

# Rights, Wronging, and Equality of Status

## Abstract

Two problems about rights have received so far little attention. One is the problem of identifying a general value in the practice of rights. The second is to see when, if at all, rights violations wrong the right-holder, in a morally significant sense. In the present essay, I address the first question by investigating the second. I first show that if we commit to the two ideas, common in the contemporary philosophy of rights, that claim-rights always correlate with directed duties and that rights aspire to protect interests of the right-holder, we make it hard to explain why rights violations, in general, wrong right-holders. In the final section, I present what I see as a promising solution to the puzzle. I describe a particular social environment (the society of equals) where interacting with others through rights is indeed valuable because respecting rights communicates that one takes seriously others' equal moral status. In such a society and only in such a society, I conclude, moral agents are required to treat all rights violations as wrongs perpetrated against the right-holder.

## 1. Introduction

Rights are part of our social landscape; we interact with others through them, we demand their respect, and we treat their violations as morally salient. But, is a world containing this peculiar way of managing our interactions with others morally superior to one where rights do not exist? This question was famously posed by Joel Feinberg. He answered that having a right means having a "valid claim" against others' conduct and that the possibility of asserting valid claims is what gives rights their moral value: for "the activity of claiming [...] makes for self-respect and respect for others, gives a sense to the notion of personal dignity, and distinguishes this otherwise morally flawed world from the even worse [rights-excluding] world of No-whereville."<sup>1</sup>

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<sup>1</sup> Joel Feinberg, "The Nature and Value of Rights," *Journal of Value Inquiry*, 4.4 (1970), 243–60, p. 257.

In the present paper, I attempt to answer the same question focusing on the relationship between rights and wrongs. If interacting with others through rights is valuable, to the point that it “gives a sense to the notion of personal dignity,” it seems plausible that depriving others of the opportunity to enjoy rights may be a moral wrong. Hence, focusing on the relationships between rights violations and moral wrongdoing can help investigate the sense in which the practice of rights adds something valuable to our social landscape.

A significant consensus across moral and legal theory already accepts as a matter of definitional necessity that rights violations correspond to wrongdoing.<sup>2</sup> The authors endorsing this thesis do not distinguish, however, between a morally significant sense of wrongdoing and one under which wrongdoing is merely taken to correspond, as a matter of definition, to the violation of a right. Hence, under the latter view, the thesis that rights violations correspond to wrongdoing becomes no more than an analytic statement which does not add much to our understanding of the relationship between rights and moral reasons.

In this essay, instead, I am solely interested in a particular sense of wrongdoing. I am going to take a moral wrong as any interaction that makes it fitting for a victim to express resentment towards the perpetrator and for the perpetrator to be in moral debt towards the victim. Moral wrongdoing, as I understand it here, is further characterized by its inherent connection to corrective justice; wrongs create the need, for the wrongful agent, to make up for what they did.

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<sup>2</sup> See Frances Kamm, "Rights," in *The Oxford Handbook of Jurisprudence and Philosophy of Law*, ed. by Jules Coleman, Kenneth Himma, and Scott Shapiro (Oxford: Oxford University Press, 2004), pp. 476–513, p. 478; Michael Thompson, "What Is It to Wrong Someone? A Puzzle about Justice," in *Reason and Value: Themes from the Moral Philosophy of Joseph Raz*, ed. by R. Jay Wallace and others (Oxford: Clarendon Press, 2006), pp. 333–84; Simon Căbulea May, "Moral Status and the Direction of Duties," *Ethics*, 123.1 (2012), 113–28; David Owens, *Shaping the Normative Landscape* (Oxford: Oxford University Press, 2012), p. 46; Visa Kurki, "Rights, Harming and Wronging: A Restatement of the Interest Theory," *Oxford Journal of Legal Studies*, 38.3 (2018), 430–50; Rowan Cruft, *Human Rights, Ownership, and the Individual* (Oxford: Oxford University Press, 2019), p. 76; Julian Jonker, "Directed Duties and Moral Repair," *Philosophers' Imprint*, 20.23 (2020), 1–32 and "Rights, Abstraction, and Correlativity," *Legal Theory*, 29.2 (2023), 122–50. For critical viewpoints, see Nicolas Cornell, "Wrongs, Rights, and Third Parties," *Philosophy & Public Affairs*, 43.2 (2015), 109–43, Cruft, "Why Is It Disrespectful to Violate Rights?," *Proceedings of the Aristotelian Society*, 113.2 (2013), 201–24 and Janis David Schaab, "Why It Is Disrespectful to Violate Rights: Contractualism and the Kind-Desire Theory," *Philosophical Studies*, 175.1 (2018), 97–116.

If we just considered rights that protect morally relevant interests, we would have an answer ready regarding why their violations wrong the right-holder: as a morally relevant interest is one that everyone is required to take into account in their deliberation, we could easily appeal to that to explain why each rights violation corresponds to wrongdoing. But an account of this kind regarding the relationship between rights and wrongs fails to respond to our initial inquiry; it fails to explain why rights, in general and to an extent independently of the moral relevance of the interest they protect, feel valuable. For these reasons, I propose a different account.

I introduce a type of idealized society – the society of equals – where the distribution of rights follows two regulative norms. Firstly, any departure from an equal distribution of rights is justified in terms that do not contradict the society’s general commitment to equality. Secondly, in deciding which rights to implement, the society attempts to strike a fair balance among the competing interests of various categories of citizens. When a distribution of this kind is in place, equality of status acts both as the baseline for the fair distribution of rights and as a constraint on the public recognition of each right. Under such conditions, by respecting the rights of another, I recognize them as somebody whose equality of status can be a source of stringent reasons for my action. *Vice versa*, by violating somebody’s right in a society of equals, I communicate that I do not take their equality of status as a source of constraints on my practical deliberation. Hence why, under the society of equals, citizens ought to consider each rights violation as a wrong perpetrated against the right-holder. But that also implies that, under a society of equals, rights acquire a *valuable* function as they communicate respect for others’ equal moral status.

Alas, the society of equals is an idealization and even societies that approximate the ideal may contain local rights practices that disrespect the two regulative norms. Nonetheless, as I will show in the final part of the essay, the idealization can assist us in the task of understanding

when it is reasonable to believe, in the non-ideal circumstances we inhabit, that disrespecting certain rights will violate right-holders.

Here is how the paper proceeds. I begin in Section 2 by presenting an account of wronging that is incompatible with the received view according to which all rights violations are, by definition, equivalent to wronging. I proceed by considering, in Section 3, whether interests and directed duties – two identifying features of rights – can explain why, if at all, rights violations wrong the right-holder, and conclude skeptically. In Section 4, I explain why we should not be content, nonetheless, with the view according to which there is no inherent connection between rights and wrongs (I call it the *independence conclusion*). Finally, in Section 5, I devise an institutional solution to the puzzle. I describe an idealized society of equals and explain why it is the sole social setting where all rights violations constitute instances of wronging and where the practice of rights, as a whole, acquires value.

## **2. Wronging and Rights: A First Stab**

As I mentioned before, the sense of wronging I am interested in here is the one where wronging gives rise to characteristic reactive attitudes like resentment and the necessity of corrective duties. How do moral agents wrong each other, however, if we do not want to include rights violations in the explanation?

In the essay that inaugurated the discussion of reactive attitudes, P.F. Strawson spoke of a “degree of goodwill or regard” that our interpersonal relations require from all participants.<sup>3</sup> Whatever else we require from other moral agents, we demand that they give adequate concern

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<sup>3</sup> The phrase is from Peter Frederick Strawson, “Freedom and Resentment,” in *Freedom and Resentment and Other Essays* (London: Methuen & co., 1974), pp. 1–25, p. 6.

to the fact that we are, in all relevant respects, their peers. The frustration of “goodwill or regard” makes it fitting for agents who have been shown such disregard to feel resentment and creates the need for perpetrators to discharge corrective duties directed to the victim.

Analogous observations can be found in contemporary contractualism. Contractualists claim that an agent behaves wrongly when her conduct towards another is not justifiable to a generic, reasonable person who found herself in the position of the latter.<sup>4</sup> My conduct towards another agent is justifiable to them (or, more precisely, to a generic, reasonable agent in their position) if there is no alternative course of action that, without creating an excessive burden to me, would have led to lesser harm for them or would have subjected them to less significant risk. Contractualists further claim, about personal wronging specifically, that “[o]ne person wronging another [...] requires that the wrongdoer has, without adequate excuse or justification, violated certain legitimate expectations with which the wronged party was entitled, in virtue of her value as a person.”<sup>5</sup> What we can legitimately expect from others is that they act in a manner that is justifiable to us, not in the sense that we can see it promotes our interests, but that we understand it is a course of action that pays adequate respect to our status as a moral equal.

Combining Strawson’s observations about the reactive attitudes and their connections with the expectation of “goodwill and regard” with the contractualist focus on being able to justify one’s conduct to others, we can arrive at the following account of wronging. We wrong others, I suggest, *when we do not consider their status as a moral equal as a stringent source of other-regarding reasons for action and fail to take ourselves accountable to them*. In short, we wrong others when we do not accord them *adequate concern*.

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<sup>4</sup> See Thomas Scanlon, *What We Owe to Each Other* (Cambridge (Mass.): Harvard University Press, 1998), p. 132.

<sup>5</sup> Rahul Kumar, “Who Can Be Wronged?,” *Philosophy & Public Affairs*, 31.2 (2003), 99–118, p. 107.

Although this means that, on many occasions, we set back others' interests when we wrong them, the setback of the interest is neither a necessary nor a sufficient condition of wronging. In the words of another contractualist author, "[w]hen J fails to comply with the duty he owes to S, he injures S not just by setting back her interests but by failing to recognize her in a specific sense."<sup>6</sup> The specific sense in which the victim is not recognized is not an entity that has no interests whatsoever. The failure lies in refusing to recognize the victim as somebody who has as much a claim towards the satisfaction of her relevant interests as the wrongdoer, *qua* her moral peer, does.

The account of wronging I propose has two significant advantages. Firstly, it accords with ordinary language, where we use the verb "wronging" in situations in which some agent has been aggrieved by others. Secondly, it preserves the motivational and action-guiding character of wronging-avoidance; it can explain why not wronging others is something we ought to do.

Both advantages (consistency with ordinary language and motivational force) are lost if we adopt a definition of wronging where wronging is equated to rights violation.<sup>7</sup> Not only would such a definition introduce a significant departure from ordinary language; it would also make it mysterious why we ought not to wrong others. As rights (and directed duties) are both moral and purely conventional (more on this in the next section), the sole conclusion we can derive from the idea that each violation of a right creates wronging is that some instances of wronging are domain-specific: one *merely-conventionally wrongs* another if she violates a conventional right of the latter. But it is far from clear why one ought not to wrong others "merely-conventionally;" as many conventional rules are motivationally inert, in the sense that they do

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<sup>6</sup> Jonker, "Directed Duties and Moral Repair," p. 3.

<sup>7</sup> See the authors mentioned in footnote 2.

not give us reasons for action, conventional wronging may similarly exercise no motivational pull on our practical deliberation.<sup>8</sup>

One may proceed by analogy and argue that, in the same way that “moral” wrongs produce morally significant reactive attitudes and the need, for the wrongdoer, to discharge corrective duties, so “conventional” wrongs generate reactive attitudes only for those that adopt a Hartian internal point of view on the convention in question.<sup>9</sup> The problem of motivational inertness, however, would persist. It would still be the case that, for those who do not adopt the internal perspective of the convention, “conventional” wronging is not something that one should avoid engaging in, even if only *pro tanto*. Unless we prove that adopting an internal point of view on a particular convention is morally obligatory, we cannot claim that moral agents are under an obligation to act as if a particular convention gave them binding reasons for action. That would apply to conventional wronging too, which would be detached from action-guiding.

Instead of dividing the concept of wronging into various domain-specific sub-concepts, which would imply that wronging is only action-guiding in some contexts, I suggest we adopt a unitary, action-guiding, morally significant, account. Once we do that, we cannot simply take for granted any longer that violating a right wrongs the right-holder. The next step is to see if there are features of rights that demonstrate why all rights violations correspond to wronging. In the next section, I am going to focus on interests and directed duties specifically.

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<sup>8</sup> On the idea that legal norms, by themselves, are motivationally inert, see especially David Enoch, “Reason-Giving and the Law,” in *Oxford Studies in Philosophy of Law. Volume 1*, ed. by Leslie Green and Brian Leiter (Oxford: Oxford University Press, 2011), pp. 1–38.

<sup>9</sup> I thank an anonymous reviewer for raising this point.

### 3. Can Features of Rights Explain Why Rights Violations Wrong the Right-Holder?

#### 3.1 Directionality and Wronging-ness

One thing rights scholars agree on is that claim-rights, i.e. those rights that, in the classic Hohfeldian taxonomy, correlate with duties, correlate with *directed duties*.<sup>10</sup> What does it mean, however, to say that a duty is directed?

Proponents of the interest and will theory of rights – the two main rival explanations of the nature and function of rights – have attempted to demonstrate that the core elements characterizing each theory explain in what sense a duty is directed.<sup>11</sup> But all attempts have been met with objections, leading to a stalemate. Against interests, it has been argued that the mere acknowledgement that a duty benefits somebody's interest cannot make that duty directed.<sup>12</sup> Against the will theory, it has been observed that many duties seem directed even when the alleged recipient has no element of control over it.<sup>13</sup>

Mainly to avoid the stalemate, I want to propose a different definition that abstracts from the interest vs. will dispute in rights theory. I am going to define directed duties in a way that captures their ability to instantiate a relationship of mutual accountability between the two parties involved. Thus, instead of the literature on rights specifically, I am going to rely on the conceptual inventory characterizing the discussion on mutual accountability and second-personal normativity in moral theory.<sup>14</sup>

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<sup>10</sup> See Judith Thomson, *The Realm of Rights* (Cambridge (Mass.): Harvard University Press, 1990), pp. 62-63; Kamm, "Rights," p. 476; Thompson, "What Is It to Wrong Someone?"; Gopal Sreenivasan, "Duties and Their Direction," *Ethics*, 120.3 (2010), 465–94; Stephen Darwall, "Bipolar Obligation," in *Oxford Studies in Metaethics. Volume 7*, ed. by Russ Shafer-Landau (Oxford: Oxford University Press, 2012), pp. 333–58; Matthew Kramer, "Some Doubts about Alternatives to the Interest Theory of Rights," *Ethics*, 123.2 (2013), 245–63; Hillel Steiner, "Directed Duties and Inalienable Rights," *Ethics*, 123.2 (2013), 230–44; Cruft, *Human Rights, Ownership, and the Individual*.

<sup>11</sup> See, for attempts to reduce directed duties to interest-based duties, Kramer, "Some Doubts about Alternatives" and Joseph Raz, "On Respect, Authority, and Neutrality: A Response," *Ethics*, 120.2 (2010), 279–301, p. 297 and, for the attempt to explain direction through the will theory, Steiner, "Directed Duties and Inalienable Rights."

<sup>12</sup> See May, "Moral Status and the Direction of Duties," and Cruft, Chapter 2.

<sup>13</sup> See May, "Directed Duties," and Cruft, Chapter 3.

<sup>14</sup> See especially Stephen Darwall, *The Second-Person Standpoint* (Cambridge (Mass.): Harvard University Press, 2006) and R. Jay Wallace, *The Moral Nexus* (Princeton (NJ): Princeton University Press, 2019) and, for a summary, Schaab, "Second-Personal Approaches to Moral Obligation," *Philosophy Compass*, 18.3 (2023), 1–11.



My suggestion is that a duty is directed when it originates a normatively laden relationship under which one agent is required to do something *for* the other. When directed duties are involved, one agent's duty is another agent's claim: there is a perfect correspondence between what one agent (the duty-bearer) is required to do, and is held accountable for doing, and what another can hold them accountable for doing.<sup>15</sup>

As noticed by Jay Wallace, one of the leading theorists of relational normativity, this aspect of directed duties contributes to the proto-egalitarian character of rights. What Wallace calls relational requirements, which are in all relevant respects analogous to directed duties, "appear to operationalize a commitment to equality, insofar as they acknowledge the standing of persons as equally worthy of moral consideration" because "the interests of others count equally, in this context, not as considerations that are to be assigned equal weight in assessing the consequences of actions that the agent might perform, but as potential bases of moral claims that are held against the agent."<sup>16</sup> Directed duties allow us to see each other not merely as individuals who may have a stake in what is to be decided but as holders of morally relevant claims.

But can directionality in itself explain why *all* rights violations wrong the right-holder? It may initially seem so as I have argued in the last section both that (1) wronging corresponds to denying others adequate concern and that (2) this concern is something we owe to others and that others can hold us accountable for. Since (2) implies that we wrong others when we disregard a duty we owe to them, can we not conclude that we wrong others when we violate rights simply because we violate a duty directed to them? Not quite. For I have not argued that wronging is reducible to the violation of any directed duty whatsoever, but only that wronging equates to the violation of one *specific* directed duty, namely, the duty to assign others adequate moral concern. Thus, directionality in itself is insufficient to explain in what sense, if at all, rights

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<sup>15</sup> This applies to all types of directed duties including those, such as the duty of gratitude, that are not the counterparts of rights. See Adrienne Martin, "Personal Bonds: Directed Obligations without Rights," *Philosophy & Phenomenological Research*, 102.1 (2021), 65–86.

<sup>16</sup> *The Moral Nexus*, pp. 117–118.

violations wrong the right-holder. Let's consider instead whether we can explain the wrongdoing through the relationship between rights and interests.

### *3.2 The Role of Interests in a Theory of Rights*

Let me first elaborate briefly on some relevant features characterizing the relationship between interests and rights.

The first feature is that, plausibly with the exception of individualized contractual rights, rights only belong to *types* or categories of individuals. Even individuals who are the sole holder of a specific right (e.g., Joseph Biden with the power-right to issue executive orders in the US) have that right because they are the sole occupant of a certain role (US President).

This feature has been noticed in different ways in the literature. Leif Wenar, for instance, argues that rights only exist when there is a duty, attributed to some individuals as occupants of roles, that they behave in a certain manner towards other individuals, also identifiable through their roles, and the latter “want such duties to be fulfilled.”<sup>17</sup> For authors endorsing a contractualist moral framework, by contrast, the generic interests protected by rights are identified considering “whether it is fair for others to expect that a representative person in S’s position will take an interest in x, and whether it is fair for S to expect that others will expect that.”<sup>18</sup>

Regardless of which strategy we employ to identify type-interests, it is important to reflect on its implications. If the interest protected by a right is one that we can attribute to a group of individuals by virtue of some characteristics such individuals share, any departure from the attribution of the right to all group members will need justification. This is the second sense in which rights possess a rudimentarily egalitarian character – the very language of rights

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<sup>17</sup> Wenar, “The Nature of Claim-Rights,” p. 209.

<sup>18</sup> Jonker, “Contractualist Justification and the Direction of a Duty,” *Legal Theory*, 25.3 (2019), 200–224, p. 215, Wallace, *The Moral Nexus*, pp. 180-189.

presupposes that all individuals who share such relevant features that we can reasonably attribute to all of them a similar interest are entitled to the protection of the interest, unless we find a valid justification for doing otherwise.

But how do type-interests relate to rights? Here I must introduce a basic distinction between legal (or more generally conventional) and moral rights. At least since Bentham's repudiation of natural rights as "nonsense upon stilts," some philosophers have expressed skepticism about the conceivability of rights that lie outside conventional settings. However, the idea that moral agents may be entitled to some things as a matter of right even when such entitlements are not guaranteed by conventions is part of our ordinary discourse. If I say, for example, that women have, in general, a right to decide whether to terminate their pregnancy, regardless of how societies regulate abortion, the concept RIGHT I am using can only make sense if interpreted as a purely moral right.

It seems quite plausible that interests may directly ground moral rights.<sup>19</sup> Joseph Raz, for instance, famously affirmed that, for a right to exist, an interest must be a "sufficient reason for holding some other person(s) to be under a duty,"<sup>20</sup> and the affirmation seems particularly at ease with moral rights. If I take women to possess a moral right to decide whether to terminate their pregnancy, to follow the example above, it must be because of a morally relevant interest that the right serves and nothing else.

Interests by themselves cannot have the same unmediated grounding role for legal rights; a mere interest – regardless of its moral relevance – cannot make a legal right unless it is protected by a legal duty. Raz himself writes, about legal rights, that "[somebody's] right is a legal right if it is recognized by law, *that is if the law holds his interest to be sufficient ground to*

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<sup>19</sup> I am here using "ground" in the sense of contemporary metaphysics, which refers to the factor that explains, more than any other, why something occurs. See Gideon Rosen, "Metaphysical Dependence: Grounding and Reduction," in *Modality: Metaphysics, Logic, and Epistemology*, ed. by Bob Hale and Aviv Hoffmann (Oxford: Oxford University Press, 2010), pp. 109–36

<sup>20</sup> *The Morality of Freedom* (Oxford: Clarendon Press, 1986), p. 166.

*hold another to be subject to a duty.*"<sup>21</sup> Neil MacCormick similarly writes that "when a right to T is conferred by law on all members of C, the law is envisaged as advancing the interests of each and every member of C *on the supposition that T is a good for every member of C.*"<sup>22</sup>

What explains in virtue of what a *legal* right exists? Following Raz and MacCormick, we can say that the law mediates the justificatory relationship between interests and legal rights; the law assigns legal relevance to an interest that may be, outside of it, utterly trivial. Raz further affirms that "[o]ne has a legal right because the authority declared that one has an interest which justifies holding others to be subject to duties [and] *one has that legal right even if the authorities' declaration is mistaken.*"<sup>23</sup> Which means that legal authorities may introduce duties that aim at protecting completely fictitious interests, or interests that do not actually affect any citizen's wellbeing.

Now let's consider whether interests, by themselves, can explain why rights violations wrong the right-holder. If we just considered moral rights, answering this question would be trivial. Moral rights protect, by definition, morally relevant interests. Morally relevant interests are equivalent to claims that each interest-holder can legitimately advance against other members of the moral community.<sup>24</sup> Insofar as I have a moral right, that means I have an interest of such relevance that it should shape how others are supposed to treat me, to the point that their neglecting the relevance of the interest in the interactions they have with me can make it fitting for me to express resentment and demand some corrections. And, I argued before, that a form of resentment is fitting and that corrective duties are required indicate precisely that a wrong has been committed. So, when it comes to moral rights, the explanation for why their violation

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<sup>21</sup> "Legal Rights," *Oxford Journal of Legal Studies*, 4.1 (1984), 1–21, p. 14. Emphasis added.

<sup>22</sup> "Children's Rights: A Test-Case for Theories of Right," *Archiv für Rechts- und Sozialphilosophie*, 62.3 (1976), 305–17, p. 311. Emphasis added.

<sup>23</sup> *The Morality of Freedom*, p. 262. Emphasis added.

<sup>24</sup> On the relationship between claims and morally relevant interests, see Wallace, *The Moral Nexus*, Chapter 5.

wrongs the right-holder is straightforward: the interest itself gave right-holders a morally relevant claim and the wrong consists in the frustration of the claim.

When we consider legal rights that do not protect morally relevant interests, their wronging character cannot be explained by the setback of the interest because the mere presence of an interest, however genuine, is insufficient to show that its deliberate frustration, on the part of another agent, will wrong the right-holder. Consider an example of competition. In a fair competition, each competitor has an interest in outperforming the others. The interest in outperforming one's competitors may feel trivial sometimes (think of a game of cards among children), other times definitely less so (think of an academic job interview). Not only that, each competitor is aware that, by winning, they are going to frustrate others' genuine interest. Yet, in no way could we qualify their intentions or final success as a case of wronging.

We could ask why competition is (at least sometimes) morally permissible, even though it will inevitably lead to the frustration of some agents' interests. The answer refers again to the idea that only some of our interests can work as morally relevant claims that we can vindicate against others; the interest in not being outcompeted in a competition I am voluntarily partaking is clearly not one of them. This does not mean that it is not *in the interest* of each competitor to win. It is just that such interest is far from reaching whatever threshold of moral relevance that would be necessary to make it into a claim since "one can have all manner of personal interests regarding the character of one's own life that do not give rise to corresponding moral claims."<sup>25</sup> Which implies, in turn, that its frustration, in the absence of further information, does not give even a *prima facie* indication that the individual whose interest was at stake has been wronged.

Are *all* the interests protected by legal rights analogous to the interest of each competitor in a race to outperform the others? Not exactly, because at least some legally recognized

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<sup>25</sup> Wallace, *The Moral Nexus*, p. 162.

rights might be the legal counterparts of moral rights. However, at least some legal rights do not protect morally relevant interests; that is the obvious conclusion if we accept the point I derived before from Raz and MacCormick according to which the law can give protection, in the form of a right, to all kinds of interests, including not only trivial but immoral ones. And, if that is the case, then at least some of the interests protected by the law through the attribution of legal rights may indeed have the same moral credentials of the interest in outperforming one's competitors: they might be genuine interests but not equivalent to claims that moral agents can vindicate against each other. To argue otherwise – to argue, that is, that the law can elevate whatever interest to a morally relevant claim – would be to assume that there is some kind of moral magic in the word “right.”

#### **4. Complete Independence of Rights and Wrongs? Some Reasons for Skepticism**

The most immediate conclusion might be that there is no relevant relationship between rights and the idea of wrongdoing.<sup>26</sup> Some rights violations *may* produce wrongdoing (when the interest protected by the right is morally relevant) but only in virtue of some properties contingently possessed by the specific right. Let's call this thesis about the relationship between rights violations and moral wrongdoing the *independence conclusion*.

Should we accept the independence conclusion? Admittedly, it has distinct advantages. Firstly, it avoids the moral magic of saying that, just because the law has decided that certain interests deserve to be protected as a matter of rights, then the frustration of those interests counts as a wrong. Moreover, the independence conclusion explains why violations of both

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<sup>26</sup> This is the conclusion ultimately supported in Cornell, “Wrongs, Rights.” For Cornell, rights are action-guiding norms and determine “the ways that other people’s deliberation and action should be guided by respect for us and our choices.” Wrongs, by contrast, “arise where another person’s action affected us and is unjustifiable to us” (p. 139) and only enter the normative picture *ex-post*, when a damage has already occurred and someone is called to justify their existence.

moral rights and legal rights protecting morally relevant interests wrong the right-holder, and we might be content with that.

But, if the crude version of the moral magic thesis is implausible, so is the crude version of independence. For something does seem to change, in terms of what we can hold each other accountable for and whether we can resent others, when the law attributes a right to us, even when the interest is morally trivial. Or, at least, something seems to change *in many, ordinary circumstances*. Which is why I do not feel satisfied – not yet – with independence.

Another reason to feel unsatisfied about independence is that it neglects the proto-egalitarian character of rights. I previously identified two sources for the belief that rights, in general, possess some kind of proto-egalitarian character. The first is the fact that rights protect type-interests, which implies that any departure from the rule that all members of the type-group ought to receive the right stands in need of justification. The second is the fact that rights correlate with directed duties, which implies that rights may work as vehicles of communication of respect for another's status as a moral peer (the aspect, I suspect, Feinberg relied upon when concluding that "the activity of [rights] claiming [...] makes for self-respect and respect for others").

Unfortunately, the proto-egalitarian features of rights are possessed by immoral rights too. Indeed, immoral rights too aspire to protect an interest that may be shared across a group of individuals and correlate with directed duties. Hence, if we had to employ the proto-egalitarian features by themselves to explain why rights violations wrong the right-holder, we would have to conclude that the violation of immoral rights too wrong the right-holder, which seems implausible. Suppose you have the opportunity of preventing one slave-holder within a slave-owning society from exercising his slave-owning rights. It would be absurd to say that you are thereby wronging him (even *pro tanto!*) unless you also prevent all other slave-holders from exercising their rights. Hence, we have to look elsewhere for a solution.

## 5. Rights in a Society of Equals: From Conventional Rights to Moral Wrongs

### 5.1 Why an Institutional Solution Is Required

The reference to the slave-owning society in the previous paragraph was not casual. The thought I want to develop in this section is that, instead of looking to a *general* solution to the puzzle, we may look to an *institutional* one. We may look, that is, at a solution that explains why, *under certain institutional circumstances*, the practice of rights as a whole acquires value and rights violations become equivalent to wrongs.

But why an institutional solution, in particular? Even if I have excluded that we can explain the wronging-ness of rights violations purely by appeal to interests or directions, other non-institutional solutions may be available. For example, we could appeal to the concomitant facts that (i) every violation of a *morally action-guiding* directed obligation wrongs the duty-recipient and (ii) some conventional obligations create morally action-guiding directed duties.<sup>27</sup>

I am not sure, however, that (i) necessarily holds. Consider a case where you are required, morally, to respect an *immoral* right because not doing so would lead to morally abhorrent consequences (for instance, you are required to submit to the dictator's command in a grave crisis because, if not enough people follow the dictator's order – whatever they might be – chaos will ensue). So, the right in question gives rise to a *morally* action-guiding obligation (in the sense that morality dictates that you ought to do that) which is also directed (because correlated to a conventional right – the dictator's right to command). Yet, we would not want to say that, by violating the right, you are wronging the right-holder (as opposed to doing something that is simply wrong, all-things-considered).

So, the fact that a conventional, directed obligation is morally action-guiding does not automatically entail that its violation will constitute a wrong for the duty-recipient. Whether it does so

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<sup>27</sup> This combination of theses was specifically suggested to me by an anonymous reviewer and is close in spirit to Schaab, "Why It Is Disrespectful."



depends on whether the *directionality* of the obligation itself, and not just its content, has a moral character, as is the case, for instance, with rights protecting morally relevant interests. But, if we just relied on the moral relevance of the interest, we would be back to the independence conclusion which, I suggested, we should not be too keen to accept.

The guiding idea behind the institutional solution I will defend in this section is that, if we want to avoid attributing moral stringency to rights in general, we should look more carefully at the manner in which rights are distributed within concrete, although possibly idealized, social settings. I will suggest that there is at least one such social setting – the society of equals – under which conventional rights acquire the stringency of moral obligations and where rights violations generate wrongdoing, even when the interest protected by the right is morally insignificant.

### 5.2 Rights in a Society of Equals

To an extent, all societies that have rights include differentiated rights. Women’s rights, children’s rights, the rights of persons with disabilities, are all restricted in their domain. Beyond rights differentiations grounded in differences of interests, there are differentiations that have a teleological and role-based justification: certain rights are distributed unequally because they guarantee that those who occupy some roles can do so without impediments.<sup>28</sup> So, we have the rights of parliamentarians to enact laws, the right of members of a board of trustees to elect a company’s CEO, the right of a football player to “their position on the field of play,”<sup>29</sup> and so on.

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<sup>28</sup>This distinction makes sense even if it is not a rigid dichotomy. One could say, for instance, that it is *in the interest of* role occupants to undertake their roles without impediments. For an argument of this kind, see Mullins, "Rights, Roles, and Interests," *Journal of Ethics & Social Philosophy*, 16.2 (2019), 95–115.

<sup>29</sup> <https://img.fifa.com/image/upload/datdz0pms85gbnqy4j3k.pdf>, p. 124. I derived the example from Wenar. The right of parliamentarians to enact laws and the right of board members to elect the CEO are not, strictly speaking, Hohfeldian claim-right but bundles of rights including both claims, powers, and immunities. However, as long as at least as some elements in these bundles can be interpreted as claims, they can be said to give rights to directed duties

Societies differ in how they differentiate rights. Take, for instance, a caste society. One way of describing caste societies at a superficial level is to say that different categories of individuals hold different rights because they are presumed to possess different interests. Once we apply a modicum of critical theory, however, we realize that the rights enjoyed by the higher classes allow them to maintain the social hierarchy and their privileged position within it. Hence, even though the justification offered for the unequal distribution of rights may refer to a presumed difference in how different interests are distributed across the population, the result of the rights distribution tends to privilege some individuals at the expense of others.

These examples show that the way rights are assigned among citizens is an important component in defining how a particular society fares in terms of its commitment to equality. It seems plausible, then, that a society could not qualify as egalitarian unless the rights it recognizes are distributed in a particular manner.

Let me paint first the idealized model of a society of equals and then delve further into the way that social equality and rights interrelate. I define a society of equals, in line with relational egalitarian commitments, as one that succeeds in preventing the emergence and persistence of sectors of society that feel entitled to represent others as, in some sense, socially inferior.<sup>30</sup> The fundamental commitment of a society of equals is to make sure that its citizens treat each other, in all relevant areas of public life and some sections of private life, as moral equals.<sup>31</sup> More specifically, a society of equals supports egalitarian relations both *horizontally*, between

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<sup>30</sup>What I write here can be appreciated from many perspectives within the so-called social or relational egalitarian camp. I am especially indebted to Niko Kolodny ("Rule Over None II: Social Equality and the Justification of Democracy," *Philosophy & Public Affairs*, 42.4 (2014), 287–336 and "Being under the Power of Others," in *Republicanism and the Future of Democracy*, ed. by Yiftah Elazar and Geneviève Rousselière (Cambridge: Cambridge University Press, 2019), pp. 94–114), Samuel Scheffler, ("The Practice of Equality," in *Social Equality: On What It Means to Be Equals*, ed. by Carina Fourie, Fabian Schuppert, and Ivo Walliman-Helmer (Oxford: Oxford University Press, 2015), pp. 21–44) and Christian Schemmel, *Justice and Egalitarian Relations* (Oxford: Oxford University Press, 2021).

<sup>31</sup>Which sections of the private sphere? Needless to say, I cannot do justice to this question here. But, at least in the absence of a more convincing account, we can follow Rawls on the "basic structure" of each society, comprising "the "political constitution, the legally recognized forms of property, and the organization of the economy, and the nature of the family" (*Political Liberalism* (New York: Columbia University Press, 2005, p. 258).

citizens in the public and some sections of the private sphere, and *vertically*, between citizens and state officials.

As relational egalitarians have already argued, the egalitarian commitment generates some distinct constraints on the distribution of goods and titles as certain forms of unfair distributions are incompatible both with citizens treating each other as equals and with the state according its citizens equal respect and concern.<sup>32</sup> Although these constraints are usually elaborated with reference to goods and titles that appear canonically in the literature on distributive justice – such as Rawlsian primary goods, capabilities, opportunities to lead a good life, etc. – I believe similar conclusions can be reached considering rights: only certain distributions of rights are compatible with a political society according equal respect and concern to its citizens and only certain distributions of rights allow citizens to relate to each other as equal.

The distribution of rights that guarantees the persistence of equal relations among citizen need not be an equal one. Indeed, as the initial examples show, some distributions of rights *must* be unequal, in full consideration of the unequal interests that characterize different sections of the population. So the question becomes, how does a society prevent an unequal distribution of rights from turning into a system of inequality?<sup>33</sup>

I want to suggest that, at the level of the distribution and recognition of rights, a society of equals is characterized by following two regulative norms. The first holds that any departure from the equal distribution of rights should be justified in terms that do not contradict a general commitment to equality. So, if we are to implement a system by which only some individuals have certain power-rights (say, the right to issue an executive order, or enact a law, or detain another citizen, etc....), there must be a reason that can be offered as to why that distribution of rights does not offend against the equality of citizens on which the society is founded. Secondly,

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<sup>32</sup> See especially Scheffler, "The Practice of Equality," and Schemmel, *Justice and Egalitarian Relations*, Chapter 8.

<sup>33</sup> The problem appears in Gregory Vlastos, "Justice and Equality," in *Social Justice*, ed. by Richard B. Brandt (Englewood Cliffs (NJ): Prentice-Hall, 1962), pp. 31–72 and Bernard Williams, "The Idea of Equality," in *Problems of the Self: Philosophical Papers* (Cambridge: Cambridge University Press, 1973), pp. 230–49.

the distribution of rights must be demonstrably fair across the most significant type-interests that various categories of individuals identify as relevant to their wellbeing and sense of moral worth. The distribution cannot give a disproportionate recognition to the type-interests of some citizens and neglect type-interests that are equally or more relevant to the wellbeing and sense of moral worth of other citizens.

We can imagine two scenarios in which a society's distribution of rights is unfair towards its citizens' type-interests. The simplest case is when the same type-interest is protected as a matter of rights for some citizens and not for others. Consider how societies that do not legally recognize same-sex marriage seem to treat the interest of same-sex couples in having their intimate relationship protected as less worthy of consideration than the same interest when expressed by heterosexual couples. A more complex scenario is when a society gives significant protection, as a matter of rights, to the type-interests of some citizens whilst neglecting type-interests of comparable relevance to others. Consider how early capitalist states (say, 19<sup>th</sup>-century England) gave full recognition to the interests of the owning class (in reaping the fruits of their investments, in having control over their property, etc.) whilst treating the interests of workers (in having decent working conditions, in being able to influence how their society or the factory they work in is governed, etc.) as unworthy of consideration. By contrast, a society of equals attempts to strike a fair balance between the interests of workers and those of the owning class in the attribution of rights in the system of production and distribution.

Now that I have painted the model of a society of equals, let me explain why I take it as the ideal social setting where citizens may be entitled and even required to assume that violating the rights of others amounts to wronging them, morally speaking.

### *5.3 The Institutional Solution*

Let's start by considering what respecting rights communicates, in general. I am here relying on the view, common in the literature, that we can attribute an expressive meaning to an act, by virtue of how acts of that type are generally interpreted within a community of sense, independently of the specific actor's communicative intentions.<sup>34</sup>

I noticed before that directed duties can be understood as duties that one ought to discharge not because doing so is impersonally good but *for someone*. Willingly respecting rights conveys the message that one accepts that others can be the source of one's obligations; that is the communicative message implicit in the directionality of rights. But, I argued before, this is insufficient to demonstrate the moral bindingness of rights-based obligations. I do not demonstrate inadequate concern towards others when I refuse to submit to conventional norms that assign them undeserved privileges.

However, within a social context in which rights are distributed fairly, the expressive meaning we can reasonably attribute to the act of respecting rights is bound to change. Let's assume that inhabitants of a society of equals are aware of the fair distribution of rights. They are then concomitantly aware of the fact that conventional rights are distributed in a fair manner that takes equality of status as a constraint on the social recognition of each conventional right. If citizens are aware of this, they are invited to conceive fellow right-holders not simply as individuals for whom one ought to act, but as individuals *whose status as a moral equal in society is a source of obligations*.

Notice how this shift in the expressive meaning of respecting rights requires living in a society where the two regulative norms are respected. Only if equality of status is the baseline

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<sup>34</sup> See Elizabeth Anderson and Richard Pildes, "Expressive Theories of Law: A General Restatement," *University of Pennsylvania Law Review*, 148.5 (2000), 1503–75: "[t]he expressive meaning of a particular act or practice [...] need not be in the agent's head, the recipient's head, or even in the heads of the general public. Expressive meanings [...] are a result of the ways in which actions fit with (or fail to fit with) other meaningful norms and practices in the community" (p. 1525). Other examples are Jean Hampton, "Correcting Harms versus Righting Wrongs: The Goal of Retribution," *UCLA Law Review*, 39.6 (1992), 1659–1702 and Christopher Bennett, "What Goes On When We Apologize?," *Journal of Ethics & Social Philosophy*, 23.1 (2022), 115–35.

for the distribution of rights and a constraint on their recognition, can I interpret right-respecting as communicating concern for the equal moral status of the right-holder. By contrast, in a caste society, where rights serve to reinforce the social hierarchy, respecting rights can only communicate concern for another's *superior* status. That is why I see no risk that this argument can be exploited to demonstrate that slave owners too are wronged when their rights are violated; simply, the rights convention within the slave-owning society does not invite members to conceive of each other as peers when they respect others' rights.

The equal character in the distribution transfers, therefore, from the social level of institutional architecture and conventional norm-setting to the individual level of second-personal relations. Whoever violates a right within a society of equals implicitly communicates that she does not take the right-holder's status as a moral equal as a source of stringent obligations. But that is precisely what wronging consists in, as I argued in Section 2. It follows that, in a society of equals, citizens are not merely entitled to assume that, by violating the rights of others, they are neglecting others' status as a moral equal. They are also *required*, morally, to respect conventional rights because not doing so would amount to wronging.

If the proper distribution of rights is in place, the idea that the mere act of violating another's right demonstrates disregard acquires plausibility. Because, in violating a system of conventional norms whose core function is to give recognition to the equal moral status of members of the community, I do show disregard for the particular member whose rights I violate.

The convention tells me that rights are recognized and distributed in a manner that pays respect to the equal status of each member. How can I, then, unilaterally decide that one person's right is not worth respecting without demonstrating that I consider that particular right-holder as less than a full moral peer? In deliberating that way, I treat the right-holder as if the equality-based convention were somehow not there for them. Of course, in cases of need, my

deliberate disregard can still be excused or justified by the circumstances but it is still acceptable for the person whose rights I have violated to resent me and ask for an explanation, at least until more details have been added about the motivation behind my action. That, again, would not be the case in the slave-owning society; the slave owner whose rights have been violated has no entitlement to feel any resentment because he is not entitled, in general, to expect that moral agents treat him as the convention demands.

It may be objected I am proving too much here. Am I really suggesting that *all* violations of conventional rights within societies of equals, including violations of rights that protect morally irrelevant interests, communicate disrespect for the moral status of the right-holder and, because of that, amount to wrongdoing? The answer is positive, provided that we understand that the society of equals is, in important respects, an idealization. Remember that, as per my assumptions before, a society of equals is one in which rights are distributed fairly both in the sense that each unequal distribution of rights across people who share the same interests is adequately justified and that the global distribution of rights gives a fair protection to the various type-interests existing across the population. When these conditions are in place, I cannot defend myself against the allegation of having wronged another person when violating their right by saying that the interest protected was not, after all, morally relevant. Because of course the same applies to at least some of the rights that the institution allows me to claim against others; by assumption, even some of my own morally irrelevant interests are protected in terms of rights. Hence, my unilateral decision to violate another person's right on the ground that the right protects a morally irrelevant interest, while taking advantage of a system that protects some of my own morally irrelevant interests, cannot but communicate my belief in the superior relevance of my own interests.

What if we disagree, substantively, about the *content* of the right?<sup>35</sup> Consider the following scenario. Within a society of equals, some citizens residing close to a wood are entitled with felling rights. Meanwhile, other citizens believe that cutting further trees in that wood will harm the ecosystem. Notice that the opposers of the right do not contest the fact that the right in question is part of a system of conventional rights that is overall fair; they just reject that particular right. Surely, one could say, the opposers of the right do not wrong the current right-holders by demanding that the right should be abrogated.

In response, let me first add another feature to the ideal representation of a society of equals. Let's agree that a society of equals, in being an ultimately *just* society, will not give legal protection to *immoral* interests. Hence, by assumption, the interest of the woodcutters is not immoral, for instance because there is some reasonable disagreement regarding whether cutting further trees in that particular wood is going to have a particularly negative impact on the ecosystem. Now suppose that the protesters decide to go one step further and, instead of simply campaigning to have the right abrogated, directly violate the right, for example by preventing any access to the wood, and do so without giving adequate compensation to the right-holders. Would we still say that the violation cannot constitute a wrong? Our intuitions on the case are probably muddled by the fact that we can hardly conceive of disagreements like this in an *ideal* society (I will have more to say about what this implies for non-ideal societies later). But, if we agree that the interest underlying the right is not immoral (again, by assumption) and that the protesters too take advantage of a system of rights that pays adequate respect to everyone's interests (morally relevant and not), then it seems the protesters are indeed doing something wrong *to* the woodcutters by refusing to give any kind of recognition to the right in their action. After all, the woodcutters too may have reservations about some of the rights enjoyed by the protesters (case in point, they might contest the fact that the protesters enjoy such a robust

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<sup>35</sup> I thank an anonymous reviewer for pressing this objection.



right of protest) and they may also be tempted to violate the protesters' rights. So, if this is really a scenario of genuine reasonable disagreement (as it must be, because otherwise we would not be in a society of equals), then the protesters' failure to give any kind of recognition to the woodcutters' rights does qualify as a wrong, at least *pro tanto*. But, again, this only applies to the violation as such and not to any protest that goes *just short* of violating the right.

An important point follows. Within a society of equals, the *content* of a right – the interest specifically protected – should not play any role in anyone's decision regarding whether to respect it. I ought to respect rights because that is a way of demonstrating respect for the equal status of my co-citizens and not because that is also good in some other personal or impersonal sense. That a right protects an interest I consider important may give me some additional (but redundant) motivation but cannot be the sole reason for why I respect a particular right. This point has often been appreciated in the literature, especially by deontological authors, but what has been less appreciated is that the irrelevance of the underlying interest in deciding whether a right should be respected can only make sense within a social context in which rights as such, independently of the interest they protect, have value.<sup>36</sup>

In sum, the fair distribution of rights in a society of equals achieves three remarkable results. Firstly, it brings to fruition the egalitarian potential of rights. Secondly, it demonstrates that there are institutional settings wherein it is true that all rights violations, including ones that do not frustrate a morally significant interest, wrong the right-holder in a morally significant manner, at least *pro tanto*. Thirdly, within a society of equals, we can finally attribute moral value to the practice of rights. That is because the practice makes it easier for participants to demonstrate respect for each other's equality of status.<sup>37</sup> Without rights, we would have to find

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<sup>36</sup> Apart from Feinberg, other authors who emphasize the importance of rights beyond their contribution to the protection of interests are Thomas Nagel, "Personal Rights and Public Space," *Philosophy & Public Affairs*, 24.2 (1995), 83–107 and Kamm, "Rights."

<sup>37</sup> Which means that the value we can attribute to the practice of rights is ultimately instrumental. But the attribution of instrumental value to the practice of rights can still serve to answer the initial question about the moral

alternative, possibly more costly, ways to demonstrate to others that we take their equal moral status seriously enough to create constraints on our actions.

This conclusion both strengthens and qualifies Feinberg's thesis. It strengthens Feinberg's thesis insofar as it gives a more specific presentation of how rights can operate as communicative vehicles of respect for one another's moral status. It is both because rights correlate with directed duties, thus inviting a representation of the right-holder as somebody for whom others ought to act, and because of the way in which societies of equals distribute rights, that respecting rights in a society of equals "makes for self-respect and respect for others." At the same time, the reasoning in this section strongly qualifies Feinberg's general thesis about the value of rights, showing that it only applies under specific, not so easy to obtain, institutional circumstances.

We might feel, however, that the description of the society of equals is so idealized that, in the non-ideal world we occupy, we must treat rights as normative devices that have no direct, content-independent appeal on our reason. Isn't this the sole conclusion we can draw by combining the thesis I have presented in this section with the realization that we do not, in fact, live in a society of equals?

Suppose we ask this question from within a society which is committed to the equal status of its citizens in theory and sometimes in practice but that often delivers poorly on that commitment. This seems to me a fair description of most contemporary democratic societies. For the person who wants to know whether they ought to respect the rights included in the society's legal code, this is a circumstance of both moral and epistemic uncertainty; given the complexity of evaluating the way in which the society is far from the ideal, it is not *prima facie* obvious whether all rights violations will correspond to wrongdoing or whether, instead, at least

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value of engaging with rights. If a practice exhibits value, even if only instrumentally, engaging with it is itself valuable.

some rights violations will be morally irrelevant. As these are circumstances of genuine uncertainty, we need a change of perspective. Instead of wondering whether the wronging thesis corresponds to truth or is contingently falsified, we should focus, instead, on what moral agents should do, in the light of such uncertainty.

Acting under circumstances of moral uncertainty is morally risky; we are always in danger of producing moral wrong that, from our restricted viewpoint, we had not anticipated.<sup>38</sup> In our specific case, we can notice that two general attitudes we may adopt in non-ideal societies bring with them specific risks. Assuming that all rights violations correspond to wronging can be morally risky in societies that are far from the ideal model of a society of equals; if the rights one is confronted with resemble those found in a caste society, one has a (belief-independent!) reason *not* to respect them as doing so would wrong individuals in the discriminated sectors of society. However, the suspension of judgement about the wronging character of rights violations can also be morally risky. By subjecting all conventional and legal rights to critical scrutiny in a society that is sufficiently close to a society of equals, one risks respecting significantly fewer rights than the ones that ought to be respected.

Although I cannot offer a complete way out of the conundrum – that would require a complete ranking of societies in relation to how they differ from a society of equals – the main thesis presented in this section can assist in the ordinary task of deciding which kind of relevance we want to assign to rights in our practical deliberation. Suppose, for instance, that the society we live in commits strongly to equality of status as a constraint on the proper distribution of conventional rights, even though it does not qualify as a society of equals proper because the two regulative principles are respected only partially. Then, our job as moral agents is to identify the local rights practices that are at odds with the general commitment to equality of

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<sup>38</sup> The literature on moral risk and moral uncertainty is now burgeoning. But, for just an example at its application to rights specifically, see Renée Jorgensen Bolinger, "Moral Risk and Communicating Consent," *Philosophy & Public Affairs*, 47.2 (2019), 179–207.

status. Some examples are not hard to identify: consider “qualified immunity” from prosecution for police officers in the US, the right of the Catholic Church not to pay estate tax on its properties in Italy, or the right of the high clergy of the Church of England to a seat in the House of Lords. These practices may not compromise the overall fairness of the system of legal rights of which they are part and, if this is so, citizens of these countries may still assign moral value to the practice of rights as a whole. But respecting these rights risks wronging the citizens whose equality of status is neglected by their implementation. Hence, the best attitude is possibly one of qualified commitment to the system of rights; one should treat violations of legal and conventional rights in these imperfectly egalitarian societies as generally capable of producing wrongdoing, with all that follows in terms of one’s reasons for action, except in those cases in which respecting rights patently risks disrespecting the moral status of other citizens.

Finally, let me be clear that there are some cases in which the institutional solution does *not* explain why a rights violation produces wrongdoing. These are the cases where (i) the institution does not qualify as even an aspiring society of equals, (ii) the right does not protect a morally relevant interest and yet (iii) the violation seems to constitute wrongdoing. Consider the example of a white citizen under an Apartheid-like regime who is denied their right to vote – which they would not possess if they were not white – on immoral grounds (for instance, because they protested Apartheid itself).<sup>39</sup> Or take a fictitious regime where only men can own property but where one particular man is denied the possession of goods – again, on immoral grounds. These cases can be explained by the insulting nature of the violation. If the violation is done out of spite or with the specific intent to punish a right-holder, then the wrong consists in the malevolent intent and not in the deprivation of the right itself.

This final case proves that the institutional account by itself cannot explain why all the rights violations that feel wrongful are indeed wrongful. But we already knew that, even in

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<sup>39</sup> I was suggested this example by an anonymous reviewer. The case is complicated by the fact that the interest in voting, even in an unjust context, is, quite plausibly, morally relevant.

deeply unjust societies, one can sometimes wrong others by violating their rights; for instance, when the rights in question protect morally relevant interests. The institutional account, however, is the only one that can explain why certain rights violations are wrongful even when the interest protected by the right is morally irrelevant and even when the violation is not undertaken out of spite or with a disparaging intent. Moreover, as I have tried to show in this section, the institutional account is the only one that explains how the practice of rights as a whole may acquire, within given settings, moral value.

## **6. Conclusion**

In this essay, I have attempted to answer two questions. The first concerns the general value of the practice of rights. Granted that a right to something can only exist if that something is understood to be of interest to the right-holder, why do we need this peculiar normative way of serving human welfare? The second question concerns rights and what it means to wrong others, in a morally significant sense: under which conditions can we confidently say that rights violations are wrongs perpetrated against the right-holder?

The answer I have given emphasizes the role of rights in a social environment where people treat each other as equals. Generally, I have argued, rights contain an egalitarian potential because of their aspiration to protect interests belonging to types of individuals. Which means that, generally, any departure from a rule that assigns rights to individuals who share some relevant characteristics stands in need of justification. Rights also generally invite us to conceptualize fellow moral agents as individuals who are not simply vulnerable to what we do but who can demand from us that we act in a certain way. But the egalitarian potential of rights is compatible with the use of rights as mere vehicles of social stratification. Hence, if we want to attribute value to the practice of rights, and to assume reasonably that rights violations correspond to wronging, we cannot consider rights in isolation from the manner in which they are

socially distributed. Only then, once we consider a system of rights in its concrete expression, will we be able to say not only that rights make it possible for moral agents to relate to each other in ways that would not be otherwise possible but also that relating to each other through rights bears moral value.