Are Human Rights the Rights of Social Justice?

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I/ Introduction

Human rights documents and discourse frequently draw strong links between the aims of human rights and social justice. As James Griffin (2008) notes, the Universal Declaration of Human Rights (UDHR) is characterized by a 'wholesale inclusion of justice among human rights…(and) includes not only procedural justice, but also distributive justice and fairness' (186). Indeed, the UDHR's preamble states that human rights are the 'foundation' of justice 'in the world' (UN, 1948). In addition to protections against standard associative threats to the person, its articles cover wide-ranging entitlements from public protection against discrimination to 'equal access to public service' (21.2). The UDHR's invocation of these aims is re-affirmed and strengthened in subsequent human rights statements (e.g., the International Covenant on Economic, Social and Cultural Rights, the Copenhagen Commitment on Social Development, as well as in many regional and domestic human rights regimes). The expressed goals of different agents of global and domestic human rights advocacy networks also frequently draw connections between realizing human rights and the advancement of social justice (Clapham, 2007: 160-62; Hucker, 1997; Jetschke, 1999: 144-6).

In quite strong contrast, the dominant view in the current political theory of human rights is that while not 'minimalist' natural rights, they occupy a largely distinct, and significantly less egalitarian, domain than social justice (Beitz 2009; Buchanan 2010; Griffin 2008; Jones 2010; Nickel 2007; Risse 2012). There are, of course, notable exceptions to this distinction and areas of significant overlap between the equality of social justice and human rights, particularly in the case of constitutionally essential civil and political rights, in which human rights ground significant formal equality in protections against standard threats of political association. However, theories of social justice tend to require further levels of equality of opportunity that extend well beyond the requirements of human rights. As Charles Jones (2010) puts it, while different conceptions of human rights will vary as to the '*extent* of justice commitments' they cover, theories of social justice include 'further specifications on the legitimate range of inequality of basic goods' that 'are compatible with universal (human) rights protection' (133).

The aim of this paper is to auger against the standard theoretical separation between human rights and social justice and to present an account of greater normative overlap as part of an egalitarian theory of human rights. It begins by addressing the claim that the justification of human rights and social justice rest on different kinds of interests. Against the view that human rights rest on especially urgent justificatory interests – particularly the interest in protections against standard associative threats to something like a 'minimally good life' (Nickel 2007:

36) – it is advanced that human rights, like social justice, are best seen as resting on a broader conception of 'membership'. Theorizing human rights as membership norms suggests that, like principles of social justice, they are comparative rather than baseline principles, and that their requirements are dynamic and develop in accordance with the condition of political society. The overlapping view of human rights and social justice is further developed by establishing their respective roles in processes of political legitimacy. The final section addresses the argument that human rights are distinct from, and more urgent than, the norms surrounding social justice because for something to be a human right it must be intelligible as a matter of international concern in ways that satisfaction of social justice through citizenship entitlement is not necessarily, or appropriately, thought to be.

II/ Human Rights as Membership Norms

Human rights are often distinguished from social justice by virtue of differences in their respective justificatory interests. Whereas human rights are widely theorized as resting on a narrower, more urgent, set of basic interests against standard associative threats, principles of justice are justified by the general interests of an ideal status of membership in a political association. Membership here is a substantive ideal of the relationship between institutions and those exposed to them that distinguishes legitimacy from domination. The inclusive ideal of membership as distinct from subjection is central to John Rawls's distinction between domination as 'merely socially coordinated activity…by orders issued by some central authority' and a legitimate system of genuine social cooperation, 'guided by publicly recognized rules and procedures that those cooperating accept and regard as properly regulating their conduct' (1993: 16). Membership is an inclusive status since, as Joshua Cohen puts it, 'to be treated as a member is to have one's interests given due consideration, both in the processes of authoritative decision-making and in the content of those decisions' (2010: 328).

Human rights, in contrast, are widely held to rest on different justificatory grounds than inclusion in an ideal status of membership. To take an influential example, James Nickel's conception of human rights treats them as distinctive regulatory principles for political association, primarily the relationship between authoritative state structures and those exposed to them, however the justificatory interest is not inclusion in the status of membership but the more basic interest in standard protects against 'common threats' of exposure to associative institutions to a 'minimally good life' (2007: 36). While they are, like social justice, political principles, human rights are a 'political morality of the depths' aimed at 'avoiding the terrible' rather than an 'attempt to prescribe a general theory of distributive justice' drawing on a richer kind of relational interest (36).

Membership interests are comparative and dynamic grounds for evaluating and selecting regulative principles of political society. It is comparative because the status of membership depends on relational aspects of one's standing in the general material and cultural condition of membership. Membership interests produce dynamic principles because as the general conditions of membership develop the

requirements for inclusion in that status vary. In contrast, a conception of human rights based on general interests against standard associative threats is largely non-comparative, providing instead baseline requirements of well-being. Its requirements will also be significantly less dynamic across political societies, and over time in political societies, in addressing predictable associative threats (though most non-minimalist accounts are sensitive to broads facts of development levels [e.g., Beitz, Nickel]). Re-structuring the grounds of human rights as membership interests brings them into greater contact with social justice, and permits an egalitarian account of human rights that operates at more specific institutional areas of political society than principles of social justice.

The primary reason to question whether general interests in protection against standard associative threats to a minimally decent life are the most appropriate ground for justifying human rights is its incompatibility with much of the nature of current human rights discourse and practice. Many current elements of human rights practice stretch well beyond the justificatory reach of protections against standard threats and indeed suggest in the direction of human rights as egalitarian membership norms. Applying the protection-against-standard-threats view to current human rights practice would result in a significant curtailment of current protections and entitlements. While it is of course not desirable that current practice determines the nature and content of a conception of human rights, theorizing human rights as regulative principles for political association that presume the existence of states, and not as pre-political or natural rights, augers for granting 'practice a certain authority in guiding our thinking about the nature of human rights' (Beitz, 2009: 10). Interpreting current human rights practice, notably its anti-discrimination and equity dimensions, suggests they rest on interests in fair inclusion in the operation of major social institutions that constitute the material and cultural experiences and expectations of membership (Hucker 1997; Garcea and Hibbert 2011). Buchanan (2010) advances a similar claim in arguing that the idea of 'status equality' is the more appropriate justificatory ground for human rights in comparison to an 'instrumental' justification of human rights as efficient protections against standard threats of exposure to states (686). Status equality, he argues, accounts for central elements of current human rights practice, including 'robust equality before the law', anti-discrimination policies and the idea of an 'adequate standard of living' that is defined in a 'social comparative way' (683). Significant and effective protections against standard threats of exposure to states can be non-egalitarian, but this, Buchanan argues, fails to capture the thrust of current human rights practice that address relational inequalities. Current forms of socioeconomic entitlement and anti-discrimination measures under the framework of human rights presume the importance of relative standing to other members, and the 'most secure and straightforward grounding' for these types of considerations 'is the idea of equal status' (687).

Compelling, Buchanan goes on to argue, however, that interests stemming from status equality produce less egalitarian principles of human rights compared to social justice. None of the core elements of human rights practice, he argues, that

push past the limits of an instrumental-threat justification presuppose an 'egalitarian distributive principle'. Status equality is distinct from the distributive equality of social justice, and is 'compatible with a wide range of differences and with their social recognition in the form of material inequalities' (685). Equal status 'constrains' material inequality but does not require the full measure of distributive justice a state may pursue that 'exceeds' entitlement under status equality. To close this space between the egalitarianism of human rights and social justice, as formulated by Buchanan, it is possible to link concerns of status and distributive equality as part of a general theory of egalitarian regulative principles that secure membership. Respect for the status of member in political association is shown, in large part, through supporting social justice. As Will Kymlicka (2002) puts it, 'one way to ensure that social relationships are egalitarian is to ensure that individuals have roughly equal shares of social resources' (196). A similar claim is central to Rawls's (1999) argument that a primary concern of social justice is social status, what he calls the social bases of self-respect. Capacity for self-respect in political association depends on having one's status as a member respected by others, and the extension of distributive justice to institutional functioning is a basic form of members' expressing their mutual 'respect for one another' (156). There is a strong case, then, for what Nancy Fraser (1996) calls a 'false antithesis' between inequality rooted in 'recognitional' structures of 'cultural domination…(and)…social patterns of representation, interpretation and communication', on the one hand, and material inequalities on the other (7). Most forms of inequality, she argues, are 'bivalent' and consist of 'both economic differentials and culturally constructed distinctions' (7). These connections between status equality and distributive equality brings the egalitarianism of human rights and social justice together as part of general processes protecting persons' membership status.

While possibly seen as sharing in the performance of the function of protecting persons against exclusion from membership, human rights and social justice function at different levels of abstraction from the institutional processes they regulate. Social justice consists of principles that apply to the structural functioning of systems of social cooperation and the way in which institutions operate collectively to affect the interests of members; as Rawls puts it, social justice conditions 'the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation' (Rawls, 1999: 6). Human rights are less deep norms than principles of social justice, and do not operate as far in the structural background of political association. By operating in more circumscribed institutional sites they are more suited to relatively direct translation into formal juridical and legislative entitlements. Take, for example, the contrast between the widely endorsed social justice principle of equal opportunity applied to the cumulative functioning of a range of relevant institutional settings over a person's life course and the kinds of human rights that pertain to the specific institutions that bear on the overall distribution of opportunity (e.g., concerns of human rights in educational institutions, general mobility issues, workplace discrimination, poverty oriented concerns, and so forth). Equal opportunity as a principle of social justice reflects a general membership

interest and is a deep background norm that hosts specific human rights applied in certain institutional settings. Generated human rights will also be grounded in more specific social identities than the deeper generative norms of social justice.

Membership and Political Legitimacy

As a political status, membership is distinguished from subjection and domination. While different kinds of systems based on subjection can remain stable through effective domination, without respect for membership norms they lack legitimacy. By accounting for relational interests in the procedural and substantive dimensions of associative structures, securing membership status establishes political legitimacy by bringing political association as close to the ideal of voluntary acceptance as is possible (Nagel, 1991: 36). This section develops the view of human rights and social justice as nested membership norms by considering their functioning in institutional and discursive processes of establishing and satisfying the conditions of political legitimacy, marked off from subjection and domination.

Political legitimacy is of course a deeply contested concept. On one rendering, the idea of political legitimacy contains normative and descriptive properties. As Rawls puts it, legitimacy is 'stability for the right reasons' (1993: 391). Political association, on this view, has legitimacy when its members accept the basic terms of justification and support its institutions from perceptions of generally sufficient satisfaction of these terms in their ongoing functioning. As Charles Taylor puts it, 'a society has legitimacy when members so understand and value it that they are willing to assume the disciplines and burdens which membership entails' (1993: 64-5). As a certain kind of stability and support based on acceptance of the terms of justification, legitimacy is normative as well as descriptive and is distinguished from stable forms of domination as well as purely instrumental support. Institutional stability from acceptance of the values that justify political association reflects legitimacy as a form of compliance that is 'distinguishable from purely self-interested or instrumental behaviour on the one hand, and from straightforward imposed or coercive rule on the other' (Hurrell, 2005: 16).

The legitimacy of political association draws on two sequenced justificatory ideas. The first is efficiency – a political association is justified whatsoever if it improves on the postulated condition of a non-institutional baseline. This is a backward-looking aspect of justification, comparing and balancing the postulated 'risks of isolation' with the 'risks of association' (Vernon, 2010: 51-2). Depending on the nature of one's thoughts on life without cooperative institutions, the idea of efficiency, while normative, is, presumably, a more or less minimalist justificatory principle. In most cases, importantly, it is consistent with protections against standard associative threats to basic interests and could be satisfied without the entitlements needed to secure the status of membership. However, a justified political association is not necessarily legitimate and may fail, through exclusionary practices, to provide all those subject to it sufficient reason to accept and support its demands. The second legitimating idea of political society is a forward-looking

conception of equality. It addresses subsequent and unique associative risks to the status of membership without making comparative reference to the postulated condition of isolation; the relevant comparisons are with other feasible modes of association or other possible regulative principles that condition calculations of reasonable acceptance. The subsequent principle of equality frequently requires inefficient changes to an efficient institutional baseline in order to secure political legitimacy (Rawls, 1999: 69).

Human rights and social justice on the view here advanced come in at the second, egalitarian stage of legitimating political association. Membership interests are protected through regulation of shared associative institutions by principles of social justice. Background principles of social justice nest the further layer of more concrete human rights norms that apply to concrete social identities and patterns of exclusion in specific areas of institutional functioning. This concept of social justice and human rights as responding to subsequent demands for legitimacy is political because they are not theorized as motivating political association, but as generated by it; the development of cooperative institutions can be theorized as motivated by the less demanding, though normative, idea of efficiency (Heath 2006). Human rights and social justice come in as subsequent egalitarian regulative principles for efficient institutions and address, at different levels of abstraction, patterns of exclusion from the status of membership.

Considering two possible objections can help further develop this view. The first points to the universal status of human rights and recalls the idea of human rights as protections against standard associative threats. As discussed, the general claim that human rights and social justice work to bring normative legitimacy to institutions could be accepted while identifying more distinctive domains within this broad role. On an alternate view, human rights function at the justificatory stage to make association an efficient change by protecting against standard threats of exposure to political structures, particularly the abusive potential of setting up coercive capacities, through limiting constitutional and quasi-constitutional mechanisms (Vernon 2010). Social justice, on the other hand, is a more dynamic norm that directs and regulates subsequent modes of the production and distribution of cooperative benefits. Social justice, in this respect, is a prescriptive norm for social cooperation, rather than a constraining principle. This alternate view of the role of human rights and social justice in political legitimacy suggests a sequenced application of them. Human rights come in at the first stage of justification by protecting against standard risks of association. Social justice is a subsequent and dynamic norm that secures legitimacy in particular sites and is conditioned by the specific range of benefits that a political association chooses to produce and by the unique kinds of relations and interactions that develop between members. Whereas human rights protect against generally universal threats to standard associative interests it is not, as Charles Beitz puts it, 'unreasonable to expect the requirements of social justice…to vary across societies in ways that respond to the differences in the economic, social and cultural background' (2009: 143).

In reply to this line of objection it can first be pointed out that social justice, in significant part, contains entitlement to protections against standard abuses of coercive associative capacities. The Rawlsian idea of prioritized equality rights in the area of basic liberties provides protections against associative threats to the 'freedom of the person, which includes freedom from psychological oppression and physical assault and dismemberment' (1999: 53). Of course, this area of justice leaves other social institutions unaddressed by egalitarian principles, such as risk-pooling arrangements and structures of socioeconomic opportunity. Entitlements of justice beyond associative threats to the 'freedom of the person' often represent the point of theoretical separation between the domains of social justice and human rights, such that social justice has a sort of human rights-plus quality (that is, social justice includes human rights in formal civil and political areas plus further kinds of social rights beyond those included as human rights). Weighing against this split, however, is that inequalities beyond standard protections for the 'freedom of the person' are similarly predictable risks that could test the reasonability of association and so would be included in deliberations concerning justification, leading to standard institutional protections. This permits a more continuous conception of human rights and social justice as regulative principles, at different levels of abstraction, for political and socioeconomic structures that primarily function as constraining mechanisms on social exclusion. However, sufficient protections against both formal-coercive and informal-material risks of associations that make association justified can come in a range of more or less egalitarian forms, which bears on legitimacy. The second objection holds that social justice is an overly demanding requirement of legitimacy, and that a weaker conception of human rights norms is a more plausible foundation.

The second objection, then, is that even if the view of social justice and human rights as constraining mechanisms on institutional inequalities is accepted, the strong egalitarian requirements of social justice are too demanding to be the basis of a plausible conception of political legitimacy. This is especially so under conventional views of legitimacy in which it functions to deliver stability to justified associative practices by establishing political obligation as the correlative duty of a legitimate authority's right to rule (Klosko, 1982: 87-91; Simmons, 1999: 745-7). On the standard view that social justice is a strong egalitarian norm, identifying it as the basis of legitimacy puts universal political obligation largely out of reach, given persistent experiences of injustice. If, however, the obligation to obey is based on respect for a weaker (i.e., less egalitarian) standard of human rights, then legitimacy is, arguably, widely realistic. This informs Cohen's (2010) distinction of human rights as norms in political legitimacy and obligation from justice as a more maximalist ideal of social cooperation – 'the rights that are required if individuals are to be treated as members would be identical to the rights that are required if the requirements imposed by law and other regulations are to be genuine obligations …(and treating these rights as human rights)…certainly is more plausible than a theory of obligation that ties political obligation to justice' (329).

Against this ground for distinguishing between human rights and social justice is the possibility of a concept of legitimacy as principled stability without obligation (Buchanan and Keohane, 2006; Green, 1988). Rather than producing compliance and stability through obligation, an alternative conception of the output of legitimacy includes a more diffuse range of supportive attitudes and behaviours. Legitimacy, on this view, is not an either/or scenario, in which authoritative structures either have the right to rule or do not, and relevant persons either have obligations of obedience or do not, but is an ongoing process of the formation of pluralistic sets of beliefs and commitments that flow from perceptions of broad-based satisfaction of endorsed principles of justification. Principles of social justice, on this understanding, do not provide concrete requirements of legitimacy but establish a 'range' of legitimate institutional and policy formation by ruling out certain inequalities (Rawls, 1993: 428). This permits significant space for democratic deliberation and social choice in reasoning about the institutional demands and mechanisms of justice in different areas of political association (Sen, 2009: 104-10). Informing a range of legitimacy by primarily ruling out certain kinds of exclusionary treatments, principles of social justice can be theorized as background conditions for fair terms of inclusion in membership. As nested membership norms, human rights provide more specific demands in narrower areas of political society, informed, not determined, by background principles of justice.

With this dynamic, demands for legitimacy create political spaces of opportunity for deepened practices of human rights and social justice. Through institutionalization and iteration of the standards of legitimacy, previously tolerated forms and grounds of exclusion can be ruled out of the range of legitimacy. Acquired entitlements affect the conditions of membership, and thus the nature of human rights and principles of justice a particular association needs to respect to maintain legitimacy. The range of legitimate institutional functioning is tightened through the consolidation of human rights and social justice practices, by, as Seyla Benhabib puts it, effectively raising 'the threshold of justification to which formerly exclusionary practices are now submitted' (2006: 60). Thus, the standards of legitimacy should not be treated as static but as responsive to institutional formation and political discourse. As Jeffrey Reiman argues, 'we cannot take for granted that any existing formulation of (legitimacy's) conditions is complete...a government must do more than merely keep within some identified set of conditions (and) must be continually monitoring the conditions of its legitimacy and effectively correcting existing formulations of these conditions' (1997: 127). This dynamic conception of the role of human rights and social justice in political legitimacy suggests that both share the quality of aspirational norms in addition to, in certain cases, grounding claim rights and juridical entitlements.

Human Rights as Aspirational Norms

Identifying human rights as protections against associative threats to a 'minimally good life' is frequently informed by the concern that more dynamic interests of

membership permits entitlement inflation and thus threatens the status of human rights as universal norms (Nickel, 2007: 79-81). A concept of human rights that grounds their justification in the status and general interests of membership, in contrast, endorses a dynamic, open-ended view of the content of human rights across jurisdictions. To develop this further, this section presents overlapping points of normativity between human rights and social justice in their functioning in political legitimacy as standards of social aspiration and as guides for reform. The aspirational quality of principles of social justice is relatively straightforward given their status as general principles that regulate the interactive effects of institutions over time, and so necessarily operate at a more abstract level from political practice than formal juridical and legislative entitlements the ground. Human rights, on the other hand, given their formulation as 'rights' rather than as principles, ideals or even 'high priority goals', may be seen as 'mandatory norms' limited to concrete entitlement-claims with specific duty-bearers (specifically, domestic and international agents, largely operating through institutions) (Nickel, 2007: 24, 31-35). While it is the case that human rights are frequently operationalized as formal juridical and legislative entitlements, an equally significant aspect of human rights practice is their prior status as aspirational norms that guide political development in more pluralistic ways than establishing formal human rights entitlements.   In addition to specifying points of normative overlap in the domain of human rights and social justice, this helps address concerns of feasibility and democratic acceptability in an expansive concept of human rights.

Like principles of social justice, human rights frequently function as 'inspiration for legislation' and help illuminate the 'legislative route' (Sen, 2009: 363-4). However, in many cases, the legislative route is not open, or the most appropriate option, for human rights. But, as Amartya Sen puts it, '(b)ecause of the importance of communication, advocacy, exposure and informed public discussion, human rights can have influence without necessarily depending on coercive legislation' (365). Informal routes of the influence of human rights work by altering, institutionally and discoursively, the general conditions of political legitimacy and the 'threshold of exclusion' in law and legislation. Human rights are, in this functioning, similar to Joel Feinberg's classic idea of socioeconomic rights as 'manifesto rights' that establish discoursively broad and dynamic aspirations for entitlement that condition institutional formation. Human rights shape the general expectations of members are both 'determinants of present aspirations and guides to present policy' (Feinberg, 1973: 67).

Understanding human rights in this way suggests compelling similarities in their functioning to a more conventional account of citizenship rights as a core mechanism of social justice. In T.H. Marshall's (1964) foundational view, the primary function of citizenship rights, rather than setting formal entitlement, is to condition the salient social ideas, experiences and expectations that condition the status of membership and so also the legitimacy requirements of states. Citizenship right, he argues, represents a 'principle of equality' that functions ideally against 'structural inequality'. Juridical and legislative entitlement embodying citizenship's

principle of equality, 'instead of being the decisive step that puts policy into immediate effect, acquires more and more the character of a declaration of policy that it is hoped to put into effect some day' (104). Institutional treatment and entitlement reflecting the equality of citizenship affect the 'superstructure of legitimate expectations' and function as a normative bar that 'is perpetually moving forward' (115). Thus, according to Marshall, 'societies in which citizenship is a developing institution create an image of an ideal citizenship against which achievement can be measured and which aspiration can be directed' (84). An aspirational view of human rights conceives of, them as an additional normative layer that can further condition the legitimacy requirements of institutional development towards equality.

As part of this dynamic, the language of human rights increasingly functions to condition, inspire and tame, rather than replace or rest aside from, that of citizenship. Human rights work as critical taming norms for modern citizenship by providing grounds outside of citizenship to contest certain of its features. As Jeremy Waldron notes, there is an 'interesting duplication of the subject matter between cosmopolitan norms and rules of municipal law' such that human rights largely function as critical 'ideas about how municipal law should be changed' (2006: 85-6). Will Kymlicka develops a similar argument concerning the relationship between human rights and citizenship whereby the former work as 'inspiration' for the liberalizing tendencies of states' treatment of disadvantaged minority groups. He argues that, 'the trend towards liberal multiculturalism can only be understood as a new stage in the gradual working out of the logic of human rights, and in particular the logic of the idea of the inherent equality of human beings' (2007: 89). While inspiring new multicultural forms of treatment of minority groups within states, he makes the further claim that human rights also function to 'constrain' contestation of citizenship, as with the ascendancy of the language of human rights, 'there is no legal space for minorities to set aside human rights norms in the name of multiculturalism, and, in the case of most minorities, there is no wish to do so' (93). The addition of human rights as a further layer of regulative principles for the development of institutions may be seen as a welcome development from a liberal perspective because of the more explicit disconnection of aspirational ideas of equality from historically exclusionary bases of citizenship, such as nationality and ethnicity, that limited its capacity as a mechanism of justice. Incorporation of human rights into the ideational character of membership in political associations helps to 'loosen' the connections between more or less closed identities and citizenship solidarity, and allows states to more easily 'turn to the needs of their minority groups' (Spinner-Halev, 2008: 615)

As mentioned, however, the aspirational, informal understanding of human (and citizenship) rights is often criticized for potentially weakening the practice by diminishing the key dimension of a right as a justiciable claim against specific, capable, duty-bearers (Klaussen, 1995; Nickel, 2007: 32; O'Neill, 2005). According to Nickel, the structure of human rights as 'mandatory norms' in political development includes both entitlement claims (that are exhaustive of the

manifesto/aspiration conception) and obligations as concrete 'modes of directing the behaviour of the addressees' (30-31). The latter requirement of concrete duty-bearers, with sufficient capacities, he argues, protects against expansion of entitlement beyond present material and motivational capacities that weakens the political practice of human rights.

Under the concept of human rights as membership norms, however, the inflationary possibility that attends human rights as aspirational norms is less of a concern, and is endorsed, rather, as a source of dynamism. As conditions of political legitimacy, human rights should be sensitive to specific conditions of membership and be adaptable to unique kinds of exclusions that prevent persons from achieving membership status. While there are general kinds of membership interests that transcend context, many are dynamic, subsequent ideas that cannot be easily understood when abstracted from a political association's unique patterns and risks of exclusion. What membership requires in one time and place may be substantially different than in others. In this respect, dynamism and inflation are necessary components of a theory of human rights as membership norms.

While endorsing dynamism in the content of human rights, human rights as membership norms does limit problematic inflation beyond present institutional capacities, the permission of which that is criticized for weakening human rights projects. Though membership is an ideal status of voluntary acceptance, it is grounded in the range of burdens and benefits that are constitutive of the reasonable expectations of membership in a particular political association. As members, persons have the responsibility of formulating their political claims in line with the reasonable expectations of membership that are shaped by resource availability and institutional capacity (Rawls, 1993: 187). This can largely be expected to occur under human rights claims insofar as they are advanced as claims against exclusion from critical social institutions. These requirements will be generally feasible because to be reasonable expectations of membership they are already secured for most members. Human rights function to identify certain barriers to inclusion faced by disadvantaged groups and make distributive claims for existing resources, rather than demands for unique kinds of benefit production. The contents of this concept are dynamic in the sense that with social development and change, the pertinent sites of and barriers to membership evolve over time.

Theorizing human rights as aspirational norms also addresses the common concern of parochialism that leads to relatively minimalist conceptions of their contents and marks them off from the posited egalitarian nature of social justice. In light of the deep diversity across the political associations of the world, when a critical aspect of a concept of human rights is universality in legitimate regimes, the resultant interpretive implication for its content is relative minimalism (Rawls, 1999a: 121-23; Cohen, 2010: 330-4). To reconcile a universal conception of human rights with the legitimating idea of self-determination the former is reduced to the level needed to produce wide consensus on their acceptability. However, theorizing human rights as aspirational norms, rather than as formally listed and enacted

universal requirements, helps to reconcile a stronger concept of human rights that significantly overlaps with the idea of social justice, with democratic processes of the emergence of norms. As general aspirational standards of inclusion, human rights are available to a wide range of interests stemming from the material and cultural particulars of different associations. Concrete human rights claims are iterations of more general norms filtered by the condition of membership in local settings (Benhabib, 2006: 47-50). Conventional forms of the emergence of norms pushes the idea of legitimacy in more informal directions than formal-procedural conceptions. As Waldron (2006) puts it, 'by shifting our attention away from formal democratic legitimacy to the more demotic legitimacy of ordinary iteration, we need not be as pre-occupied as we are…with borders and the scope of norms. Norms emerge in the world in the circumstances of dense interactions that occur *all over the place*'; iterative emergence of human rights in local settings is 'democratic simply in the demotic dailiness of (their) use' (97-8). Human rights emerge and exist in the world as universal grounds of normative criticism, agitation and aspiration that are appropriated and applied to conditions of political membership and legitimacy as they are found and understood.

III/ International Concern

It could be suggested, quite reasonably, that the treatment of the relationship between social justice and human rights has thus far overlooked a critical piece of any plausible concept of human rights that marks it off from the normative domain of social justice – a constitutive element of human rights is that they are matters of international concern. Human rights, on this view, while primarily applying to the relationship between a political association and its members, are marked off from social justice and citizenship by being, further, standards of justification the violation of which imposes obligations of assistance on non-members. They are not, then, purely membership norms but are matters of international concern that make claims on the resources and capacities of non-members in ways that social justice does not. According to Joseph Raz (2010), what makes a right a human right is that it is a right against one's government that is 'assertible in the international arena' and that its violation is 'a (defeasible) reason for taking action against violators in the international arena…(such that)…(d)isabling the defence "none of your business," is definitive of the political conception of human rights' (328-332). With this distinctive function, human rights will fall short of the full rights of social justice, as not all violations of social justice properly trigger international concern. This section responds to two arguments for this position developed by Charles Beitz.

Beitz's (2009) theory of human rights identifies the idea of international concern as the constitutive element of its normative structure that marks it off from social justice. He presents a three-part concept of human rights that guides interpretation of its content: i/ human rights protect interests that are sufficiently important to make their protection a 'political priority'; ii/ they apply to states as duties and it is advantageous for persons that states work to protect the underlying interests; iii/ the failure to protect the relevant interests in a 'range of cases' is a

'suitable object of international concern' (136). Because of the third feature, international concern, human rights and the 'requirements of justice are grounded in interests of different degrees of urgency and therefore exert different weights' (142). Human rights, he holds, are underpinned by the more urgent interest in having a 'standard of living adequate for a decent life' whereas social justice is underpinned by 'the interest in not feeling ashamed or humiliated by one's material situation considered in relation to those of others' (142-43). International concern, it is important to note, includes a range of non-coercive 'paradigms of implementation', such as, 'accountability', 'inducement', 'assistance', 'domestic contestation and engagement', 'compulsion', and 'external adaptation' (33-40). This leads to a conception of human rights that is not 'minimalist' (because of the expansive non-coercive view of concern and intervention), but is not 'maximalist' in the sense of overlapping with the full domain of social justice due to other limiting considerations of international concern.

The constitutive idea of international concern in a concept of human rights, according to Beitz, marks it off from social justice for two related reasons, both of which address different issues of the capacity of international actors and the concern that 'some requirements of justice may not be achievable by means of any permissible form of action available to outside agents' (143). The first reason considers international society's limited material capacity – 'the international resources available for advancing human rights are scarce'. Given the limited resources behind international concern for human rights, it is important, Beitz argues, to distinguish and prioritize the interests underpinning human rights and social justice. Because there is a significant material distinction between 'assisting a society to develop its economy sufficiently to eliminate the worst forms of poverty and causing it to attain an income distribution that satisfies some more ambitious standard of distributive justice' human rights should be limited to the more minimal, and apparently cheaper, aim of satisfying the requirements of a minimally decent life (143).

It is not clear, however, that this framing of social justice as the stronger egalitarian, and therefore more expensive, norm necessarily holds. On the suggested sequenced view of the application of social justice and human rights in the second stage of political legitimacy, social cooperation, and the production of cooperative benefits is not theorized as motivated by concerns of justice, but by the principle of efficiency. Justice comes in subsequently to regulate the broad distributive patterns of the interactive functioning of institutions, compelling reform in cases where classes of persons are excluded from the status of political membership. This concept of social justice takes the kinds of benefit production and development levels as found and makes interpersonal comparisons in their distribution.   For example, in a three-person micro-case, all things being equal, a (1-1-1) distribution is just even if resource level (1) is meager and falls short of 'a standard of living adequate for a decent life' (the interest Beitz identifies underpinning human rights). In this respect, on the standard view of human rights as concerned with objective thresholds of decency it is human rights that more

clearly than not social justice requires increasing (1) to, say, (2), which is, perhaps, more materially demanding than redistributing at the level of existing resources. One question of justice is whether the move from (1-1-1) to something like (8-4-2) is just, in addition to being an efficient improvement on general living standards.

The second argument to distinguish the respective domains of human rights and social justice that Beitz makes is from the 'practical role of human rights as sources of reasons for transnational political action' and concerns the epistemological capacity of international actors. He argues that the laws, institutions and policies of social justice can be expected to 'vary across societies in ways that respond to differences in the economic, social and cultural background' and that 'judgments about the requirements of justice at this level sometimes turn on complex assessments of the significance of the pertinent background facts…that outsiders are at a disadvantage in making' (143). The membership concept of human rights developed here suggests against this reason to distinguish it from social justice. It has been suggested that human rights and social justice are nested egalitarian norms, operating at different levels of abstraction from institutions, in the legitimacy of political association. Social justice operates at a deeper level of abstraction from institutions than does human rights and concerns the working of institutions together as it bears on general principles of justice, such as equal opportunity. Human rights function at more concrete levels of institutions and entitlements as mechanisms for realizing general principles of social justice. Here again, given the function of human rights in delivering general principles of social justice in specific institutional areas, it is human rights that are necessarily more sensitive to the particularities of context, and the importance of entitlement levels in a specific area for the general structure of membership. Human rights as membership norms can be expected to display significant variation at the level of implementation based on differences across associations and the institutional and policy areas to which they apply. This should not, however, suggest against the status of human rights (or social justice) as matters of international concern whatsoever, but that external 'social help' (Sen 2004: 329) should be part of consultative processes in which relevant capacities and insights are brought to bear on the process by different domestic and international agents.

An expansive idea of non-coercive international concern does not seem decisive in setting a firm distinction between human rights and social justice, whereby human rights are the more urgent, less egalitarian norm. A concept of justice as subsequent regulative principles for the distribution of cooperative benefits and burdens does not necessarily require greater material or epistemological capacities on the part of international actors than a similar concept of human rights. It is also plausible that conventional concerns of comparative inequality in a theory of social justice above the threshold of decent levels of well-being can be properly seen as matters of international concern, such as in the case of significant relative inequality between a structurally advantaged majority group and disadvantaged minority group (or vice versa), even when the shares of the worse off

are above, even well above, the preferred conception of decent or minimal levels of well-being (Griffin, 2008: 201).

IV/ Conclusion

The idea of human rights has become a remarkably significant political force in a relatively short period of time. Increasingly, it is the dominant language of contestation of political structures and of formulating entitlement claims to different forms of institutional treatment. Human rights have not given rise to new kinds of political concerns than citizenship rights, but work to more explicitly link conventional kinds of normative claims and expectations in political associations to the universal language of the equal moral standing of humanity. Human rights connect membership claims within a political association to an external egalitarian status that bears on its legitimacy.

A notable development in the formation of human rights is the expansion of the kinds of inequality and exclusion they cover, including both the relevant sites and identities of exclusive practices. This ongoing development increasingly brings human rights practice closer in line with forms of membership-oriented comparative evaluations that characterize social justice and citizenship rights than with a general idea of instrumental protections against standard associative threats to basic interests. The basic suggestion of this paper is that the upward tendencies in the development of human rights practice need not be theoretically capped short of the general structural demands of principles of social justice in particular institutional areas, and that increasingly human rights are the rights of social justice.

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