value, this can give us a way of breaking out of the deontological circle. As Beitz mentions in relation to Nagel's proposal, Nagel's recognition that inviolability must be a kind of value amounts to the

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<sup>21</sup>Tasioulas, 'Human dignity', p. 300.

<sup>22</sup>Nagel recognizes this potential problem of circularity. 'One problem with any argument of this type is that it seems in danger of being circular. For what is the value that a morality without rights would fail to recognize and realize? It seems to be nothing more nor less than the existence of rights, for which "inviolability" is just another name' (Nagel, 'Personal rights', p. 39)

<sup>23</sup>To take another example, consider the following claim by Joel Feinberg: 'respect for persons (this is an intriguing idea) may simply be respect for their rights, so that there cannot be the one without the other; and what is called "human dignity" may simply be the recognizable capacity to assert claims.' Joel Feinberg, 'The nature and value of rights', *The Journal of Value Inquiry*, 4 (1970), 243–60, at p. 252. Feinberg's proposal appears to be that we ground human rights in human dignity. The justification can certainly appear circular. If respect for persons is equivalent with respect for their rights, to say that human rights are grounded in human dignity begins to sound as the tautological claim that the duty to respect human rights is grounded in the duty to respect human rights. I am grateful to an anonymous reviewer for reminding me of Feinberg's proposal. As I will show, I think there is an important insight in Feinberg's account, an insight best captured by the relational approach. The point that matters now is that Feinberg never explained how to work out a satisfying justification of human rights from this conception of human dignity.

recognition that the justification of human rights must include a '“value” element'.<sup>24</sup>

Otherwise, an account grounded in 'status or respectfulness will be too thin to do useful work in a theory of human rights'.<sup>25</sup>

Upon reflection, this seems to have brought us back to where we started. For characterizing inviolability as a kind of *value* and conceding that without an appeal to value the concept of status or respectfulness is powerless to ground human rights is an acknowledgement of the core instrumentalist assumption, namely, that human rights, ultimately, must be grounded in some kind of value judgment.<sup>26</sup> More formally put, this returns us to the instrumentalist thought that B-type judgments, ultimately, must be grounded in A-type judgments.<sup>27</sup>

These reflections suffice, I think, to give shape to the dilemma for non-instrumentalism I want to consider in this paper. On the one hand, if a non-instrumentalist account remains within the relational deontological column, it appears vulnerable to the charge of emptiness and circularity. On the other hand, if a non-instrumentalist account fills the ground with a 'value' element, it appears to collapse

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<sup>24</sup>Charles Beitz, 'Human dignity in the theory of human rights: nothing but a phrase?', *Philosophy and Public Affairs*, 41 (2013), 259–90, at p. 283.

<sup>25</sup>Ibid.

<sup>26</sup>Nagel acknowledges the potential for this problem: 'Another problem is that this explanation of rights in terms of the value of the status they confer might be thought instrumental or consequentialist after all, if not actually rule-utilitarian.' ('Personal rights', p. 40)

<sup>27</sup>Of course, unlike Beitz, Nagel would probably want to resist this conclusion. We might read Nagel as trying to reject the neat division I have drawn between evaluative and deontic judgments, such that inviolability does not fit neatly into either. If so, Nagel's is not a familiar version of instrumentalism. Nevertheless, it should at least be granted that Nagel owes us more of an explanation of how a justification in terms of the *value* of inviolability is, at the same time, fundamentally deontic. Notice, for instance, a peculiarity in Nagel's form of argument on behalf of inviolability. Nagel seeks to defend inviolability by showing that a world without it would be a worse world than one with it. And this strikes me as instrumentalist, for it seeks to break out of the deontic circle by appealing to a value independent of rights, namely, the value of a certain kind of state of affairs. See, for instance, the following claim: 'Kamm's approach enables us to understand rights as a kind of generally disseminated intrinsic good ... To be tortured would be terrible; but to be tortured and also to be someone it was not wrong to torture would be even worse.' ('Personal rights', p. 40)

into some form of instrumentalism. This dilemma sharpens what I earlier called the 'negative reason' for instrumentalism. If no theory of human rights can have content without appealing to some value element, an instrumentalist account can appear inescapable.

## **II. 'You are Not the Boss of Me': A Relational Approach**

To anticipate: in the rest of this article, I will argue that a relational approach grounding human rights in a master norm of *Reciprocity* is neither instrumental nor viciously circular nor empty. It is not instrumental because *Reciprocity* makes reference to the concept of rights. It is not viciously circular because taking for granted *Reciprocity* does not mean taking for granted the whole body of human rights as found, for instance, in the Universal Declaration of Human Rights (UDHR). And it is not empty because *Reciprocity* can generate a robust list of human rights. This section introduces a relational approach to human rights as grounded in *Reciprocity*.

Our reflections in the previous section already set the framework for a relational approach: it develops an account of human rights while remaining exclusively within the column of relational deontic judgments. In so doing, it contrasts with familiar teleological theories, which ground human rights in evaluative judgments, and familiar deontological theories, which ground human rights in non-relational deontic judgments.

My proposal is that we begin from a master *relational deontic* principle. Call it *Reciprocity*.<sup>28</sup>

*Reciprocity*: *A* has a basic claim right to independence against *B*; or, equivalently, *A* has a basic duty to respect *B*'s independence.

*Reciprocity* represents any natural person's basic right to independence in relation to others. This norm is *reciprocal* in the sense that *A*'s right to independence against *B* is, *reciprocally*, *B*'s right to independence against *A*. Equivalently, *A*'s duty to respect *B*'s independence entails and is entailed by *B*'s duty to respect *A*'s right to independence. And *Reciprocity* is deontic because it represents the reciprocal, directed rights and duties between persons.

*Reciprocity* may be represented from different perspectives: from a first-personal perspective, when one emphasizes that *I* am the bearer of rights or directed duties; from a second-personal perspective, when one emphasizes that my right is against and my duty is owed to *you*; or from a third-personal perspective, when one represents this relationship of reciprocal right as obtaining between other parties. What makes

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<sup>28</sup>As will be evident, the relational account I develop here is inspired by the work of Immanuel Kant. The principle of *Reciprocity*, in particular, offers an articulation of Kant's principle of right and his notion of external freedom. See Immanuel Kant, *Metaphysics of Morals*, in *Practical Philosophy*. trans. Mary J. Gregor (Cambridge: Cambridge University Press, 2006), 6:237. Kant is traditionally read as offering an account grounded in  $B_{\text{non-relational}}$  concepts, such as the value of intra-personal coherence. However, spearheaded by Arthur Ripstein's masterful reconstruction of Kant's legal and political philosophy, there is a growing understanding that at least a crucial portion of Kant's doctrine takes an irreducibly relational form. See Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy* (Cambridge, MA: Harvard University Press, 2009), especially ch. 2. Nevertheless, Ripstein's reading is controversial, as some still think of Kant's legal and political concepts as grounded in non-relational ethical norms. See, for instance, Louis-Philippe Hodgson, 'Kant on the right to freedom: a defense', *Ethics*, 120 (2010), 791–819. Since my aim here is not to defend a specific interpretation of Kant, I will sidestep altogether exegetical questions. I engage with such questions, as they concern Kant's justification of human rights, in Ariel Zylberman, 'Kant's juridical conception of human rights', in A. Føllesdal and R. Malikis (eds.), *Kantian Theory and Human Rights* (New York: Routledge, 2014), pp. 27–51. And I defend a relational understanding of Kant's idea of external freedom in 'The public form of law: Kant on the second-personal constitution of freedom', *Kantian Review* (forthcoming).

*Reciprocity* an intrinsically relational, deontic norm is that it represents the correlation of directed norms: the rights of one person against another or, equivalently, the directed duty of respect any person owes another.

*Reciprocity* offers a specific gloss on the dignity of persons. So understood, the dignity of persons is not a special kind of value: intrinsic, or absolute, or non-consequentialist. Rather, our dignity as persons is a basic *moral status*. The idea of status is relational and deontic, signifying one's standing as the object of respect. In this way, *Reciprocity* takes from Nagel the thought that our moral status is a form of inviolability, without yet having to take on Nagel's additional thought that our inviolability involves a special kind of value. Our independence is not a value to be produced, promoted, or honored. It is a *status* to be respected.<sup>29</sup>

*Reciprocity* supposes a specific conception of one's right to independence, which we may briefly characterize as follows:

*Independence as Non-Subordination*: *A* subordinates *B* only if *A* treats *B* as a causal means for the pursuit of *A*'s purposes without *B*'s consent.<sup>30</sup>

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<sup>29</sup>On this distinction in two ways of understanding the moral significance of autonomy, see Stephen Darwall, *Morality, Authority, and Law: Essays in Second-Personal Ethics I* (Oxford: Oxford University Press, 2013), ch. 7; and Nagel, 'Personal rights', p. 38

<sup>30</sup>Here I introduce only a necessary condition for subordination and will not seek to establish necessary *and* sufficient conditions. I think this necessary condition suffices to explain the sense of independence I will have in mind. For an attempt to supply sufficient conditions for the principle, see Samuel Kerstein, *How to Treat Persons* (Oxford: Oxford University Press, 2013); and Derek Parfit, *On What Matters: Volume I* (Oxford: Oxford University Press, 2011), chs. 8–10. This formulation differs from Kerstein's necessary condition for treating another merely as a means (Kerstein, *How to Treat Persons*, p. 121). Kerstein's formulation appeals to a notion of well-being. No such notion plays a role in *Independence as Non-Subordination*.

The basic idea of independence as a right against subordination is an abstract formulation of a perfectly familiar thought, one expressed even by young children: 'you are not the boss of me'.

*Reciprocity*, then, represents a basic relational prohibition on the subordination of one person for the purposes of another. This prohibition abstracts away from the *value* of the other's purposes. Even if your purposes are morally worthy, such as promoting the common good or acting charitably, the quality of your purposes cannot override the prohibition on subordination. In this way, *Reciprocity* captures what Henry Richardson calls the core idea of subordination: 'someone's being harmed [a]s a causal means to the greater good'.<sup>31</sup> But the prohibition on subordination is not a blanket prohibition on any relationship of dependence, for some such relationships need not involve subordination. For instance, you may depend on your doctor's judgment about your health or on the guidance of a teacher without becoming their subordinate. Similarly, consent plays an important (but arguably limited) role in circumventing subordination. If someone cuts you up to obtain your left kidney, that person clearly subordinates you to her purposes; but if a doctor does so with your consent, no subordination need obtain.

Given the interdependent inferential relations within our normative columns, we can articulate *Reciprocity* through any of our three elementary relational deontic judgments.

**B<sub>relational</sub>**

*A* has a right to independence against *B*.

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<sup>31</sup>Henry Richardson, 'Discerning subordination and inviolability: a comment on Kamm's *Intricate Ethics*,' *Ethics*, 20 (2008), 81–91, at p. 89. In this paper, I follow the spirit of Richardson's suggestion and, like him, I focus on the core and simple idea behind the notion of inviolability.

*B* has a duty to *A* to respect *A*'s independence.

*B* wrongs *A* when *B* fails to respect *A*'s independence.

As mentioned earlier, the reciprocal character of this principle means that *A* and *B* have the same basic right to independence and the same basic duty of respect. You and I are one in the basic right to independence, equal in our dignity as persons.<sup>32</sup>

This brief presentation of *Reciprocity* and of *Independence as Non-Subordination* should suffice for representing the following *relational* formula of human rights (henceforth, *HR*):

*HR*: A right *R* counts as a human right if, and only if, *R* functions as a necessary specification of *Reciprocity*.

The basic idea behind *HR* is that human rights are warranted by their special inferential function. Human rights *specify* in more concrete ways the requirements of *Reciprocity*. To say that human rights are *specifications* of *Reciprocity* is to say that human rights are *isomorphic* with, express the same kind of judgment ( $B_{\text{relational}}$ ) as, *Reciprocity*: a human right represents a specific aspect of our status as independent in relations to others.<sup>33</sup> To say that human rights are *necessary* specifications of *Reciprocity* is to say that

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<sup>32</sup>There are important parallels here to Rainer Forst's notion of reciprocity, but there is also an important difference. For Forst, reciprocity is a basic but second-order norm, namely, the reciprocal *right to justification* to any actions of others that *affect* one. See Rainer Forst, 'The justification of human rights and the basic right to justification: a reflexive approach', *Ethics*, 120 (2010), 711–40, at pp. 719–20. By contrast, as I understand *Reciprocity*, it is a basic first-order relational deontic norm prohibiting subordination. For reasons of space, I cannot delve here into the details of Forst's account nor can I examine whether it succeeds in solving our dilemma. Whether Forst's account succeeds and, if so, whether it is superior to the relational account are the topics for another paper. I am grateful to an anonymous reviewer for helping me to frame this contrast to Forst's account.

<sup>33</sup>I am grateful to Byron Davies for helping me to put the point in this way.



without them we would necessarily contravene *Reciprocity* in some specific way. A right to your laptop or cell-phone may be a specification of *Reciprocity* insofar as such a right may be an aspect of your status as independent, but such a right cannot count as a human right insofar as lacking a right to a laptop or cell-phone would not necessarily contravene *Reciprocity*. *HR*, then, gives us a way to distinguish human rights from ordinary rights.

An initial reason in favor of *HR* is that it seems to meet our two preliminary conditions for a human right. Because human rights are necessary specifications of the categorical duty to respect one another as persons, human rights preserve the same *categorical* force as *Reciprocity*. And because the chief ground of human rights, *Reciprocity*, stays within the relational deontic column, *HR* can represent human rights as universally valid *rights*. Furthermore, by comparison to familiar instrumentalist accounts, *HR* avoids the need to bridge conceptual gaps in order to yield a relational deontic judgment of human rights. But does *HR* not succumb to the dilemma for non-instrumentalism we encountered above?

We are now in a position to appreciate the first way in which a relational approach avoids this dilemma. It does not collapse into instrumentalism because judgments of specific human rights and *Reciprocity* are *isomorphic*, judgments with the same relational deontic form. Unlike the familiar teleological and deontological accounts, which require a leftward movement from a deontic relational judgment to a judgment with a different form, for a relational approach the justification of human rights stays within the right column. The justification of specific human rights takes us to a more general norm, *Reciprocity*, but one with the same form. A relational approach promises, in this way, to block a collapse into instrumentalism. But can a relational approach also avoid the problems of vicious circularity and emptiness?

### III. Three Models of Derivation

An account is viciously circular that takes for granted that which it sought to justify. A relational approach is not viciously circular because it does not take for granted any specific human rights. Instead, it takes for granted only *Reciprocity* and then seeks to articulate this basic norm into human rights, without taking any of them for granted. But to understand this thought, we need to understand how exactly it is that we can derive specific human rights from *Reciprocity*. And to do so, we need to introduce two ideas, namely, a specificatory model of derivation and the concept of the *subject* of human rights.

A relational model deploys what I will call a *specificatory model* of derivation. The specificatory model develops the insightful but neglected suggestion by Alan Donagan that we understand the derivation of specific moral precepts from a general principle in terms of *specificatory premises*. As Donagan put it, a specificatory premise identifies 'a species of action as falling or not falling under the fundamental generic concept of action in which every human being is respected as a rational creature'.<sup>34</sup> In our terms, a specificatory premise derives from *Reciprocity* more specific rights and directed duties that fall under the generic right to independence and the generic directed duty of respect. The movement from general to specific, we might say, is *intra-column* rather than *inter-column*.

To bring into view the distinctive character of the specificatory model, it will help to contrast it with two other models of derivation. Call the first the 'axiomatic

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<sup>34</sup>Alan Donagan, *The Theory of Morality* (Chicago: The University of Chicago Press, 1977), p. 68.

model'.<sup>35</sup> According to the axiomatic model, we begin from an abstract principle and derive specific theorems by mere logical analysis from the primitive terms included in the axioms. An axiomatic derivation of human rights from *Reciprocity* would be problematic. It is doubtful that a plausible set of human rights could be derived by sheer logical analysis of the primitive term 'dignity' or 'independence'. Moreover, if the entire system of human rights is packed into the meaning of 'dignity' or 'independence', then the derivation will look viciously circular.

The difficulties of the axiomatic model can encourage thinking of derivation as an *instrumental* matter. Specific human rights would be derived from a general norm as *necessary means* for the production or protection of the basic norm. Unlike the axiomatic model, the instrumental model does not proceed by mere logical analysis of primitive terms, but by normative considerations of instrumental necessity.

The specificatory model is neither axiomatic nor instrumental. Unlike the axiomatic model, it does not proceed by mere logical analysis; and unlike the instrumental model it does not see human rights as means for the production of an external end. Rather, the specificatory model proceeds by *normative* analysis that develops the more specific norms required for the realization of *Reciprocity* in our interpersonal relations. It does so by examining specific kinds of relationships and then examining whether they are necessarily inconsistent with *Reciprocity*, that is, whether they are necessarily instances of subordination. If a certain kind of relationship does necessarily manifest an instance of subordination, then that kind of relationship involves a wrong, the violation of a human right. Unlike the axiomatic model, the inconsistency in question is not purely logical, for the problem is not a logical mistake

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<sup>35</sup>Cf. Donagan, *The Theory of Morality*, p. 66.

by one of the parties. Rather, the inconsistency is *practical*, for the problem pertains to the form of the practical relationship: one person subordinates another.

But to generate specific human rights, the specificatory model requires us to offer a more concrete picture of the subject of human rights. According to the relational approach, we may do so as follows:

*The subject of human rights is a rational animal.*

This claim is meant to capture two intuitive thoughts that philosophers often distort. The first is that our animality is not accidental to our rationality, but a conceptual feature of it. The subject of human rights is not first and foremost a disembodied noumenal agent that happens occasionally to be embodied in animal form. The bearer of human rights is *essentially an animal*. Our animality and embodiment bring to the idea of the subject of human rights concepts that would otherwise be missing or appear curious additions: the necessity of our occupying space, of living through time, of being born to others of our kind, of being born in a condition of dependence on others and growing old to a state that can resemble that original dependence, and of being organic, requiring food, getting sick, and dying. The second is that our rationality is not accidental to our animality. The subject of human rights is not first and foremost an animal with interests in well-being that happens to occur in rational form. The bearer of human rights is *essentially rational*. Of course, this does not mean that every one of our actions is perfectly rational, or that only beings who manifest a high degree of rationality can have human rights. Instead, it means that it must be possible to attribute the power of rationality, actual or potential, to the bearer of human rights. Our rationality is what lifts us from merely evaluative judgments of goodness and

grounds deontic judgments of duties, rights, and wrongs in our interpersonal relations. In a word, the idea of the subject of human rights is, we might say, *hylomorphic*, the essential unity of our rational form with our animal matter.<sup>36</sup>

*Reciprocity* generates specific human rights, then, by grounding them in a conception of our agency as rational animals. If we were not rational, *Reciprocity* would not apply to us. But if we were not animal, the rights generated by *Reciprocity*, if any, would look rather different. Think of an angel: disembodied, immortal, inorganic. Does it make sense to ascribe a right to freedom of movement to a being who does not occupy space, a right to not be tortured to a disembodied soul that cannot suffer, or a right to food to an immortal creature? The significance of reflection on our agency as *rational animals* is that it provides the *necessary context* for the development of the abstract *Reciprocity* into specific human rights.

For the relational approach, then, we develop specific human rights as follows. First, we give more precise content to *Reciprocity* by recognizing the subject of human rights as a *rational animal*. Then, deploying the specificatory model, we ask: is a specific kind of relationship consistent with *Reciprocity* or is it necessarily an instance of subordination? If the relationship necessarily involves subordination, then the wrong it involves is the breach of a directed duty and a corresponding basic right to independence. The specific relationship is the matter of a human right.

Having sketched the form of the derivation from *Reciprocity* to specific human rights, let us return to the concern about vicious circularity. The relational approach avoids the charge of vicious circularity because it does not presuppose the validity of

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<sup>36</sup>The two distortions I alluded to at the beginning of this paragraph are two ways of denying the hylomorphic thought. Some read Immanuel Kant as offering a picture of our agency according to which our animality is merely accidental. Others read David Hume as offering a picture of our agency according to which our rationality is merely accidental, a tool for satisfying the push and pull of our animal drives. As I read Kant, he defended the hylomorphic thought, even if his search for the pure principle of morality sometimes led him to incautious hyperbole.

that which it seeks to justify. It begins with the validity of *Reciprocity* as the master norm and suspends judgment on specific human rights. It then seeks to justify human rights *via* the conception of the subject of human rights as a rational animal, articulating *Reciprocity* through specific kinds of relationships. When these relationships necessarily contravene *Reciprocity*, we have arrived at a human right.

It will help to contrast the proposed account with Nagel's or Feinberg's. Their account invites the charge of vicious circularity because it grounds human rights in inviolability (or human dignity) without giving us a way to grasp the content of inviolability independently of specific human rights. The problem is that Nagel does not explain how we should understand the subject of inviolability, nor how we are to derive specific human rights from it.<sup>37</sup> The relational approach corrects these problems by determining *Reciprocity* as a basic deontic norm prohibiting subordination, by articulating a notion of the subject of human rights as a rational animal, and by spelling out the specificatory model of derivation from *Reciprocity*.

#### **IV. Civil, Economic, and Participatory Human Rights**

But even if the relational approach avoids a collapse into instrumentalism and vicious circularity, it may still be objected that the proposed account is, after all, *empty*, for how can we derive specific human rights from a formal principle of reciprocity?

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<sup>37</sup>To clarify: my points about Nagel are three. First, by casting the status of inviolability as a *value*, Nagel does not do enough to explain how his account does not collapse into instrumentalism. Second, Nagel fails to explain the *content* of the status of inviolability. And relatedly, third, Nagel does not explain how exactly we are to derive specific human rights from inviolability, thereby failing to address adequately the objection of vicious circularity. But none of this is to say that, once sufficiently tweaked and filled in, Nagel's account is incompatible with the relational account offered here. I am grateful to an anonymous reviewer for prompting to clarify this contrast.

My aim in this final section is to address this objection by showing how the specificatory model can develop from *Reciprocity* three basic kinds of human rights, which I will call *civil*, *economic*, and *participatory*. Since my aim is only to show that the relational approach is not empty, the argument in this section will remain fairly schematic and will not seek to offer a full justification of specific human rights. This sketch should also help to illustrate how the specificatory model works.

The specification I propose proceeds first by subdividing *Reciprocity* into two basic kinds of right-duty correlates: *natural* and *institutional*. Right-duty correlates are natural if they specify human rights by focusing exclusively on our interpersonal relations as rational animals. Right-duty correlates are institutional if they specify human rights by focusing on our interpersonal relations through social rules that introduce rights going beyond our mere embodiment as rational animals. Institutional right-duty correlates themselves subdivide into two kinds. Some are *horizontal*, governing relationships of property and contract. Others are *vertical*, governing the relationship between a public authority and its subjects. The ensuing division results, then, in three kinds of right-duty correlates: (1) *natural*, (2) *horizontal institutional*, and (3) *vertical institutional*.<sup>38</sup>

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<sup>38</sup>Organizing a system of human rights according to this three-fold division means that the relational approach seeks to integrate the insight of both *naturalist* and *political* theories of human rights. Naturalist theories conceive of human rights independently of any institutions; political theories identify human rights with a specific political function, say, limiting the external sovereignty of states. For naturalist theories, see Griffin, *On Human Rights*; Martha Nussbaum, *Women and Development*; and John Tasioulas, 'The moral reality of human rights'. For institutional theories, see Beitz, *The Idea of Human Rights*; Thomas Pogge, *World Poverty and Human Rights*, and Joseph Raz, 'Human rights without foundations', in Samantha Besson and John Tasioulas (eds.) *The Philosophy of International Law* (Oxford: Oxford University Press, 2010), pp. 321–338. Many thinkers have begun to question whether these models really need to be mutually exclusive. See, e.g., Pablo Gilabert, 'Humanist and political perspectives on human rights', *Political Theory*, 39 (2011), pp. 439–67.

Begin with the first and most straightforward heading (1), our natural right-duty correlates. An immediate requirement of *Reciprocity* has to do with the use of force and violence towards one another.<sup>39</sup> We can express this precept relationally as follows:

(1) *B* wrongs *A* when *B* uses force at will upon *A*.

Let me explain three important features of how (1) is a necessary specification of *Reciprocity*.

First, as a relational deontic judgment, (1) entails the other two elementary relational judgments. (1) entails that *A* has a right against the use of force at will by others and, equivalently, that *B* has a directed duty to *A* not to use force at will. Given these relationships of entailment, it does not matter whether we formulate our precepts in any of the three elementary forms of the relational deontic judgment.

Second, I have used the qualification 'at will' in order to begin with the paradigmatic case of wronging.<sup>40</sup> This qualification is important to appreciate the categorical binding force of the directed duties. The specificatory model is not absolutist in the sense that it characterizes a very general action type, say, using force on another, as absolutely forbidden. Rather, what is categorically forbidden is the paradigmatic case, say, using force on another at will. Careful normative consideration (rather than mere logical analysis) must develop still further the generic norm in order to determine which specifications are like the paradigm and which are not. For instance, randomly attacking another to steal their food would fall under the

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<sup>39</sup>Cf. Donagan, *The Theory of Morality*, p. 82.

<sup>40</sup>Here I am following Donagan: 'A natural approach is to begin by showing that it is impermissible to perform actions of that kind at will, and then to go on to determine the kinds of cases in which it is permissible.' (Donagan, *The Theory of Morality*, p. 72)



paradigmatic case, but using force in self-defense may not, making the use of force in self-defense permissible. I will return to this in a moment.

Third, my suggestion is that (1) is a necessary specification of *Reciprocity*. The general form of this reflection is as follows: would it be consistent with *Reciprocity* to relate to one another in such a way that we could use force at will to secure our purposes? The idea is that it would not. When I use force at will upon you, I infringe your independence and subordinate you in order to secure my purposes. This relationship is non-reciprocal, for in attempting to use you as a mere means I act as if you were my subordinate. But relations of subordination breach the basic directed duty of respect required by *Reciprocity*. So, my use of force at will upon you is normatively inconsistent with *Reciprocity*. This is the general argument form through which the specificatory model 'derives' more specific precepts and human rights from *Reciprocity*. Let me now show how this works for specific human rights.

If denying (1) is indeed normatively inconsistent with *Reciprocity*, then we can infer three further necessary specifications of (1):

- (1a) *B* wrongs *A* when *B* kills *A* at will.
- (1b) *B* wrongs *A* when *B* inflicts bodily injury or hurt on *A* at will.
- (1c) *B* wrongs *A* when *B* holds *A* in slavery.

Begin with (1a), which expresses a general prohibition on killing another at will. From it, we infer *A*'s generic human right to life. The qualification of (1a) means that *A*'s human right to life need not entail a generic prohibition on the use of force. Self-defense in proportion to the force of the attack may be permissible. Similarly, if the police shoot someone who is attacking you in order to protect you, the police need not

wrong the attacker. In order to preserve the same kind of judgment, the qualification needs to make reference to the normative idea behind the paradigmatic form, rather than to extraneous considerations of permissibility or goodness. For instance, one may argue for the permissibility of self-defense by appealing to the notion that the ordinary protections of one's right to life are forfeited by an action of attacking and visiting violence upon another. If no force were ever permissible, we would enable relations of subordination by means of the use of force, that is, some people would be enabled to subordinate others by the use of force. But that would be inconsistent with *Reciprocity*. So long as force is used exclusively defensively and in proportion to the attack, then the use of force on another is permitted. The point that matters to us is not the details of the casuistic case, but the general form of the 'derivation' of (1a) from *Reciprocity*. If the argument for (1) holds, killing another at will is a form of subordination and hence is normatively inconsistent with *Reciprocity*.

Similarly, (1b) and (1c) are necessary specifications of *Reciprocity*, I suggest, because if these precepts did not hold, we would enable forms of relationships necessarily inconsistent with *Reciprocity*. If I were permitted to inflict bodily injury or hurt at will on others, I would be granted a certain authority over others, namely, the authority to decide how to use their bodies. Torturing another is perhaps the starkest form of (1b), where I get to use your body and the hurt I inflict on you for my purposes. Similarly, (1c), slavery, is one of the starkest forms of an infringement of *Reciprocity*, for it is the starkest form of violation of the duty to respect one another as independent. Slavery is the highest form of denial of the other's independence, for it seeks to establish a relationship of complete subordination of one party to the other. For this reason, we have good reason to admit no qualifications of slavery or torture.

The specificatory model generates (1a-c) by deploying the same form of argument: we ask ourselves whether denying (1a-c) would be *normatively consistent* with *Reciprocity*. If it is not, we are warranted in affirming (1a-c) as necessary specifications of *Reciprocity* and hence, according to *HR*, as human rights. Once (1a-c) are in place, the inference to substantive human rights is straightforward, leading to the human rights to life and security of the person (1a), against torture (1b), and against slavery (1c).

Further downstream, we may also infer rights to freedom of movement or to freedom of religion, insofar as denying those freedoms would amount to a contravention of *Reciprocity*. Once again, the form of the argument is that denying freedom of movement or religion is a form of denying (1), that is, of enabling using force on another by determining for them where they are to occupy space or what they are to believe. This derivation occurs not by mere logical analysis of the meaning of 'dignity' but rather by normative articulation of *Reciprocity* as it obtains for rational animals.

At this juncture, the reliance of the relational approach on the idea of a rational animal may prompt a worry. If the subject of human rights is a rational animal, are we not excluding children or people with severe disabilities from the purview of human rights protection?

The relational approach is not exclusionary in this way. We tackle hard cases about the bearers of rights not by *analyzing* the concept of a rational animal, but in the same way that we generate specific human rights: by deploying the specificatory model. Just as we begin from a paradigmatic case of wrongdoing (for example, killing at will or using force on another at will), we begin from a paradigmatic case of the bearer of human rights, namely, the mature rational animal. We then ask: are there qualifications

to the bearer of human rights, such that, say, children may be permissibly excluded?

Although I cannot develop such an argument here, the form of the argument should already be familiar. Is it consistent with *Reciprocity* to deny any human rights protection, for instance, to children? We typically think it is permissible for children to be in relationships of *dependence* with adult guardians. But why is that? One reason this dependence is permissible stems from reflection on our animal nature: we are not born fully formed and independent but are born in a condition of primitive dependence on others. And one way to think of this dependence as compatible with *Reciprocity* is to think that the relationship guardian-child must have a fiduciary nature, that is, the relationship of dependence must be consistent with the prospective independence of the child.<sup>41</sup> But it would be incompatible with this prospective independence to think of the child's dependence as if the child were a mere thing, the object of any form of treatment by the guardian. So if the child's dependence on the adult is to be rightful, that is, consistent with *Reciprocity*, there must be bounds to the child's dependence and to the adult's treatment. The child's dependence need not entail the child's subordination. When it does involve subordination, say, through torture, enslavement, or the use of force at will, the relationship does necessarily contravene *Reciprocity*. If that is so, the child should enjoy the same rights generated by (1a-c) as the adult. To continue determining the proper scope of the bearers of human rights (for example, whether and how to include children, foetuses, the severely disabled, the comatose, and so on), we need to repeat and develop in detail the same kind of specificatory normative argument.

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<sup>41</sup>Cf. Immanuel Kant 6:280. See also Ripstein, *Force and Freedom*, pp. 71ff.

So much, then, for our sketch of right-duty correlates falling under (1). The second division of right-duty correlates, I suggested, is (2): the horizontal institutional domain. Assume that property and contract are legitimate, what human rights follow from *Reciprocity*? Two basic relational precepts seem to follow:

(2a) *B* wrongs *A* if *B* deprives *A* of her property at will.

(2b) *B* wrongs *A* if *B* subordinates *A* through work.

As before, two generic sets of human rights follow: from (2a) a generic right to own property, from (2b) a generic right pertaining to work.

The argument for (2a) is straightforward. Depriving another of her property at will is necessarily a form of subordinating the other, of using the other's means as if they were one's own. As we will see below, (2a) does not erect around property a barrier impossible to penetrate, for it appears legitimate for a state to take some of its subjects' property in the form of taxation. (2a) focuses on the paradigmatic case of deprivation at will. More generally, we may infer from (2a) a general right to own property. The thought is not that a world without property would be inconsistent with *Reciprocity*. Instead, the thought is that a world where some own property and others are not allowed to do so is inconsistent with *Reciprocity*. This is precisely the situation that characterized, historically, many forms of slavery, for the slave was not only treated as property, the slave was also prohibited from owning property. Allowing some to own property without granting this right to all would permit relations of subordination incompatible with *Reciprocity*.

The thought behind (2b) shares the same relational structure. Understood relationally, the human rights pertaining to work are not grounded in the independent

value of furthering one's well-being. Rather, they are requirements for interacting with one another consistently with *Reciprocity*. Begin with the starkest form of subordination in the context of work: slavery and forced labor. As the Slavery Convention puts it, slavery is 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.'<sup>42</sup> Slave labor is necessarily wrong because it presupposes a relationship of subordination, where the master treats the slave as property, rather than as an equal bearer of rights. For example, as Fons Coomans points out, in Niger, Mauritania, and Malia, tens of thousands of people belonging to a specific caste and ethnic status are treated as the property of their 'masters' who force them to work without pay.<sup>43</sup> Forced labor manifests the same defect: the employer treats the employee as a mere causal means to the employer's purposes. Forced labor necessarily manifests a form of subordination. In this way, two of the basic components of a human right pertaining to work can be seen as necessary specifications of *Reciprocity*. Other human rights pertaining to work (for example, the rights to seek work, to *decent* work, or union rights) could then be established by further specification, determining the extent to which specific employer-employee relationships necessarily contravene *Reciprocity* and are similar to instances of slave or forced labor.

Finally, consider the third domain in which *Reciprocity* can generate human rights, namely, the relationship between a public authority and its members. I lack the space to delve into the possible justification(s) of a public authority, but the following thought suffices: the exercise of public power must be *limited*. For a relational approach,

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<sup>42</sup>Slavery Convention, 1926, art. 1 (1).

<sup>43</sup>Fons Coomans, 'Education and work', in D. Moeckli et. al. (eds.), *International Human Rights Law* (Oxford: Oxford University Press, 2010), pp. 280-303.

one central constraint on the use of public power is *Reciprocity* itself. The introduction of the state cannot reproduce the problem of subordination it was introduced to solve.

Assuming, then, that *Reciprocity* places a constraint on the exercise of public authority, what human rights follow?

(3a) A state wrongs its members when it treats them as mere subordinates.

(3b) A state wrongs its members if it does not reasonably protect its members from subordination.

Begin with (3a). Whatever the reasons why we introduce a public authority into our normative system, the exercise of public authority must be limited, for otherwise the state would become an instrument of subordination. This general thought leads us to ask what specific forms of treatment would implicate the state in the subordination of its members.

First, the thought that the state cannot treat its members as mere subordinates takes us some way towards specifying *Reciprocity* into (3aa), a right to political participation. The general thought is that to deny the right to political participation is to necessarily contravene *Reciprocity*, for such denial would enable the state to relate to its subjects as mere subordinates rather than as independent persons. Similarly, a state that prohibited public gatherings at will or censored the expression of opinions by its subjects would contravene (3a), by treating its subjects as mere subordinates, there to heed whichever arbitrary mandates enacted by a public authority. Once a right to political participation is warranted, a similar line of thought would lead us to introduce (3ab), a right to freedom of expression and opinion, and (3ac), a right to freedom of

association. The thought would be that without these a state would necessarily treat its members as mere subordinates.

The rights falling under (3b) are perhaps more controversial than the others, so the relational argument schema is apt to appear more controversial than the earlier versions. But since my aim is only to address the objection of emptiness, let me quickly sketch how *Reciprocity* may generate some basic socio-economic rights.

My suggestion is that (3a) and (3b) together generate traditional socio-economic rights, such as the rights to food, basic health care, housing, and education.<sup>44</sup> Consider the right to education. For the relational approach, this right makes necessary reference to the concept of the *subject* of human rights as a rational animal in the sense that the subject of human rights does not come into the world fully formed. Instead, we come into the world in a condition of *dependence* on others. If this dependence is going to be rightful, it must be temporary rather than permanent, for permanent dependence would amount to subordination. We introduce a right to education because without it some persons would be left vulnerable to subordination to others (contravening (1)) and to the public authority that governs them (contravening (3a)). In order to protect persons from this wrongful condition, a state has a duty to educate its young members. Correlated with this duty is the members' right to education.

If this rough thought is plausible, we can extend this kind of justification in a parallel way to other types of socio-economic rights. Take, for instance, a right to food. Arguably, we have a right to food because without it we would contravene *Reciprocity*, as some persons would be permitted to interact with others in a condition of subordination because they are starving. Similarly, a state has a duty to protect its

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<sup>44</sup>For a recent and compelling defense of socio-economic human rights, see James Nickel, 'Poverty and rights', *Philosophical Quarterly*, 55 (2005), pp. 385-402.



members from food insecurity in order to ensure that they can remain independent members of the state rather than mere subordinates to its authority. If such a justification were successful, it would ground human rights in *Reciprocity* via the idea of our agency as rational animals. It would not ground the human right to food, say, in the fact that said right is necessary to protect some aspect of our well-being.

Taking stock, we may tabulate our relational deontic division of human rights as follows:

Civil	Economic	Participatory
<i>UDHR Arts. 2-16, 18:</i> *Life, Liberty, and Security *Against Slavery *Against Torture *Against Arbitrary Arrest *Freedom of Thought, Religion ...	<i>UDHR Arts. 17, 22-4</i> *Property *Work Rights ...	<i>UDHR Arts. 19-21, 25-26</i> *Freedom of Opinion and Expression *Freedom of association *Political Participation *Adequate Standard of Living *Education ...

This table illustrates how a relational approach can generate a robust list of human rights, indeed one encompassing the rights enshrined in the *UDHR*. The derivation, I have suggested, can be carried out by beginning with *Reciprocity* and deploying a specificatory model via the notion of a rational animal as the subject of human rights. The resulting rights are mediated by a threefold division of duties, natural (civil), horizontal institutional (economic), and vertical institutional (participatory). The relational approach unifies a system of human rights not only by grounding all human rights in the single master norm of *Reciprocity*, but also by generating specific human rights through a single argument form. The form of this argument is to ask whether denying a specific kind of relational deontic precept is normatively consistent with *Reciprocity*. If it is not, then *Reciprocity* necessarily requires the specific precept, from which we then infer specific human rights. The unifying thought of the relational

approach is that the *point* of specific human rights is not to minimize suffering in the world or to protect some independent good. Rather, the point of human rights is making real a social world governed by reciprocal relations of respect among equally independent persons.

Of course, this table provides nothing more than a sketch of how the relational approach can generate a unified system of human rights. I think this sketch suffices to show that, as a wholesale consideration, the objection of emptiness is not persuasive. *Reciprocity* is an idea powerful enough to generate human rights without surreptitious appeal to extraneous value considerations. Nevertheless, the objection of emptiness may succeed as a retail consideration, that is, as the objection that *Reciprocity* is not powerful enough of itself to generate some specific kind of widely acknowledged human right. But notice how significant is this shift in the kind of emptiness objection. If the wholesale objection of emptiness as such is unpersuasive, this means that a relational approach cannot be dismissed as such. Rather, it must be worked out in more detail to show the extent to which it can successfully justify specific human rights. The relational approach, then, offers a promising research program for the justification of human rights, rather than a hopelessly empty form of thought.

If the specificatory arguments above persuade, they also assuage a familiar concern with monistic accounts, namely, that no robust system of human rights can be generated from a single norm, especially when this norm is deontic. As Beitz had put it, the worry is that only by adding a 'value element' could a deontic account generate human rights.<sup>45</sup> Otherwise, the idea of dignity alone would be powerless to generate a recognizable list of human rights. Similarly, James Nickel worries that a monistic account like Griffin's can only be comprehensive by adding 'practicalities', but this

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<sup>45</sup>Beitz, 'Human dignity', p. 283.

makes 'the justification of rights other than liberties appear shaky and derivative'.<sup>46</sup> Instead, Nickel urges us to embrace a form of justificatory pluralism, encompassing a variety of grounds.

The relational approach can avoid both of these worries. If indeed it can generate the rights listed in our table, Beitz's concern can be assuaged: we do not need a value element to ground human rights norms. The relational approach generates human rights as more specific requirements of *Reciprocity*, our general right to independence and non-subordination. The movement of justification, as I put it earlier, is *intra-column*. If so, no value element is needed to supplement *Reciprocity*.

Similarly, although Nickel advocates justificatory pluralism, he also admits that the four basic grounds he proposes 'provide an interpretation' of the idea of the dignity of persons.<sup>47</sup> So Nickel's pluralist approach need not be in tension with the relational approach. At the level of more specific *kinds* of duties (1, 2, or 3), the relational approach is pluralist. But each of these kinds of duties and rights 'provides an interpretation' of the deontic requirements of respecting one another's dignity as persons. Normative monism with regard to the master norm of *Reciprocity* need not be in tension with a plausible pluralism about slightly more specific precepts. Indeed, we can see these precepts as *specificatory premises* required in an argument for specific human rights.

## **V. Conclusion**

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<sup>46</sup>James Nickel, 'Poverty and rights', p. 391.

<sup>47</sup>*Ibid.*, p. 394.

My aim in this paper has been to show that a relational approach to human rights can resolve the non-instrumentalist dilemma, that is, that it can avoid emptiness and vicious circularity without collapsing into instrumentalism. I have argued that a relational approach avoids instrumentalism because *Reciprocity* is a basic relational deontic norm. It avoids vicious circularity because taking for granted *Reciprocity* does not mean taking for granted a whole system of human rights. And the relational approach avoids emptiness because it appears able to generate a comprehensive system of human rights. Admittedly, a proper vindication of the relational approach would need to develop in far more detail each of the three categories of human rights generated by *Reciprocity*. But I hope to have made a compelling case that this project is worth pursuing. Contrary to what is often thought, instrumentalism about human rights is not inescapable. Non-instrumentalism need be neither viciously circular nor empty.