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## Article

### (Re)discovering Duties:

#### Individual Responsibilities in the Age of Rights

Fernando Berdion Del Valle and Kathryn Sikkink\*

*“There cannot be ‘innate’ rights in any other sense than that in which there are innate duties, of which, however, much less has been heard.”<sup>1</sup>*

#### I. INTRODUCTION: WHAT HAPPENED TO DUTIES?

Human rights are, simultaneously, legal, moral, and political claims.<sup>2</sup> Equally important, however, is the fact that human rights are fundamentally claims about relationships.<sup>3</sup> To have any practical meaning, human rights must be recognized

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1. See THOMAS HILL GREEN & PAUL HARRIS, LECTURES ON THE PRINCIPLES OF POLITICAL OBLIGATION AND OTHER WRITINGS 28 (Paul Harris & John Morrow eds., 1986).

2. See TONY EVANS, US HEGEMONY AND THE PROJECT OF UNIVERSAL HUMAN RIGHTS 3, 7 (1996).

3. See LOUIS HENKIN, THE AGE OF RIGHTS 2 (1990); CHRISTOPHER N. J. ROBERTS, THE CONTENTIOUS HISTORY OF THE INTERNATIONAL BILL OF HUMAN RIGHTS 122 (2015); Siegfried Schieder, *Pragmatism as a Path Towards a Discursive and Open Theory of International Law*, 11 EUR. J. INT’L L. 663, 686–90 (2000).

by states, international institutions, and society generally. Another way to express this basic fact is that all human rights imply duties.<sup>4</sup> For many scholars, this logical relationship is so widely acknowledged that asserting it borders on truism.<sup>5</sup> A closer look reveals that although scholars often assert the correlation of human rights and duties, or even call for increased attention to duties to fulfill human rights, the dynamics between contemporary human rights and “human duties” are rarely studied in any systematic way.<sup>6</sup> Moreover, the now-robust historical literature that traces the sources and evolution of human rights concepts largely avoids tracing a history of duties.<sup>7</sup> This lack of attention is all the more remarkable if we accept the notion that human rights—those internationally recognized claims articulated in the 1948 Universal Declaration of Human Rights (“UDHR”) and later formalized through legal instruments and institutions—are, by now, a basic feature of international relations.<sup>8</sup> Human rights long ago ceased to be an idea or even set of aspirational ideas about the dignity of persons; they now provide the vocabulary with which we debate many questions about international law, politics, and global justice.<sup>9</sup> If human rights ideas have been normalized, then, how

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4. HENKIN, *supra* note 3, at 3–5.

5. See JACK DONNELLY, *UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE* 9 (3d ed. 2013).

6. Countless commentaries note that duties flow from human rights, but surprisingly few examine the sources, validity, and implications of duties of individuals under the international regime of human rights law as it exists today. See, e.g., Jordan J. Paust, *The Other Side of Right: Private Duties Under Human Rights Law*, 5 HARV. HUM. RTS. J. 51, 52 (1992); SANDRA FREDMAN, *HUMAN RIGHTS TRANSFORMED: POSITIVE RIGHTS AND POSITIVE DUTIES* 65 (2008).

7. See Samuel Moyn, *Rights vs. Duties*, BOSTON REV. (May 16, 2016), <https://bostonreview.net/books-ideas/samuel-moyn-rights-duties> (“Unfortunately, while there has been great interest in the history of rights, no one has attempted to write the history of human duties . . . to the best of my knowledge, there is not a single book on the history of duties . . .”); Philip Alston, *Does the Past Matter? On the Origins of Human Rights*, 126 HARV. L. REV. 2043, 2043 (2013) (reviewing JENNY S. MARTINEZ, *THE SLAVE TRADE AND THE ORIGINS OF INTERNATIONAL HUMAN RIGHTS LAW* (2012) and discussing the historiography of human rights). *But see* JOHANNES MORSINK, *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS, DRAFTING, AND INTENT* 1, 241 (1999) (discussing the drafting history of Article 29 of the Universal Declaration of Human Rights); ROBERTS, *supra* note 3, at 41–45 (examining the dramatic shift away from duties language evidenced in the Universal Declaration of Human Rights and on the “relational” understanding of human rights).

8. DONNELLY, *supra* note 5, at 24–25.

9. See generally David Kennedy, *The International Human Rights*

is it that a fundamental part of those rights, namely duties, have been sidelined or even ignored?

Today, we speak in terms of “responsibility” more often than “duty.” In addition, duty commonly denotes a binding legal obligation, while the term responsibility is more likely to be used in reference to social rather than legal norms.<sup>10</sup> This distinction has, in part, contributed to the increased attention given to responsibility generally in global politics; the past twenty years, in particular, have seen a particularly blossoming of responsibilities concepts.<sup>11</sup> Responsibility constitutes a thread running through a number of topical public policy subjects, including sovereignty-as-responsibility,<sup>12</sup> corporate social responsibility,<sup>13</sup> and common but differentiated responsibility within environmental policy.<sup>14</sup> Nowhere has attention to responsibilities been more prominent, however, than in the realm of human rights protection. This “turn” to responsibility is evidenced in new norms such as the Responsibility to Protect

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*Movement: Part of the Problem?*, 15 HARV. HUM. RTS. J. 101, 101 (2002) (“There is no question that the international human rights movement has done a great deal of good, freeing individuals from great harm, providing an emancipatory vocabulary and institutional machinery for people across the globe, raising the standards by which governments judge one another, and by which they are judged, both by their own people, and by the elites we refer to collectively as the ‘international community.’”).

10. For example, John Ruggie, who developed the Guiding Principles for Business and Human Rights, made a conscious decision to refer to a state *duty* to protect against human rights abuses by third parties, and a corporate *responsibility* to respect human rights. JOHN GERARD RUGGIE, JUST BUSINESS: MULTINATIONAL CORPORATIONS AND HUMAN RIGHTS 91 (2013) (“My use of the term ‘responsibility’ was intended to signal that it differs from legal duties.”). See also Steven Ratner *Corporations and Human Rights: A Theory of Legal Responsibility*, 111 YALE L.J. 443 (2001).

11. See, e.g., InterAction Council, A Universal Declaration of Human Responsibilities, Art. 18 (1998), <http://interactioncouncil.org/universal-declaration-human-responsibilities>; INT’L COUNCIL ON HUM. RTS., TAKING DUTIES SERIOUSLY: INDIVIDUAL DUTIES IN INTERNATIONAL HUMAN RIGHTS LAW: A COMMENTARY 1 (1999), [http://www.ichrp.org/files/reports/10/103\\_report\\_en.pdf](http://www.ichrp.org/files/reports/10/103_report_en.pdf); Amitai Etzioni, *Communitarianism Revisited*, 19 J. POL. IDEOLOGY 241, 242 (2014); see also Jeremy Waldron, *Dignity, Rights, and Responsibilities*, 43 ARIZ. ST. L.J. 1107 (2011).

12. See, e.g., FRANCIS M. DENG ET AL., SOVEREIGNTY AS RESPONSIBILITY: CONFLICT MANAGEMENT IN AFRICA 1, 4–5 (1996).

13. See, e.g., Michael Posner, *Business & Human Rights: A Commentary from the Inside*, 29 ACCT., AUDITING & ACCOUNTABILITY J. 705, 708 (2016).

14. See, e.g., LAVANYA RAJAMANI, DIFFERENTIAL TREATMENT IN INTERNATIONAL ENVIRONMENTAL LAW 7–9 (2006).

(R2P),<sup>15</sup> discussions concerning businesses' responsibility to respect human rights, and the emerging notion of the Right to Environment, which this Article explores in greater depth below. Even so, many of these efforts have sparked opposition among traditional supporters of universal human rights.<sup>16</sup> Do these developments, particularly the emphasis on the role of non-state actors and even of individuals promoting human rights,<sup>17</sup> indicate an emerging Age of Responsibility in global politics?<sup>18</sup> Also, how do we account for this this new scholarly and policy interest in the responsibilities and obligations that undergird rights?<sup>19</sup> Finally, how can we locate these facts within the broader development of political obligations—or what we might simply call the history of duty?

The aim of this Article is to recover the tradition of individual duties that is integral to the historical origins of international human rights.<sup>20</sup> We argue that increased attention to duties and responsibilities in international politics can be necessary complements to promoting human rights, particularly economic, social, and cultural rights. Stressing duties as useful complements to human rights can be a tool to address pressing global public policy challenges. This strategy holds particular promise in issue areas such as transnational environmental protection, and especially climate change, which traditional

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15. ALEX J. BELLAMY, *THE RESPONSIBILITY TO PROTECT: A DEFENSE* 1 (2015).

16. Amnesty Int'l & Int'l Secretariat, *Muddying the Waters: The 'Draft Universal Declaration of Human Responsibilities': No Complement to Human Rights*, 1, 3 AI Index IOR 40/02/1998 (Mar. 31, 1998); Sue L.T. McGregor, *Human Responsibility Movement Initiatives: A Comparative Analysis*, 7 IN FACTIS PAX 1, 1–2 (2013).

17. ANDREW CLAPHAM, *HUMAN RIGHTS OBLIGATIONS OF NON-STATE ACTORS* 1–2 (2006).

18. See, e.g., President Barack Obama, Inaugural Address (Jan. 21, 2009) (calling for a New Era of Responsibility).

19. OLUFEMI AMAO, *CORPORATE SOCIAL RESPONSIBILITY, HUMAN RIGHTS AND THE LAW: MULTINATIONAL CORPORATIONS IN DEVELOPING COUNTRIES* (2011); Samantha Besson, *The Bearers of Human Rights' Duties and Responsibilities for Human Rights: A Quiet (R)evolution?*, 32 SOC. POL'Y & PHIL. 244 (2015); John H. Knox, *Horizontal Human Rights Law*, 102 AM. J. INT'L L. 1 (2008); Ben Saul, *In the Shadow of Human Rights: Human Duties, Obligations, and Responsibilities*, 32 COLUM. HUM. RTS. L. REV. 565 (2000); FREDMAN, *supra* note 6; WALDRON, *supra* note 12; Kennedy, *supra* note 9.

20. Note that in this Article the term “duty” does not primarily refer to binding, legal obligations. Rather, “duty” here refers to a category of concept of obligation which includes both binding duties as well as non-binding responsibilities. This choice reflects historical patterns of usage, in which the term duty could convey, simultaneously, legal, political and ethical meanings.

human rights language has struggled to address adequately.<sup>21</sup> To address environmental crises, it is necessary not only to emphasize a human right to a clean environment, but, more importantly, to emphasize the duty of states, corporations, *and* individuals to protect the environment.<sup>22</sup> While much attention has correctly focused on the need for states and corporations to limit emissions to slow climate change, individuals need to complement state and corporate actions by working to decrease their own carbon footprints. Similar arguments could be made for a range of other pressing issues in the world, including inequality, refugee flows, and the right to education. To confront global inequality, it is necessary to stress not only the economic rights of individuals (e.g., to an adequate standard of living), but also the duties of individuals (e.g., to pay taxes so that their governments can address poverty and inequality at home and abroad).<sup>23</sup> To address the refugee crisis in the world, we need to highlight not only the right to asylum, but also the duty of states to grant asylum and complementary responsibilities of individuals to help their communities receive refugees. To ensure that all children receive equal access to education, we need to stress the right to education as well as the duty of parents, communities, and states to create the conditions under which that right can be fulfilled. In sum, recovering and updating historical understandings about individual duties may provide human rights the vocabulary with which to address some of our most pressing collective policy concerns. Duties can play this vital role because, by definition, they identify the actors who are needed in order to make human rights real. This aspect of duties was recognized in 1944 when a multinational group of jurists and legal scholars from the American Law Institute (“A.L.I.”) argued that declarations of international rights unaccompanied by recognition of duties would make those rights no more than “pious aspirations.”<sup>24</sup>

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21. Dinah Shelton, *Human Rights, Environmental Rights, and the Right to Environment*, 28 STAN. J. INT’L L. 103, 106–07 (1991); Christopher Stone, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450, 453–55 (1972).

22. Shelton, *supra* note 21; Stone, *supra* note 21.

23. We are indebted to Samuel Moyn, *supra* note 7, for drawing our attention to this duty/rights issue.

24. A.L.I., REPORT TO THE COUNCIL OF THE INSTITUTE AND STATEMENT OF ESSENTIAL HUMAN RIGHTS BY A COMMITTEE OF ADVISORS REPRESENTING THE PRINCIPAL CULTURES OF THE WORLD 7 (Feb. 24, 1944).

Although duty is among the oldest topics in political thought, there is sparse scholarship focused specifically on duties in the human rights story.<sup>25</sup> Scholars of human rights history have largely failed to account for the lack of explicit mentions of responsibilities in the Universal Declaration of Human Rights.<sup>26</sup> They have also failed to reach a consensus on why or how the emphasis on duties and responsibilities has reemerged in the aftermath of the Cold War.<sup>27</sup> Some chalk up the renewed interest in the topic to the global turn to neoliberalism in the last thirty years, as neoliberalism places a greater burden on individuals to be self-reliant and productive (e.g., neoliberal principles might be described in terms of duties toward the market economy).<sup>28</sup> Others suggest the recent call on duties comes from the increasing global influence of communitarian-minded societies, such as Singapore and China, where the good of the community can take priority over the rights of the individual.<sup>29</sup> Intriguingly, some empirical research in psychology has investigated cross-cultural understanding of rights and duties, finding support for the notion that some basic principles of rights and duties exist cross-culturally, even though the specific scope and content of those duties vary widely across cultures.<sup>30</sup> But even these investigations of notions of duties as

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25. See, e.g., Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, *The Individual's Duties to the Community and the Limitations on Human Rights and Freedoms under Article 29 of the Universal Declaration of Human Rights: A Contribution to the Freedom of the Individual under Law*, U.N. Doc. E/CN.4/Sub.2/432/Rev.2 (1983); DENG ET AL., *supra* note 12; Paust, *supra* note 6.

26. Johannes Morsink's work is a notable exception. His definitive account of the drafting of the Universal Declaration of Human Rights includes a chapter on the debate over individual duties. However, Morsink's text does not address the broader question of why duties were a prominent topic of discussion to begin with or what became of them after the passage of the UDHR. See MORSINK, *supra* note 7.

27. See, e.g., Paust, *supra* note 6.

28. MICHAEL PETERS & JAMES MARSHALL, INDIVIDUALISM AND COMMUNITY: EDUCATION AND SOCIAL POLICY IN THE POSTMODERN CONDITION 63 (1996); RACHEL S. TURNER, NEO-LIBERAL IDEOLOGY: HISTORY, CONCEPTS AND POLICIES 4–5 (2008); Ronen Shamir, *The Age of Responsibilization: On Market-Embedded Morality*, 37 ECON. & SOC'Y 1, 1 (2008).

29. HUMAN RIGHTS AND ASIAN VALUES: CONTESTING NATIONAL IDENTITIES AND CULTURAL REPRESENTATIONS IN ASIA 8 (Michael Jacobsen & Ole Bruun eds., 2000); Neil Mitchell et al., *Liberalism, Human Rights, and Human Dignity*, 81 AM. POLITICAL SCI. REV. 921, 922 (1987); Amartya Sen, *Human Rights and "Asian" Values*, NEW REPUBLIC, Jul. 14 & 21, 1997, at 33 (2008).

30. THE PSYCHOLOGY OF RIGHTS AND DUTIES: EMPIRICAL CONTRIBUTIONS AND NORMATIVE COMMENTARIES (Norman J. Finkel & Fathali M. Moghaddam

they exist in popular morality do little to clarify their role in the international human rights regime. Despite the uptick in attention, duties within human rights are mired in a kind of “no man’s land.” Recognized as an important predecessor to rights, their status today under international human rights law is left conveniently vague. The unstated consensus appears to be that while informal and voluntary “responsibilities” may have important roles to play in guaranteeing rights, “duties” *per se* do not. At best, duties seem to offer a benign, if slightly old-fashioned, vocabulary to discuss the personal obligations undergirding human rights. At worst, they serve to strip rights of their power, offering justification for authoritarian-minded coercion, or providing a legal pretext with which to deny individuals their universal rights.<sup>31</sup>

In contrast with this common view, our study reveals that the attention to duties in conjunction with rights is neither a new nor an intrinsic threat to human rights. In fact, duties and rights concepts have been linked together since the late 18th century, the same historical moment when phrases such as the Rights of Man proliferated.<sup>32</sup> This Article traces the historical links between human rights and duties, describing their origins in the 19th and 20th century Atlantic republican tradition, and their growing prominence until their moment of crisis in the mid-20th century. In 1948, during the course of a single year, duties in human rights were inserted into the American Declaration, included prominently in draft versions of the Universal Declaration of Human Rights (“Universal

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eds., 2005).

31. This Article consciously employs the term “duties” rather than “responsibilities.” We make this choice, in part, to reflect the historical record of human rights discourse, where, until recently, “duties” played a much more prominent role than “responsibility.” In addition, “duties” language preserves the moral and ethical connotations that were firmly a part of human rights discussions in the late 1940s, and which may contribute in constructive ways to contemporary human rights discourse. Despite these subtle differences in meaning, for the purposes of this Article, the two terms can be treated as rough synonyms. In other words, this Article emphatically rejects the idea that the emerging set of voluntary “responsibilities” ought to be jettisoned and replaced with binding and legally enforceable “duties.” Rather, we suggest that “duties” under human rights were once more flexible concepts than is usually assumed, and that recovering this tradition of duties may complement the current push for responsibilities under human rights. Some also now see a link between responsibilities and notions of dignity. *See, e.g.*, Waldron, *supra* note 12.

32. PETER DE BOLLA, THE ARCHITECTURE OF CONCEPTS: THE HISTORICAL FORMATION OF HUMAN RIGHTS 77–86 (2013); DOUGLAS HODGSON, INDIVIDUAL DUTY WITHIN A HUMAN RIGHTS DISCOURSE 1–2 (2003).



Declaration” or “UDHR”), and eventually reduced to a single vague article (XIX) in the Universal Declaration.<sup>33</sup> After 1948, duties followed a bifurcated path: international, legal human rights continued to downplay or omit explicit mention of duties, while in the sphere of regional human rights and national constitutions, duties persisted and even proliferated.<sup>34</sup> But, as in Jorge Luis Borges’ *Garden of Forking Paths*, diverging tracks often separate and converge again, sometimes in unexpected ways.<sup>35</sup> Today, duties and rights language are intersecting again, and in doing so, they are offering a set of conceptual tools that allow us to preserve the core ideas of human rights, while confronting transnational policy challenges.

The argument proceeds in four parts. The first part presents a sketch of duties within human rights in conceptual terms. In particular, we note that the “rights and duties correlative” model does not sufficiently illustrate the meaning of the concept as it was first used by human rights advocates in the mid-to-late 1940s. As a result, we present a vision of human rights duties understood as the necessary obligations of individuals which enable contemporary human rights. Building on other treatments of the subject, we distinguish “vertical” duties, directed toward coercive entities (e.g., states, churches, monarchs), from “horizontal” duties, which are held mutually by political equals (e.g., between family members, members of a local community, and other persons tied together by civil, economic, and environmental association).<sup>36</sup> Finally, we suggest

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33. MORSINK, *supra* note 7.

34. See American Declaration of the Rights and Duties of Man, OEA/Ser.L.V.II.23, doc. 21, rev. 6 (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V.II.82, doc. 6, rev. 1, at 17 [hereinafter American Declaration]; African [Banjul] Charter on Human and Peoples’ Rights, June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) (entered into force Oct. 21, 1986); Allen Buchanan, *Why International Legal Human Rights?*, in PHILOSOPHICAL FOUNDATIONS OF HUMAN RIGHTS 244, 244–62 (Rowan Cruft et al. eds., 2015); Zachary Elkins & Beth Simmons, *On Waves, Clusters, and Diffusion: A Conceptual Framework*, 598 ANNALS AM. ACAD. POL. & SOC. SCI. 33, 40 (2005) (discussing the diffusion of international human rights norms and national constitutional provisions). While Elkins & Simmons explore the process of “downward” diffusion, we suggest a potential “upwards” diffusion from national constitutions to the international human rights system.

35. JORGE LUIS BORGES, COLLECTED FICTIONS (Andrew Hurley trans., 1998).

36. See Thomas Pogge, *Cosmopolitanism: A Defence*, 5 CRITICAL REV. OF INT’L SOC. AND POL. PHIL. 86, 91 (2002); Jonathan Seglow, *Associative Duties and Global Justice*, 7 J. MORAL PHIL. 54, 54 (2010); Knox, *supra* note 19.

the need for networked rights and duties, a conceptual vision in which rights and duties do not exist in a dyad of individuals and states, or even of individuals to other individuals, but as a mutually reinforcing set of obligations involving a wider array of actors. We argue that such a networked concept of duties among multiple duty holders is exactly the kind of understanding necessary to help us address some of the pressing policy issues of the 21st century, such as climate change and corporate social responsibility.

The second part turns to the historical origins of duties within human rights. This section traces how a liberal duties tradition gained steam slowly over the course of the long 19th century, eventually playing a major part in the debates leading up to the drafting of the UDHR in 1948. We stress that the linking of rights and duties is a deeply-rooted principle in the history of human rights—a history that cuts across the traditional boundaries of liberalism, conservatism, and communitarianism. In the process, we document the marked shift in the vocabulary of international human rights from ideas framed largely in terms of state and individual duties to free-standing concepts grounded in beliefs about inherent human dignity.<sup>37</sup> Using new archival sources, we highlight how norm entrepreneurs from the Global South, especially jurist-diplomats from Latin American states, contributed to the coupling of rights and duties within a legal, human rights framework.<sup>38</sup> These findings further reinforce earlier research, showing that universal human rights, sometimes thought to be fundamentally Western, were actually informed by a much broader variety of political traditions and philosophies, including some from the Global South.<sup>39</sup> These traditions lent

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37. JOSEPH R. SLAUGHTER, *HUMAN RIGHTS, INC.: THE WORLD NOVEL, NARRATIVE FORM, AND INTERNATIONAL LAW* 3 (2007); A.L.I., *supra* note 24.

38. See, e.g., Kathryn Sikkink, *Latin America and the Idea of the International Protection of Human Rights*, in *ROUTLEDGE HANDBOOK OF LATIN AMERICA IN THE WORLD* 349, 349 (Jorge I. Domínguez & Ana Covarrabuias eds., 2015) (“Few histories stress that Latin American states passes a similar American Declaration of the Rights and Duties of Man a full eight months before passage of the UDHR. The American Declaration of Rights and Duties of Man was in fact the ‘first broadly detailed enumeration of rights to be adopted by an intergovernmental organization.’”).

39. See generally Paolo Carozza, *From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights*, 25 *HUM. RTS. Q.* 281 (2003) (describing the contribution of Latin American countries to the genesis of the Universal Declaration of Human Rights); Mary Ann Glendon, *The Forgotten Crucible: The Latin American Influence on the Universal Human*

support to universal human rights while stressing the inherent social dimension of individuals; more specifically, we find that these Latin American norm entrepreneurs did not innovate so much as incorporate ideas from a bundle of related political traditions available to them.<sup>40</sup> Most notably, we look to Atlantic republicanism,<sup>41</sup> Catholic Social thought,<sup>42</sup> and Latin American liberalism.<sup>43</sup>

The efforts of these legal norm entrepreneurs<sup>44</sup> resulted in one of the first inter-governmental human rights agreements: the American Declaration of the Rights and Duties of Man (“American Declaration”).<sup>45</sup> Despite this brief moment of ascendancy for human duties, these core concepts failed to be incorporated into subsequent international legal human rights agreements (with the exception of the African Charter on Human and People’s Rights, which revived the rights and duties model of the American Declaration).<sup>46</sup> Given this historical trajectory, we approach a historical puzzle: why did responsibilities, obligations, and duties of individuals fail to

*Rights Idea*, 16 HARV. HUM. RTS. J. 27, 27 (2003) (characterizing the Latin American contribution to the development of the Universal Declaration of Human Rights as “the forgotten crucible of the universal human rights idea”); Kathryn Sikkink, *Latin American Countries as Norm Protagonists of the Idea of International Human Rights*, 20 GLOBAL GOVERNANCE 389 (2014) (describing generally Latin American human rights protagonism).

40. See Sikkink, *supra* note 39, at 390; see generally Sikkink, *supra* note 38 (describing the history and contributions of the Latin American human rights movement).

41. See, e.g., ERIK J. OLSEN, CIVIC REPUBLICANISM AND THE PROPERTIES OF DEMOCRACY: A CASE STUDY OF POST-SOCIALIST POLITICAL THEORY (2006); J. G. A. POCKOCK, THE MACHIAVELLIAN MOMENT: FLORENTINE POLITICAL THOUGHT AND THE ATLANTIC REPUBLICAN TRADITION (2003).

42. See, e.g., Pope Leo XII, *Rerum Novarum* – Encyclical Letter of Pope Leo XIII on the Conditions of Labor (May 15, 1891), in 2 THE PAPAL ENCYCLICALS 1878–1903, 241 (Claudia Carlen ed., 1981).

43. See, e.g., JAIME E. RODRÍGUEZ O., “WE ARE NOW THE TRUE SPANIARDS”: SOVEREIGNTY, REVOLUTION, INDEPENDENCE, AND THE EMERGENCE OF THE FEDERAL REPUBLIC OF MEXICO 98 (2012) (describing the “determination of the people of the New World to govern themselves and to remain free from French domination”); Karen Racine, *This England and This Now: British Cultural and Intellectual Influence in the Spanish American Independence Era*, 90 HISP. AM. HIST. REV. 424, 430 n.11 (2010).

44. See, e.g., Martha Finnemore & Kathryn Sikkink, *International Norm Dynamics and Political Change*, 52 INT’L. ORG. 887, 893–95 (1998) (calling attention to the evolution and influence of norms from the domestic context to an international stage); ROBERTS, *supra* note 3, 1–18 (describing the historical origin and trajectory of human rights).

45. American Declaration, *supra* note 34.

46. African [Banjul] Charter on Human and Peoples’ Rights, *supra* note 34.

become institutionalized in the modern human rights regime, as later international human rights instruments marginalized the concept, often condensing responsibilities and duties into a single, general article or a vague statement in a preamble?<sup>47</sup>

The third part of this Article investigates the legacy of the “rights and duties” tradition in subsequent international thought by means of new empirical data. Using a contemporary survey of all the constitutions of the world,<sup>48</sup> we show that where international agreements have failed to embrace duties language, national constitutions have stepped in, making duties, especially individual duties, a regular feature of national charters.<sup>49</sup> One of the most surprising findings of this survey is just how pervasive duties language is: a majority (60%) of the world’s written constitutions contain at least one duty provision which applies to individuals.<sup>50</sup> While some of these provisions, such as the duty to obey the constitution, are vertical and reinforce the power of the state, a surprising number are more accurately characterized as horizontal or even networked duties which seek to promote links between actors at various levels of society which, together, may help promote rights.<sup>51</sup>

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47. See, e.g., Universal Declaration of Human Rights art. 29, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

48. We conducted our own independent research, with the data and tools provided by the Comparative Constitutional Project (“CCP”), led by Zach Elkins. The CCP compiled English language versions of all the world’s constitutions, and subjected them to search and tagging tools for allow for comparative analysis. We created our own tagging system so we could locate, analyze, and compare individual duties across the world. To view CCP’s complete data set, see COMPARATIVE CONSTITUTIONS PROJECT, <https://www.constituteproject.org/search?lang=en> (last visited Oct. 30, 2016). For additional explanation on our use of the CCP, see discussion *infra* Part IV.

49. See, e.g., Willem van Genugten, *The World Bank Group, the IMF and Human Rights, About Direct Obligations And the Attribution of Unlawful Conduct*, in CHALLENGING TERRITORIALITY IN HUMAN RIGHTS LAW: BUILDING BLOCKS FOR A PLURAL AND DIVERSE DUTY-BEARER REGIME 44, 58 (Wouter Vandenhoe ed., 2015) (“Some IFI member States have already adopted national human rights legislation imposing certain duties on the Executive Directors representing them.”); Ashfaq Khalfan & Ian Seiderman, *Extraterritorial Human Rights Obligation: Wider Implications of the Maastricht Principles and the Continuing Accountability Challenge*, in CHALLENGING TERRITORIALITY IN HUMAN RIGHTS LAW: BUILDING BLOCKS FOR A PLURAL AND DIVERSE DUTY-BEARER REGIME 15, 15 (Wouter Vandenhoe ed., 2015) (discussing the Maastricht Principles, which “define obligations and responsibilities for the realization of human rights . . .”).

50. Data available at COMPARATIVE CONSTITUTIONS PROJECT, *supra* note 48.

51. We draw on the idea of vertical and horizontal duties from Professor John Knox. See Knox, *supra* note 19 (2008).

The final section concludes by suggesting that human duties can offer conceptual tools to reinforce the legitimacy of human rights while also addressing contemporary, transnational public policy challenges. We illustrate our argument in particular with references to the idea of a duty or responsibility to protect the environment that, interestingly, is the third most frequently mentioned duty in written constitutions today.<sup>52</sup> More significantly, the duty to the environment illustrates the relevancy of individual duties for transnational public policy problems, namely, global climate change as well as the necessity of duties of individuals in promoting emerging rights, such as the Right to a Sustainable Environment.<sup>53</sup>

Through this illustrative example, we observe that duties of individuals do not serve exclusively as a balance to rights; in some cases, the failure to acknowledge individual duties and responsibilities may make it impossible to enjoy a collective right.<sup>54</sup> Moreover, we argue that it is useful to reexamine the rights and duties models outlined in regional human rights agreements, especially the American Declaration and the African Charter of Human and People's Rights ("African Charter"). These texts highlight the relational quality of rights and which already figure prominently in the rise of the Right to the Environment.<sup>55</sup> These almost-forgotten histories of human rights and duties from the periphery can provide a bridge to modern debates over rights, duties, and responsibilities, thereby leading to the adaptation of human rights discourses in a more plural and multipolar world where emerging powers—such as Brazil, India, China, Russia, and South Africa—will increasingly help determine the outcome of international human rights debates.<sup>56</sup> Attention to duties is also useful for efforts to gain

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52. The duty or responsibility to protect is present in nearly 33% of national charters, making it more popular than the much-older duty to care for, raise, and educate children (27%). See COMPARATIVE CONSTITUTIONS PROJECT, *supra* note 48.

53. See generally Shelton, *supra* note 21 (discussing the link between obligations, duties, human rights, and environmental protection).

54. ANDREW CLAPHAM, HUMAN RIGHTS OBLIGATIONS OF NON-STATE ACTORS 74–75 (2006).

55. See generally DONALD K. ANTON AND DINAH L. SHELTON, ENVIRONMENTAL PROTECTION AND HUMAN RIGHTS 118–50 (2011) (describing the relationship between international human rights law and international environmental law).

56. See generally Koen De Feyter, *The Common Interest in International Law: Implications for Human Rights*, in VANDENHOLE, *supra* note 49, 158–87 (describing the development of a "global common interest" and the development

broader support for the human rights agenda, particularly at a time in which the legitimacy of universal rights norms is under siege.<sup>57</sup> Critiques of the contemporary human rights movement come in many types, but many modern criticisms argue that human rights ideals and institutions, while aspiring to universality and ethical cosmopolitanism, in reality embody the ideologies and interests of dominant Western powers.<sup>58</sup> The potential usefulness of duties extends to societies that have traditionally privileged individualized negative rights against the state over obligations to society. In the United States, for example, much is made of the right to bear arms, but much less attention is devoted to the duties of the owners of guns to help diminish violence and misuse of weapons.<sup>59</sup> With regard to discrimination, we need to emphasize both that individuals have a right not to be discriminated against and duties not to discriminate.

We note at the outset that this line of argument carries risk. Historically, many advocates of rights have feared that too much emphasis on duties could undermine rights protections, and these concerns continue to be present in today's debates.<sup>60</sup> We need to be careful that emphasis on a duty not to discriminate does not undermine the right to free speech, for example. It is also true that many regimes with troubled records of supporting human rights include a particular emphasis on duties of

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of human rights law).

57. See, e.g., Eric Posner, *The Case Against Human Rights*, GUARDIAN (Dec. 4, 2014, 1:00 PM), <https://www.theguardian.com/news/2014/dec/04-sp-case-against-human-rights>.

58. See, e.g., STEPHEN HOPGOOD, *THE ENDTIMES OF HUMAN RIGHTS* 16 (2013) ("The world in which [human rights'] claim to moral authority carries the day is vanishing fast."); SAMUEL MOYN, *THE LAST UTOPIA: HUMAN RIGHTS IN HISTORY* 10 (2010) ("Human rights were born as the last utopia—but one day another may appear."); see also Kennedy, *supra* note 9.

59. See Christopher N. J. Roberts, *Standing Our Legal Ground: Reclaiming the Duties Within Second Amendment Rights Cases*, 47 ARIZ. ST. L.J. 235, 256–57 (2015) (quoting Brief of the Cato Institute and History Professor Joyce Lee Malcolm as Amici Curiae Supporting Respondent at 10–11, *District of Columbia v. Heller*, 554 U.S. 570 (2008) (No. 07-290)) ("It seems, indeed, to be considered, by the ancient laws of this kingdom, not only as a *right*, but as a *duty*; for all the subjects of the realm, who are able to bear arms, are bound to be ready, at all times, to assist the sheriff, and other civil magistrates, in the execution of the laws and the preservation of public peace.").

60. See, e.g., Hugh Breakey, *Positive Duties and Human Rights: Challenges, Opportunities and Conceptual Necessities*, 63 POL. STUD. 1198 (2015) ("[A]ny attempt to construct rights-based positive duties threatens to dissolve hallmark features of rights."). We also thank Christopher McCrudden and Steven Ratner for drawing some of these risks to our attention.

individuals in their national constitutions, often seeking to balance the rights of individuals with the necessities of the state or of the community as mediated through the state.<sup>61</sup> Even so, in the current context of strong rights protections and pressing global problems such as climate change, the risks of inaction or complacency are often more pressing than the risk of tipping the balance such that individual duties outweigh individual rights. Duties can offer a complementary vocabulary that helps reinforce the legitimacy and universality of human rights norms. With this purpose in mind, this Article makes a number of original contributions. To our knowledge, it represents the first systematic counting and categorization of duties in global constitutions, and it is the first scholarly work to examine the sources and development of the duties provisions within the American Declaration of the Rights and Duties of Man. Similarly, it is the first survey of the duties provisions in domestic law since the United Nations special rapporteur conducted an analysis of the topic in in the 1980s.<sup>62</sup>

## II. BEYOND CORRELATIVITY: NETWORKED RIGHTS AND DUTIES

How should we conceive of duties? Surprisingly, no commonly-accepted set of categories exist in the field of international, legal, human rights, even though an entire branch of moral and ethical theory—deontology—is quite literally the study of duties.<sup>63</sup> In *De Officiis*, Marcus Tullius Cicero famously stressed the claims of society on the individual, “We are not born for ourselves alone . . . but our country claims for itself one part of our birth, and our friends another,”<sup>64</sup> and defined virtue as fulfillment of our roles, or *personae*.<sup>65</sup> Though Cicero allowed for the apparent conflict between the obligations arising from our

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61. Some examples include Venezuela (13 individual duties), Bhutan (10 duties), Sudan (10 duties), Zimbabwe (5 duties), and Russia (5 duties).

62. See Erica-Irene A. Daes, Special Rapporteur of the U.N. Sub-Comm’n on Prevention of Discrimination and Protection of Minorities, *The Individual’s Duties to the Community and the Limitations on Human Rights and Freedoms Under Article 29 of the Universal Declaration of Human Rights*, U.N. Doc. E/CN/4/Sub.2/432/Rev.2, U.N. Sales No. E.82.XIV.1 (1983).

63. “Deontological” derives from the Greek word for “duty” (δέον), and is defined as “the theory or study of moral obligation.” *Deontology*, MERRIAM-WEBSTER (2016).

64. MARCUS TULLIUS CICERO, *ON DUTIES* 9–10, ¶ 22 (1991).

65. *Id.* at 42, ¶ 107.

various roles, he ultimately argued for a synthetic approach, believing that duties, properly understood, did not conflict with one another.<sup>66</sup> Building on Cicero's insights, the early modern legal theorist Samuel Pufendorf would be the first thinker to categorize duties in the Natural Law and arrange them in a systematic way. Remarkably, Pufendorf in 1691 established a framework that is still useful in thinking about moral duties today, including duties to the self, and to other humans.<sup>67</sup> Yet, despite Pufendorf's achievements in the development of a socially-grounded typology of duties, the arrival of Kantian philosophy, especially his treatment of duty as a categorical imperative grounded on reason itself, overshadowed and then eclipsed the work done by earlier Natural Law philosophers, much of which had been drawn from empirical observation of existing norms, rather than from abstract reason alone.<sup>68</sup> While duties in the Kantian tradition would, of course, play a central role in human rights debates, the rise of the Kantian approach would mean a certain conceptual indeterminacy would surround proposed obligations under international law.

The lack of accepted categories of duties is evidenced in the way in which the documents have appeared in human rights instruments even today. Lists of duties that appear in political documents like constitutions or human rights declarations do not attempt to neatly distinguish between duty types, often mixing different kinds of duties together almost haphazardly. A duty to obey the law, which might echo the language of Socrates in the *Crito*, may exist side by side in a national charter with a practical requirement to pay taxes in proportion with one's income, which, in turn, may exist alongside a romantic exhortation that citizens must love the nation or the *patria*.<sup>69</sup> In light of this diversity of usage, we do not attempt to create a comprehensive and systematic typology. Nor do we

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66. *Id.*

67. Pufendorf further drew contrasts between absolute and conditional obligations, between duties of action versus those of restraint, those engendered through contract and those arising out of our sociable nature as well as our obligation to preserve civil society generally. See SAMUEL PUFENDORF, PUFENDORF: ON THE DUTY OF MAN AND CITIZEN ACCORDING TO NATURAL LAW (James Tully ed., Michael Silverthorne trans., 1991).

68. See Michael Rohlf, *Immanuel Kant* § 5.4, in THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., Spring 2016), <http://plato.stanford.edu/entries/kant/#CatImp> (last visited Oct. 30, 2016).

69. For one of the earliest examples of such an amalgamation, see The Political Constitution of the Spanish Monarchy (a/k/a Cádiz Constitution), 1812 CONST. (Spain).



systematically catalogue theories of political and moral duty, historically or within contemporary human rights thought. Instead, we outline a general set of meanings as a basis for our main project: to understand when and how duties were invoked, challenged, and eventually sidestepped in international legal human rights, while simultaneously surviving at a regional and national level.

A duty is “a term loosely applied to any action or course of action which is regarded as morally or legally incumbent, apart from personal likes and dislikes.”<sup>70</sup> A legal duty can be understood as “a legal obligation that is owed or due to another and that must be satisfied.”<sup>71</sup> In domestic contract or tort law, a breach of this legal obligation results in liability; proving that a duty exists and then showing that it was breached “are required elements of any lawsuit for damages.”<sup>72</sup> Legal advocates and scholars, even those working within the traditions of Anglo-American positivism, have long understood that the existence of a right implies a duty to respect that right.<sup>73</sup> Because of this necessary, logical relationship between rights and duties, some legal theorists, such as Christopher Roberts, have argued that rights should be viewed as not essentially about individuals, but about relationships between a rights-bearer and a duty-bearer.<sup>74</sup> This Article takes seriously Roberts’ and others’ relational understanding of rights and duties and seeks to understand its use in the politics of global human rights.<sup>75</sup>

Duty bearers can include states, non-state actors such as corporations or international organizations, and individuals.<sup>76</sup>

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70. DAES, *supra* note 62, at 38.

71. *Duty*, BLACK’S LAW DICTIONARY (10th ed. 2014).

72. *Legal Duty*, THE PEOPLE’S LAW DICTIONARY (2002).

73. See, e.g., H. L. A. Hart, *Are There Any Natural Rights?*, 64 PHIL. REV. 175, 179 n.7 (2006); Jeremy Waldron, *Special Ties and Natural Duties*, 22 PHIL. & PUB. AFF. 3, 3–4 (1993) (describing natural duties in terms of moral relation to the law, wherein duty, or compliance with the law, is predicated on receipt of benefits in return); see generally Joel Feinberg, *Duties, Rights, and Claims*, 3 AM. PHIL. Q. 137 (1966) (describing the ways in which duties may be thought to correlate with rights).

74. ROBERTS, *supra* note 3, at 21.

75. See *id.*; Besson, *supra* note 19. The relational view is not the only stance, however. For other perceptions of rights beyond the relational view, see JOHN RAWLS, A THEORY OF JUSTICE (1971) (arguing that rights are “primary social goods”) and RONALD DWORKIN, TAKING RIGHTS SERIOUSLY (1978) (arguing for “rights as trumps”).

76. See, e.g., *Duty*, BLACK’S LAW DICTIONARY (10th ed. 2014) (delineating alternate forms of duty, including *contractual duty*, *duty to act*, *duty to defend*, etc.) In international law we often refer to the *responsibility to protect*, which

Most often in the human rights context, the state is portrayed as the primary and often exclusive duty holder.<sup>77</sup> A right to free expression, therefore, implies a state duty to refrain from undue censorship, and to create the conditions under which people may express themselves freely.<sup>78</sup> This logic applies even more directly in the case of a positive right, such as the right to education. In order for this right to be realized in practical terms, the state must take steps to make education possible, usually by establishing schools and mandating schooling for all children and adolescents. The human rights regime largely relies on this state-centered model of individual rights.<sup>79</sup>

While the duties/rights relationships between the individual and the state dyad is essential, it does not cover a range of supplemental relationships in which individuals are both the rights-bearers and the duty-holders; that is, where a duties/rights relationship exists among individuals. Below we sketch out a pragmatic approach to duties—one of which opens the possibility of enumerated duties of individual citizens as a complement to and as a means of realizing rights—a networked model of duties. This approach rests largely on distinguishing between the types of duty-holders (states or individuals) and the types of relationships between rights-holders and duty-holders (vertical or horizontal) while also recognizing that some rights require multiple, overlapping layers of duty relationships to exist at once in order for the right to become realized.

Duties in the relational sense fall into two overarching types: vertical and horizontal. Vertical duties include those of individuals toward the state, such as the duty to obey the laws, the duty to serve in the military, or the duty to defend the state in case of a national emergency. Horizontal duties are obligations held by individuals towards other members of one's family, community, or society.<sup>80</sup> These would include, for example, duties of parents to care for and educate their children or the responsibilities to respect the rights of others.<sup>81</sup>

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primarily falls on the state. See *The Responsibility to Protect*, UNITED NATIONS, <http://www.un.org/en/preventgenocide/adviser/responsibility.shtml> (last visited Oct. 31, 2016).

77. DAES, *supra* note 62, at 39–40, ¶ 103.

78. See Human Rights Committee, *General Comment No. 34, Article 19: Freedoms of Opinion and Expression*, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011).

79. DAES, *supra* note 62, at 39–40, ¶ 103.

80. See Knox, *supra* note 19; see also Waldron, *supra* note 12.

81. See, e.g., American Declaration, *supra* note 34, art. XXIX, XXX; African [Banjul] Charter of Human and Peoples' Rights, *supra* note 34, art. 27–29.

In addition to these horizontal and vertical obligations, constitutions and human rights documents refer to duties in which the rights-holder and the duty-holder are one and the same. For example, the American Declaration includes the duty to acquire education at least at the primary level.<sup>82</sup> Here there is neither a vertical nor a horizontal relationship, but an inherent or internal one—a duty to self—where the individual possessing the right to education also has a duty to acquire that education.<sup>83</sup> The same is the case with the duty to vote, which appears in some constitutions as well as in the American Declaration; the same individual who has the right to vote has the duty to exercise that right.<sup>84</sup> The individual's ability to carry out the duty depends on the primary duty of the state to hold elections and to facilitate voting, but there is nevertheless a supplementary duty of the individual to vote.

This understanding of duties demonstrates that the relationship between rights and duties is not necessarily always a dyad between the state and the individual, but involves supplementary and complementary relationships among multiple actors. While a dyad model focused on the individual and the state evokes ideas of a link or a tether between two entities, the rights and duties model is more accurately represented by a network of diverse actors with mutually coexisting and potentially complementary ties.<sup>85</sup> In the case of the duty or responsibility to protect the environment, this network of duty-holders is particularly important. In order for the state to meet its responsibility to protect the environment, it is essential that corporations and individuals fulfill their complementary or supplementary responsibilities. If individuals do not work to reduce their own carbon footprint, for instance, it will be very difficult for the United States to meet its emission goals. Simultaneously, the state needs to do more to create the right incentives for individuals and corporations to make responsible choices, including increasing gasoline taxes and vehicle emission standards, and corporations and individuals

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82. American Declaration, *supra* note 34, art. XXXI.

83. What we call an “inherent” or “internal” relationship between rights and duties is similar to what Jeremy Waldron has referred to as “rights as responsibilities” or “responsibility-rights. Waldron, *supra*, note 12. We prefer to think of them as still two separate issues, one about rights and one about responsibilities because an individual still holds these rights even if he or she does not engage in the responsibility to exercise them.

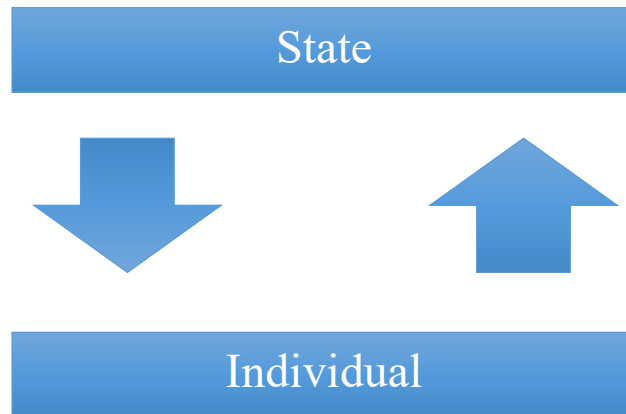
84. *Id.* art. XXXII.

85. DE BOLLA, *supra* note 32, 74 & n.67.

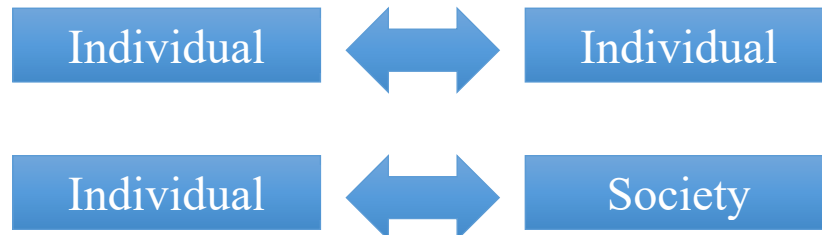
must exercise their supplementary responsibilities and duties. These various types of relationships among rights-holders and duty-bearers are illustrated below.

**Types of Rights/Duties or Rights/Responsibilities Relationships:<sup>86</sup>**

**Rights and Duties Embedded in Vertical Relationships:**

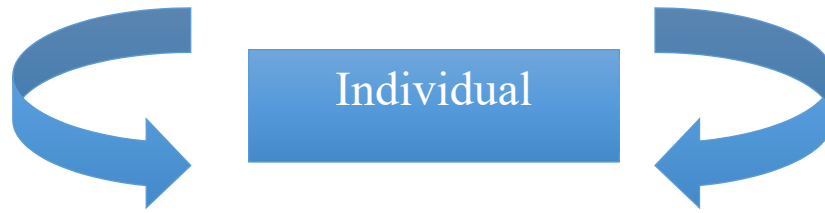
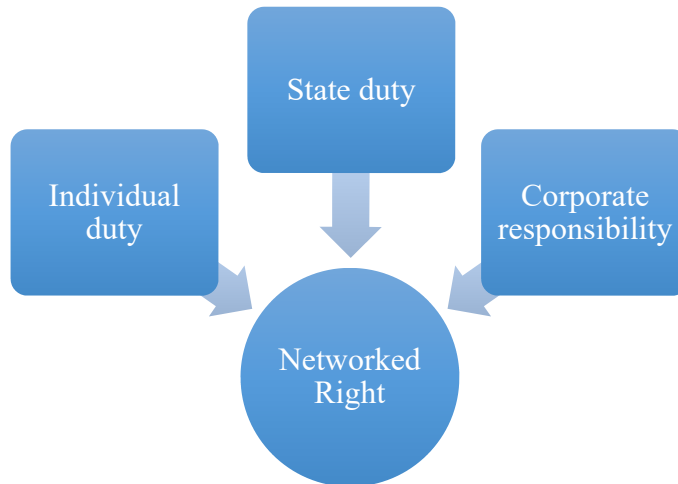


**Rights and Duties Embedded in Horizontal Relationships:**




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86. All examples of duties are taken from the American Declaration, *supra* note 34, and the African [Banjul] Charter of Human and Peoples' Rights, *supra* note 34.

**Duties to Self:****Networked Rights and Duties:**

In the contemporary understanding of human rights, duties are both under- and over-accepted. It is taken for granted in much of day-to-day life, particularly when we enter into contracts. When we create a social media account, we commonly agree to a statement of rights and responsibilities which places binding obligations on us in exchange for that particular software or technological platform, and when we sign a lease for an apartment, we frequently agree to an enumerated list of rights and obligations as tenants. Yet, despite our acceptance of the rights and duties model generally, Anglo-American liberal tradition has been remarkably reticent to incorporate a similar idea into our understanding of political rights. The English Bill of Rights established this tradition with its focus on rights and

liberties, while the American Bill of Rights reaffirmed it with its unequivocal focus on individual rights against the state.<sup>87</sup> Rights, in this tradition are thought to exist either on their own, or as properties of particular legal actors.

The United States, despite its debts to civic republicanism, has never included a duty to vote; instead it appears that individuals have a right to vote and a right *not* to vote.<sup>88</sup> Nor is there a movement underway to amend our constitution to include a duty to protect the environment. Many other countries in the world have been more open to the idea of individual duties, including a duty to protect the environment.<sup>89</sup> Today, over 60% of all national constitutions feature at least one duty or responsibility of the individual.<sup>90</sup> It is particularly important to clarify that the divisions we find on duties in constitutions are not between the Global North and the Global South, or between “the West and the rest.” As our empirical studies show, the pattern of adoption across national constitutions has been more nuanced than this. The strongest attention to duties has been in Latin America, while the weakest is in the much smaller group of countries that were former British colonies.<sup>91</sup> African nations have been avid adopters of individual duties, although not uniformly so.<sup>92</sup> In Asia, only some nations, such as Bhutan, have a robust system of duties.<sup>93</sup> Constitutions that include a duty to protect the environment are equally well-distributed around the world.<sup>94</sup>

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87. The Bill of Rights of 1689: An Act Declaring the Rights and Liberties of the Subject, and Settling the Succession of the Crown, Parliamentary Archives, HL/PO/PU/1/1688/1W&Ms2n2 (Dec. 1689).

88. Gordon Wood, *Classical Republicanism and the American Revolution*, 66 CHIC.-KENT L. REV. 13, 23 (1990).

89. See BINOD PRASAD SHARMA, CONSTITUTIONAL PROVISIONS RELATED TO ENVIRONMENTAL CONSERVATION: A STUDY 3–7 (Sept. 2010), [https://cmsdata.iucn.org/downloads/constitutional\\_provisions\\_related\\_to\\_environment\\_conservation\\_final.pdf](https://cmsdata.iucn.org/downloads/constitutional_provisions_related_to_environment_conservation_final.pdf).

90. COMPARATIVE CONSTITUTIONS PROJECT, *supra* note 48 and accompanying text.

91. *Id.*

92. 2008 CONST. art. 5 ¶ 1, art. 8 ¶¶ 2, 9–11 (Bhu.).

93. Compare 1995 CONST. art. XXIX (Ghana), with 2010 CONST. (Malawi).

94. See SHARMA, *supra* note 89, at 3–7.

## III. 1948: DUTIES IN CRISIS

## A. ORIGINS: 1795 - 1917

The first modern constitution connecting rights and duties of individuals arrived with France's Constitution of the Year III (1795).<sup>95</sup> The Declaration of Rights and Duties of Man and Citizen in this constitution included many of the rights from the original Declaration of Rights of Man and Citizen from 1789, but it also included nine articles listing duties of individuals, containing, most importantly, the duty to respect the laws, mentioned four times in the nine articles. The list also establishes horizontal duties such as being a "good son, good father, good brother, good friend, and good husband."<sup>96</sup> Historian Andrew Jainchill, author of the most recent scholarship on the Constitution of the Year III, rejects the long-held notion that the constitution was a Catholic or conservative reactionary document against the excesses of the Jacobin Terror, which is also known as the Thermidorian reaction.<sup>97</sup> Jainchill shows, instead, that by 1795, the Thermidorian reaction<sup>98</sup> had run out of steam; the authors of the Constitution of the Year III were Republicans who wanted to reclaim the revolution from its most extreme and violent elements and reestablish order. They wrote a constitution that featured the ideas of civic Republicanism emphasizing civic virtue for public officials in particular.<sup>99</sup> This constitution featured duties language as a bulwark against public corruption, rather than as a precondition for the exercise of rights, or as a well-developed outline of political obligation under the new regime.

Interestingly, even this initial foray into duties languages engendered discussion on a topic which would haunt duties for decades to come: the workability of enumerated duties as a technical matter of law. In 1799, Pierre-Claude Laroche, a Parisian legal scholar and public notary, explored the

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95. 1795 CONST. (Fr.).

96. *Id.*

97. See ANDREW JAINCHILL, REIMAGINING POLITICS AFTER THE TERROR: THE REPUBLICAN ORIGINS OF FRENCH LIBERALISM 26–27 (2008).

98. *Id.* at 27. The Thermidorian Reaction, named after the revolutionary calendar month of Thermidor in which it occurred, displaced Robespierre and the Committee of Public Safety from power, thus ending the period of civil violence known as "the Terror."

99. JAINCHILL, *supra* note 97, at 31.

relationship between rights and duties in the short-lived French charter, offering his interpretation on the legal implications of explicitly enumerated obligations.<sup>100</sup> Laroche makes clear in his gloss that duties in the Constitution of the Year II did not spark controversy because of questions of the appropriateness of duties *per se*.<sup>101</sup> In fact, Laroche viewed duties as prior to rights, and as the necessary condition arising out of the natural sociability of man first described by Aristotle.<sup>102</sup> Instead, Laroche's commentary displayed the concerns with the lack of analytical rigor in the declaration of rights and duties.<sup>103</sup> Why, Laroche wondered, do we need to "declare" rights and duties rather than derive them naturally from principles of human nature? Why, also, did the French charter employ both "duties" (*devoir*) and "obligation" (*obligation*) when the former would imply the latter? Why were civil duties yoked to moral platitudes about the Golden Rule and the virtues of filial piety? In raising these various critiques, Laroche pinpointed one of the primary weaknesses of duties discourse, namely, its lack of widely accepted philosophical foundations and analytical boundaries.<sup>104</sup> This indeterminacy meant that duties declarations, such as in the Constitution of the Year III, risked devolving into a kind of litany of moral banalities which detract from the conceptual clarity of the rights they accompanied.

The similarly short-lived Spanish Constitution of 1812 (also known as the Cádiz Constitution) was the first constitution in the Hispanic world to feature duties alongside rights.<sup>105</sup> The constitution was also remarkable because Creole delegates from colonial Latin America participated on equal footing with their Spanish counterparts in the drafting process, resulting in a charter which allowed for surprising autonomy among Spain's Latin American colonies.<sup>106</sup> The document seeks to balance newly established individual rights with traditional deference to society and the state and the nation of Spaniards.<sup>107</sup> Although short-lived as a working political charter, the Constitution of

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100. See PIERRE-CLAUDE LAROCHE, OBSERVATIONS SUR LA DECLARATION DES DROITS ET DEVOIRS DE L'HOMME ET DU CITOYEN (1799).

101. See *id.*

102. See *id.*

103. See *id.*

104. See *id.*

105. M. C. MIROW, LATIN AMERICAN CONSTITUTIONS: THE CONSTITUTION OF CÁDIZ AND ITS LEGACY IN SPANISH AMERICA 2 (2015).

106. See RODRÍGUEZ O., *supra* note 43.

107. See MIROW, *supra* note 105, at 32.



1812 proved to be a foundational text in Ibero-American liberalism, and influenced generations of Latin America's national constitutions.<sup>108</sup> Thus, when Latin American countries later secured their independence from Spain in the early 1800s, they were able to draw from the Cádiz Charter for their new constitutions, combining protection of rights with individual duties to state, society, and the family.<sup>109</sup>

In the Americas, duties re-emerged most prominently in the Mexican Constitution of 1917.<sup>110</sup> Some of these are individual vertical duties of Mexican citizens to receive military training, but the constitution also included horizontal duties, such as, for example, the duty to educate one's children. The Mexican Constitution of 1917 was the forerunner of all the following Latin American constitutions of the twentieth century.<sup>111</sup> Although much work on the Mexican Constitution stresses its emphasis on workers' rights and the expropriation and redistribution of land, it is equally notable for its attention to the civil and political rights and duties of the individual, motivated in large part by a humanist concern for the condition of the common people and informed again by Catholic social doctrine, despite the anti-clerical nature of the revolution.<sup>112</sup> The Mexican Constitution highlights the right to education in its long and detailed third article.<sup>113</sup> In Article 31 detailing "the obligations of Mexicans," the first obligation requires parents to send children to school.<sup>114</sup> Article 4 of the Mexican Constitution also includes the right to health, and adds that it is a duty of parents to preserve the mental and physical health of their children.<sup>115</sup> The detailed section on labor laws and social security spells out the responsibilities that employers have to provide a series of health benefits, including special maternity benefits.<sup>116</sup> Here, we find a very early statement of the responsibility of businesses to respect rights.<sup>117</sup> Following Mexico's example, most countries in

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108. KENNETH L. KARST & KEITH S. ROSENN, LAW AND DEVELOPMENT IN LATIN AMERICA: A CASE BOOK 44 (1975).

109. Carozza, *supra* note 39, at 282.

110. *Id.* at 304.

111. *Id.*

112. *Id.* at 308.

113. Constitución Política de los Estados Unidos Mexicanos, [CP], art. 3, Diario Oficial de la Federación [DOF] May 2, 1917 (Mex.).

114. *Id.* art. 31.

115. *Id.* art. 4.

116. *Id.* art. 123.

117. *Id.*

the region began to include lists of rights and duties in their respective constitutions, a trend that continues to this day.<sup>118</sup> Moreover, as we shall see below, the duties in the Mexican Constitution influenced in turn the duties section of American Declaration of the Rights and Duties of Man.

#### B. DUTIES IN 20<sup>TH</sup> CENTURY INTERNATIONAL LEGAL INSTRUMENTS

The earliest proposals for international human rights documents placed as much emphasis on spelling out duties as they did on spelling out rights. They relied upon the state duty model that represented the primary frame through which European jurists viewed the concept of individual rights since the Enlightenment.<sup>119</sup> This was particularly true in the codification of Inter-American norms of international law. In 1929, the American Institute of International Law, a group of legal scholars and diplomats with members from the United States and Latin America, published one of the first-ever universal rights documents: the “Declaration of the International Rights of Man,” inspired by the work of pioneering Russian jurist and diplomat André Mandelstam.<sup>120</sup> The first three articles of this declaration specified the duties of states to protect their citizens’ rights of life, liberty, property, religious freedom, and language.<sup>121</sup> Even though the American Institute of International Law made bold claims about universal rights in the 1929 Declaration, its formulation of state duties followed earlier models, most notably the American Institute of International Law’s “Declaration of the Rights and Duties of Nations,” published in 1916.<sup>122</sup> The A.L.I. clarified that they

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118. Roberto Gargarella, *Latin American Constitutionalism: Social Rights and the “Engine Room” of the Constitution*, 4 NOTRE DAME J. INT’L & COMP. L. 9, 12–13 (2014).

119. See Christian Starck, *State Duties of Protection and Fundamental Rights*, 3 POTCHEFSTROOM ELECTRONIC L.J. 1, 1–2 (2000).

120. Jan Herman Burgers, *The Road to San Francisco: The Revival of the Human Rights Idea in the Twentieth Century*, 14 HUM. RTS. Q. 447, 452 (1992).

121. *Id.*

122. See Elihu Root, President, Am. Soc’y Int’l Law, Opening Address at its Tenth Annual Meeting in Washington (Apr. 27, 1916), in 10 AM. J. INT’L L. 211, 212–13 (1916) (containing the text of and discussing the American Institute of International Law’s Declaration of the Rights and Duties of Nations).

believed rights were “pious aspirations” unless accompanied by clear statements of state duties.<sup>123</sup>

In 1944, on the eve of the Dumbarton Oaks agreement and the genesis of the United Nations system, the A.L.I. gathered to identify a common standard of “essential human rights.”<sup>124</sup> Originally conceived as a kind of multi-cultural audit of already existing basic rights, it eventually grew in scope and served as a key model for the drafters of the Universal Declaration of Human Rights.<sup>125</sup> Their final product, “Report to the Council of the Institute and Statement of Essential Human Rights by a Committee of Advisers, Representing the Principle Cultures of the World,” frames each individual right in terms of not only the individual rights-bearer’s substantive liberty or entitlement, but also the state’s duty to protect that right.<sup>126</sup> In the Report to Accompany the Definitive Draft Declaration of the International Rights and Duties of Man, the first article provides: “Each State has a duty to recognize the equal rights of every individual to life, liberty, and property and to accord to all within its territory to the full and entire protection of this right without distinction as to nationality, sex, race, language or religion.”<sup>127</sup> The inclusion of the explicit language about the duties of states, along with a justification for them, tends to undercut the argument that duties have traditionally been conceived of as the “the shadows” cast by human rights—concepts that exist, to be sure, but only insofar as they mirror the more robust and meaningful rights of individuals. Nevertheless, the document makes it clear that talks of universal rights defaulted to a discussion of state responsibility.

The A.L.I. recognized that the precision with which state duties are enumerated is itself a highly contested political issue. In response, it proposed a framework to guide the precision of state duties: that the specificity of state duties depends on the

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123. A.L.I., *supra* note 24, at 6–7.

124. *Id.* at 8. The makeup of the of the A.L.I.’s advisory group itself reveals a great deal about the Eurocentrism of this period. The report’s preamble notes the “cultures” represented include: “the Arabic, British, Canadian, Chinese, French, pre-Nazi German, Italian, Indian, Latin American, Polish, Soviet Russian and Spanish.”

125. Sarah A. Seo, *A Shattered Dream: The American Law Institute and the Drafting of the International Bill of Rights*, 30 T. JEFFERSON L. REV. 179, 180 (2007).

126. A.L.I., *supra* note 24.

127. INTER-AMERICAN JURIDICAL COMMITTEE, PROJECT OF DECLARATION OF THE INTERNATIONAL RIGHTS AND DUTIES OF MAN 3 (1948).

nature of the right affirmed.<sup>128</sup> With regard to the right of religion, for example, the state's duties are presented in both their negative form ("refrain from arbitrary limitation") as well as their positive, or active, form ("prevent denial of reasonable access").<sup>129</sup> The statement also refers to duties of individuals in an explanatory note: "We have likewise borne in mind that each right involves positive and negative duties on the part of the individual. We have emphasized this basic fact in the Preamble and in Article 18."<sup>130</sup> The focus on the role of the state as a main duty-bearer is congruent with the framing of other draft international agreements from this period.<sup>131</sup>

### C. 1948: THE AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN

The American Declaration was both the first intergovernmental declaration on human rights and the first international declaration that simultaneously presented articles on individual rights and duties.<sup>132</sup> The text contains twenty-eight articles on rights, civil and political as well as economic and social, and ten articles on duties. The American Declaration was first approved at the Ninth International Conference of American States in Bogotá, Colombia, in April 1948. The Organization of American States ("OAS") did not yet exist at the time of the Bogotá meeting; in fact, the OAS Charter was finalized and signed at Bogotá alongside the American Declaration.<sup>133</sup>

The American Declaration is also significant because of its influence on the content of the UDHR.<sup>134</sup> Although both declarations were being drafted in the same period, from 1946-

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128. A.L.I., *supra* note 24. Echoing Franklin Delano Roosevelt's famous "Four Freedoms" speech of 1941, the A.L.I. working group presents several rights as "freedoms," although the text of the articles use the term "right." See *id.*

129. *Id.* at 11.

130. *Id.* at 7.

131. See also Montevideo Convention on Rights and Duties of States, Dec. 6, 1933, 49 Stat. 3097, 165 L.N.T.S. 19 (affirming the declarative theory of statehood).

132. Tom Farer, *The Rise of the Inter-American Human Rights Regime: No Longer a Unicorn, Not Yet an Ox*, 19 HUM. RTS. Q. 510, 514–15 (1997).

133. *Our History*, OAS, [http://www.oas.org/en/about/our\\_history.asp](http://www.oas.org/en/about/our_history.asp) (last visited Oct. 28, 2016) (explaining how the OAS was formed).

134. See MORSINK, *supra* note 7, at 131–33; Glendon, *supra* note 39, at 34.

1948, the drafting of the American Declaration started before the process of drafting the UDHR and was ahead of it at every point. In 1945, when representatives from the countries of Latin America and the United States met at the Chapultepec Conference in Mexico City to discuss the proposed post-war economic and political order in preparation for the San Francisco Conference to draft the UN Charter, the delegates decided to draft an international bill of rights.<sup>135</sup> The delegates asked the Inter-American Juridical Committee (“IAJC”), which served as the legal advisory body to the Pan-American Union, to prepare a preliminary draft of the declaration.<sup>136</sup> By 1946, before the first meeting of the committee that was to draft the UDHR, the IAJC had produced the “Draft Declaration of the International Rights and Duties of Man” as well as an accompanying report.<sup>137</sup>

Here, we reach the first of our puzzles about why duties are missing in international human rights law. The draft version of the document provided the basis for the final declaration, but it included a more detailed and specific articulation of state duties than the final text that was ultimately approved at Bogotá.<sup>138</sup> State delegates eventually removed all of these specific discussions of state duties in the American Declaration.<sup>139</sup> Why did the final text of the American Declaration not include detailed articulation of duties that were in the draft versions? Although definitive explanations are difficult to pin down in the archival record, there is evidence to believe that states did not want to have such detailed discussions of state duties in order to avoid potential future liability. Even states that supported rights declarations preferred to leave duties provisions conveniently vague, limiting their legal responsibility in the case of non-compliance.<sup>140</sup>

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135. Sikkink, *supra* note 39, at 393.

136. *Id.* at 394. The four-person committee consisted of experts in international law from Brazil, Mexico, Colombia, and the United States. These committee members included Francisco Campos, Charles Fenwick, an American professor of international law and an early advocate of a world court, as well as F. Nieto del Rio, and Antonio Gómez Robledo, Colombian and Mexican jurists who would continue to be active in the Inter-American human rights system.

137. *Id.* at 397. See INTER-AMERICAN JURIDICAL COMMITTEE, DRAFT DECLARATION OF THE INTERNATIONAL RIGHTS AND DUTIES OF MAN AND ACCOMPANYING REPORT, *reprinted in* 40 AM. J. INT'L L. 93 (1946).

138. See INTER-AMERICAN JURIDICAL COMMITTEE, *supra* note 137, at 93, 95–99 (1946).

139. *Cf.* American Declaration, *supra* note 34.

140. See Ann Van Wynen Thomas & A.J. Thomas, Jr., *Human Rights and*

Some of the proposals for duties in the American Declaration did include more detailed and robust obligations of the state. For instance, the Panamanians proposed a draft that included detailed discussion of state duties. In the Panamanian draft, for example, the right to property amounts to only eight words—“Every person has the right to own property”—but the following paragraph went into greater detail about state duties to facilitate that right, specifying that “[t]he state has the duty to cooperate in assisting the individual to attain a minimum standard of private ownership of property based upon the essential material needs of a decent life, looking to the maintenance of the dignity of the human person and the sanctity of human life.”<sup>141</sup> At the Bogotá conference, the delegates of the drafting committee were careful to omit all specific discussion of the duties of states and also all of the articles on individual duties. Panama argued for even more detailed state obligations, but other states demurred, noting concerns about the differing levels of resources and industrialization among member states. Other reasons for deleting state duties revolved around issues of consistency and duties as a legal term of art (in this the delegates at Bogotá echoed some of the same concerns expressed by Pierre Laroche a century and a half before). According to a legal expert tasked with reconciling the drafts produced by the working group, the “detailed and almost exhaustive” list of state duties was excised because “on one hand, that [the state duties] would move the text away from its mandate, and, on the other hand, that they would detract from the power of expression and the clarity of the Declaration.”<sup>142</sup> Was this decision driven by desire for clarity, or were national delegations reluctant to endorse such specific obligations for their respective governments even in a non-binding declaration? At the same time the delegates in Bogotá were removing statements about state duties, they were adding and refining articles on the duties of individuals. In some cases, these duties of individuals complemented the primary duties of states, but in others, the rhetoric of individual obligation seemed to supplant that of state duty. In the end, a hybrid model emerged, which reflected Latin America’s concern

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*the Organization of American States*, 12 SANTA CLARA LAW. 319, 322–23 (1972).

141. WILLIAM A. SCHABAS, *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: THE TRAVAUX PRÉPARATOIRES* 101, 227, 486 (2013).

142. RICARDO JOAQUÍN ALFARO & UNITED NATIONS CONFERENCE ON INTERNATIONAL ORGANIZATION, *DERECHOS Y LIBERTADES FUNDAMENTALES DEL HOMBRE* (1946).

for sovereignty on the one hand and social economic and cultural rights on the other hand—a political bundle known as the “sovereignty-social rights complex.”<sup>143</sup> The ten individual duties in the American Declaration include duties toward children and parents, to receive instruction, vote, obey the law, serve the community and the nation, cooperate with the state and the community with respect to social security and welfare, pay taxes, work, and refrain from political activities in a foreign country.

An exploration of diverse philosophical origins, which informed the work of the delegates at Bogotá, may help explain the broad support for placing individual duties in the American Declaration. The Mexican delegate to Bogotá, Antonio Gómez Robledo, representing a government with strict separation of Church and State, was deeply involved in advocating for the concept of individual duties, as was the Guatemalan delegate, representing the leftist government of Juan José Arévalo. The Guatemalan delegation also advocated for the inclusion of some of the rights and duties from the Guatemalan Constitution, written only a few years previously in 1945. The Guatemalans justified the attention to both rights and duties, noting that “developing countries needed to address the unique socioeconomic challenges regarding human rights initiatives that vastly differed from prosperous industrialized nations.”<sup>144</sup> In this, the Guatemalan delegation alluded to concerns about the capabilities of weak states in promoting human rights.<sup>145</sup>

The particular language pertaining to duties in the American Declaration was crafted by a working group of several countries, but the primary author was Mexican diplomat Germán Fernández del Castillo. In a memorandum debriefing the events at Bogotá, Fernández del Castillo cites the Mexican Constitution as one of the three main sources for the duties.<sup>146</sup>

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143. Greg Grandin, *The Liberal Traditions in the Americas: Rights, Sovereignty, and the Origins of Liberal Multilateralism*, 117 AM. HIST. REV. 68, 72 (2012).

144. Raymond Ruggiero, *The Origins of a Democratic National Constitution: The 1945 Guatemalan Constitution and Human Rights* 56 (2013) (unpublished Ph.D. dissertation, Florida State University) (on file with the Florida State University Libraries).

145. *See id.*

146. The other two sources Fernández del Castillo mentions include The Convention on the Status of Aliens approved at the Sixth International Conference of American States, Havana, 1928, and the project of the International Law Commission of the United Nations.

Once the language came to the General Assembly at the Bogotá meeting for debate, the Colombian Delegation proposed including three additional individual duties. These obligations emphasize the spiritual dimension of political obligation, and once again allude to the effective goals of the Constitution of the Year III and the Cádiz Constitution. These additional obligations include: Duty to the Spirit (*Deber ante el Espíritu*), Duty to Culture (*Deber de Cultura*), and Duty to Morals and Morality (*Deber de Moralidad y Buenas Maneras*). Although these duties were not adopted as their own articles, they did succeed by being incorporated into the Preamble of the American Declaration. It reads: “The fulfillment of duty by each individual is a prerequisite to the rights of all. Rights and duties are interrelated in every social and political activity of man. While rights exalt individual liberty, duties express the dignity of that liberty.”<sup>147</sup> The historical records note that these measures were “effusively adopted” by the working group on duties, as long as it was made clear that these “moral” responsibilities were distinct from the legal ones mentioned elsewhere in the document.<sup>148</sup> The American Declaration, therefore, represented an agglomeration of duties traditions. Republican ideas about civic virtue fused with local understandings of rights which were already present in many of the region’s national charters.<sup>149</sup> This process is what one scholar has called “Inter-American Constitutionalism,” or the interaction between human rights developments and progressive constitutional developments in the region.<sup>150</sup> The idea of human rights and duties was not a recent legal transplant in the region, but a long nourished and cultivated local aspiration.<sup>151</sup> These local aspirations reflected the region’s particular understanding of the relationship between sovereignty on the one hand, and social rights on another, and a general culture that was quite receptive to legalism in international relations, a mix of political and philosophical traditions that has been aptly named the

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147. American Declaration, *supra* note 34, pmb1.

148. See Charles G. Fenwick, *The Ninth International Conference of American States*, 42 AM. J. INT’L L. 553, 563 (1948).

149. See Jorge Contesse, *Inter-American Constitutionalism: The Interaction Between Human Rights and Progressive Constitutional Law in Latin America*, in LAW AND SOCIETY IN LATIN AMERICA: A NEW MAP 220, 222 (César Rodríguez-Garavito ed., 2014).

150. *Id.*

151. ALAN WATSON, LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW 21 (1974).



“sovereignty-rights complex,” and which has proven deeply influential in global understanding of human rights.<sup>152</sup>

#### D. 1948: THE MISSING DUTIES IN THE UDHR

None of the individual duties in the American Declaration survived to be incorporated in the final version of the Universal Declaration. The final draft of the UDHR mentions duties only in a general sense as illustrated in Article 29: “Everyone has duties to the community in which alone the free and full development of his personality is possible.”<sup>153</sup> But the earliest draft of the UDHR—also called the Secretariat Draft or Secretariat Outline, written by John Humphrey, head of the Human Rights Division of the UN Secretariat—mentions duties multiple times, including individual duties both to the state and to the United Nations in the most prominent section of the document: “Article 1: Every one owes a duty of loyalty to his State and to the (international society) United Nations. He must accept his just share of responsibility for the performance of such social duties and his share of such common sacrifices as may contribute to the common good.”<sup>154</sup> In addition to this Article, duties are mentioned eight more times, including state and individual duties and vertical and horizontal duties. As it regards individuals, the draft declaration includes duties to “present information and news in a fair and impartial manner,”<sup>155</sup> and to “perform socially useful work,”<sup>156</sup> and states that an individual’s “right to a livelihood is conditioned by his duty to work.”<sup>157</sup>

In drafting the Secretariat Outline, Humphrey drew on many sources, making it difficult to pinpoint his motivations for including duties in his draft. Still, in later memoirs, Humphrey points to the submission of the A.L.I. (heavily contributed to and backed by Panama’s Ricardo Alfaro) as “[t]he best of the texts from which I worked . . . I borrowed freely from it.”<sup>158</sup> His

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152. Grandin, *supra* note 143, at 72.

153. Universal Declaration of Human Rights, *supra* note 47, art. 29.

154. Comm’n on Hum. Rts. Drafting Committee, Draft Outline of International Bill of Rights, U.N. Doc. E/CN.4/AC.1/3, at 2, art. 1 (June 4, 1947).

155. *Id.* at 6, art. 18.

156. *Id.* at 14, art. 37.

157. *Id.* at 4, art. 8.

158. JOHN P. HUMPHREY, HUMAN RIGHTS AND THE UNITED NATIONS: A GREAT ADVENTURE 32 (1984).

reliance on Panama is most clear in Article 2 of the Secretariat Draft, which functions in tandem with the social responsibility and duties laid out in Article 1. This Article was lifted almost verbatim from the Panamanian constitution, which states that “[i]n the exercise of his rights every one [sic] is limited by the rights of others and by the just requirements of the democratic state”; the only difference is that in Article 2, the word “democratic” is removed and the phrase “and of the United Nations” is added to the end.<sup>159</sup> The influence of Panama on the Secretariat Draft suggests that the broader influence of Latin American thought in the evolution and inclusion of the concept of duties in international human rights agreements.

The United Kingdom, the United States, and France all responded to the Secretariat Draft with their own versions of a declaration of rights, including new proposed articles and revised versions of existing articles. By exploring what was included and excluded in these drafts, we can see the reactions of some major powers to the duties sections of the Secretariat Draft. The United Kingdom draft mentions duties only twice, instead of ten times, and both times are in the preamble rather than in the text itself.<sup>160</sup> The first mention acknowledges that individuals have a “duty to respect the rights of their fellow man,” while the second is more of a limitation on the notion of duties than an endorsement of it: “Whereas the just claims of the state, which all men are under a duty to accept, must not prejudice the respect of man’s right to freedom and equality before law and the safeguard of human rights . . . .”<sup>161</sup> It seems that the United Kingdom government feared that the insistence on duties might be used later to undermine the respect for rights.

The American document is not a full draft of a human rights declaration, as are the United Kingdom and French drafts, but rather suggestions for articles to be incorporated. Even so, the United States draft does not mention duties, and endorses in its first suggested article a new version of Article 3 of the Secretariat draft that says: “In the exercise of his rights, everyone is limited by the rights of others.”<sup>162</sup> As opposed to the

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159. Draft Outline of International Bill of Rights, *supra* note 154, at 2, art. 2.

160. See U.N., Econ. & Soc. Council, Text of Letter from Lord Dukeston, the United Kingdom Representative on the Human Rights Commission, to the Secretary General of the United Nations, at 5, U.N. Doc. E/CN.4/21, Annex B (June 5, 1947).

161. *Id.*

162. U.N., Econ. & Soc. Council, United States Suggestions for Articles to be

*rights and duties* tradition in Latin America, here, we see what we might call the *rights vs. rights* tradition more characteristic of the Anglo-American thought, where individual rights are limited only by rights or others, and are not explicitly connected to others through an individual duty to respect their rights.

Finally, although the French version both retains and expands upon some of the duties language of the Secretariat draft, it also condenses multiple articles on duties. Most interesting is the longer French version of Article 3 of the Secretariat draft, which reads: "As human beings cannot live and achieve their objects without the help and support of society, each man owes to society fundamental duties which are: obedience to law, exercise of useful activity, acceptance of the burdens and sacrifices demanded for the common good."<sup>163</sup> Later in the French version, the idea appears again that individuals have both a "right and a duty to do work useful to society and to develop their personalities fully."<sup>164</sup> In its insistence on obedience to law, this French draft echoes some of the language in the French Declaration of the Rights and Duties of Man and Citizens of 1795. This juxtaposition of French support for duties, and United States and United Kingdom avoidance of them shows that the difference on duties were not between countries of the global north and the global south, but between an Anglo-American approach to rights that was skeptical of duties versus the rest. In the context of the post-WWII international order, however, the position of the United States and the United Kingdom carried unusual weight.

At some points, the United States and United Kingdom position received strong support from delegates from the Global South. Charles Malik of Lebanon spoke at length about Articles 1 and 2 of the Secretariat Draft, and it is worth quoting to illustrate a quite fierce objection to duties from one of the key framers of the UDHR:

Speaking with respect to Articles 1 and 2, Dr. Malik (Lebanon) questioned why they should be called 'preliminary,' and placed at the very beginning of the

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Incorporated in an International Bill of Human Rights, at 41, U.N. Doc. E/CN.4/21, Annex C (July 1, 1947).

163. U.N., Econ. & Soc. Council, Suggestions Submitted by the Representative of France for Articles of the International Declaration of Human Rights, at 51, U.N. Doc. E/CN.4/21, Annex D (July 1, 1947).

164. *Id.* at 61.

Secretariat draft outline. Both of them, he said, would limit the freedom of the individual if they were adapted in their present form. In his opinion, any social pressure placed upon the individual by a Bill of Rights should be balanced by a statement of what society owes the individual. He characterized as ‘astounding’ the statement in the Secretariat outline: ‘Every one owes a duty to his State’ and pointed out that it might be questioned whether an individual owed such a duty of loyalty regardless of the characteristics of his State. In considering a Bill of Rights, he went on, it was odd that men ought first be told that their freedom is limited. If this were done it would be a Bill not of Human Rights but of what man owes society. It was precisely because the balance had been tipped against the individual and in favor of society that human rights had been violated. He concluded by saying that Article 1 of the Secretariat draft was to him objectionable and should not be included; or if included should be reworded; and that Article 2 should not appear at the beginning of the Bill of Rights.<sup>165</sup>

A representative from the United Kingdom supported Malik’s point of view, stating that he thought that the article on duties “should be omitted from the Bill but that the substantive idea might be included somewhere in the preamble.”<sup>166</sup> Similar opposition to these articles came from the representatives from the Philippines and from China, who suggested that in dealing with a declaration on human rights, “the rights of the individual should be stressed before his duties to society.”<sup>167</sup> The main delegate from the United States, and the chair of the UDHR drafting committee, Eleanor Roosevelt, agreed that “the article regarding the general limitations on the enjoyment of rights would be better placed towards the end of the Declaration.”<sup>168</sup> Following these initial complaints, delegates continued to cut back on duties until they almost disappeared from the Secretariat Draft.

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165. U.N., Econ. & Soc. Council, Summary Record of the Third Meeting, at 9, U.N. Doc. E/CN.4/AC.1/SR.3 (June 13, 1947).

166. *Id.* at 10.

167. U.N., Econ. & Soc. Council, Summary Record of the Seventy-Seventh Meeting, at 3, U.N. Doc. E/CN.4/SR.77 (June 28, 1948).

168. *Id.*

When the drafting process opened up to all member states of the United Nations in the later months of 1948, the Latin American delegates worked to reinsert references to duties into the UDHR. The Cuban delegate Pérez Cisneros pushed this firmly. Cisneros explained, “the individual should also be reminded that he was a member of society and that he must affirm his right to be a human being by clearly recognizing the duties which were corollaries of his rights.”<sup>169</sup> The Brazilian delegate similarly argued that it was “impossible to draw up a declaration of rights without proclaiming the duties implicit in the concept of freedom . . . .”<sup>170</sup> Without the concept of duties, he said, “freedom might lead to anarchy and tyranny.”<sup>171</sup> Here, Brazil and Cuba spoke for the majority of Latin American states that had worked to get individual duties into the American Declaration.

The Latin American delegates failed to obtain a detailed list of duties in the Universal Declaration; they had to settle for the single line in Article 29 mentioning duties. Nevertheless, in the wording of that line, some believed they secured a victory for a more communitarian vision. The line reads: “Everyone has duties to the community in which alone the free and full development of his personality is possible.”<sup>172</sup> The victory came with the word “alone,” which in their mind recognized that community was necessary to the enjoyment of rights and that duties were essential to the protection of that community.<sup>173</sup> The exact reasons for the rejection of duties language by other delegates are not completely clear. In his memoirs, when discussing this final period of drafting the UDHR, John Humphrey mentioned the “Bogotá menace,” his term for the efforts of Latin American delegates to try to get the entire content of the American Declaration into the UDHR.<sup>174</sup> Since we know that Humphrey included duties in his Secretariat Draft, we can conclude that his “Bogotá menace” was not the inclusion of duties *per se*, but the delay that would be caused to the consideration of the UDHR if Latin Americans insisted on debating each of the ten articles on duties in the American Declaration as they had appeared in the regional declaration.

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169. MORSINK, *supra* note 7, at 247.

170. *Id.* at 249.

171. *Id.*

172. *Id.* at 246.

173. *See id.* at 247–49.

174. *See id.* at 131.

Such a debate may have been perceived as threatening to the timely completion of the UDHR.

The failure to include any detailed discussion of duties in the UDHR created a path-dependent situation where virtually all subsequent human rights treaties also failed to mention specific duties beyond a general statement in a single article.<sup>175</sup> The International Covenant on Civil and Political Rights (“ICCPR”) as well as the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) do not contain references to specific individual duties in the body of the treaty, although they include a statement on duties in their preambles: “Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant . . . .”<sup>176</sup> In these later binding human rights agreements, duties were implied, but not explicitly stated. As a result, over the next several decades the idea that an explicit and robust set of duties should naturally accompany rights all but disappeared from the content of international human rights law. The continuous failure to include references to specific duties in later international human rights documents, however, meant that rights came to be understood as attributes of the individual rather than as constitutive of a relationship between a rights-holder and a duty-holder.<sup>177</sup>

Particularly puzzling is the absence of duties in the American Convention of Human Rights of 1969. The initial draft of the American Convention prepared by the Inter-American Council of Jurists did not contain any mention of the individual duties that figure so prominently in the American Declaration, nor did delegates add duties during the drafting process.<sup>178</sup> This

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175. On “path dependence,” see generally Giovanni Capoccia & R. Daniel Kelemen, *The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism*, 59 *WORLD POL.* 341 (2007); Orfeo Fioretos, *Historical Institutionalism in International Relations*, 65 *INT’L ORG.* 367 (2011) (explaining the impact of path dependence in political development).

176. G.A. Res. 2200 (XXI) A, International Covenant on Economic, Social and Cultural Rights (Dec. 16, 1966); G.A. Res. 2200 (XXI) A, International Covenant on Civil and Political Rights (Dec. 16, 1966).

177. ROBERTS, *supra* note 3, at 154.

178. INTER-AMERICAN COUNCIL OF JURISTS, HUMAN RIGHTS; DRAFT RESOLUTION APPROVED BY SPECIAL COMMITTEE AND REVISED BY THE STYLE COMMITTEE (1959). The draft resolution was produced in 1959 by the Council of Jurists, however, it was not finalized by states until the Inter-American Specialized Conference on Human Rights in San Jose, California on November

demonstrates the path-dependent nature of the drafting of human rights treaties. After duties language was explicitly excluded from the UDHR, it was not reinserted in any human rights treaty, with the single exception of the African Charter on Human and People's Rights.<sup>179</sup>

#### E. DUTIES AND THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

The only major exception to this abrupt turn to exclude duties in human rights treaties was the African Charter on Human and Peoples' Rights, which was drafted in 1979 and entered into force in 1986.<sup>180</sup> The African Charter on Human and Peoples' Rights (also known as the Banjul Charter) has received attention for including both individual rights and collective (Peoples') rights in the document, especially the right to self-determination.<sup>181</sup> Less attention has been directed toward the innovative way it addresses duties and the fact that it is the only human rights treaty to do so with any degree of specificity.<sup>182</sup> The preamble to the African Charter recognizes "that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone,"<sup>183</sup> and Articles 27–29 of the Charter contain specific duties of individuals.<sup>184</sup> Part I of the Charter is labeled "Rights and Duties"; Chapter 1 handles rights while Chapter 2 handles individual duties.<sup>185</sup> In the discussion of rights, the Charter makes various references to the duties of States to promote rights.<sup>186</sup> Chapter 2, Article 27, paragraph 1 of the Charter states that, "[e]very individual shall have duties towards his family and society, the State and other legally recognized communities and the international community."<sup>187</sup> This language echoes the Secretariat Draft's discussion of

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22, 1969. Although the draft was opened for signatures, not enough ratifications were secured until 1978, when the draft ultimately went into effect.

179. See African [Banjul] Charter of Human and Peoples' Rights, *supra* note 34.

180. *Id.* at 1.

181. See *id.* art. 20.

182. For an exception, see Paust, *supra* note 6, at 56.

183. African [Banjul] Charter of Human and Peoples' Rights, *supra* note 34, at 2.

184. *Id.* at 8–9.

185. *Id.* at 2, 8.

186. See, e.g., *id.* at 8.

187. *Id.* at 8.

international duties, but is the first time a human rights treaty includes duties that extend to the international community.

In a region often characterized as more communitarian, it is interesting to see this cosmopolitan understanding of duties. Article 28 of the Banjul Charter then proclaims the duty to respect others, and “to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.”<sup>188</sup> Finally, Article 29 lists nine specific individual duties, including the duty to the family and to parents in particular, the duty to serve the national community and national independence, the duty to work and pay taxes, and the duty to preserve African cultural values and to promote African unity.<sup>189</sup> In the duties to promote African unity, we see the lingering effect of the Pan-African movement as duties expand to include the regional community.<sup>190</sup> Yet, when the African Charter turns in Part II to “measures of safeguard,” the main institution to enforce the Charter, the African Commission on Human and People’s Rights, is only given the task of promoting and ensuring the protection of *rights*, with no mention of the possibility of promoting duties.<sup>191</sup> This suggests that once again, the belief that it is more difficult or problematic to enforce duties may have complicated the inclusion of duties in human rights documents.

Around the same time as the African Charter was being drafted, the United Nations commissioned a survey in 1976 to study the status of duties of the individual to the community under international law.<sup>192</sup> To research the question, the Special Rapporteur asked Member States to respond to a survey to articulate their nations’ stances toward the individual’s duties to the community, both in international law and under their domestic constitutions.<sup>193</sup> The comments by both the East German government and the West German government gave an idea of what was at stake during the Cold War in the debate about rights and duties and reveals just how contentious the

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188. *Id.*

189. *See id.* at 8–9.

190. On the influence of Pan-Africanism, see generally Brooke Coe, *Regional Identities and Dynamic Normative Orders in the Global South: A Comparative Study* (Sept. 2015) (unpublished Doctor of Philosophy dissertation, University of Minnesota) (on file with author) (comparing the evolution of sovereignty in the global south).

191. *See* African [Banjul] Charter of Human and Peoples’ Rights, *supra* note 34, at 9–12.

192. DAES, *supra* note 62, at 53.

193. *See id.* at 21–31.



issue was. The East German government (German Democratic Republic) wrote: "The concept of citizen's basic rights in the German Democratic Republic and the way in which those rights are put into effect are determined by the desire of the socialist State and socialist order to give individuals full scope to develop into socialist personalities, it being understood in this context that *citizens' basic rights are inseparably linked with their basic duties to the community.*"<sup>194</sup> The West German government, in contrast, expressed concern that such an understanding of rights and duties would undermine respect for human rights at a fundamental level:

The state and the community, with their inherent monopoly of power, can protect themselves against dereliction of duty and abuses of law by individual citizens. For this reason, *the rights of the community vis-à-vis the individual and the individual's duties corresponding to these rights do not need to be protected and given institutionalized safeguards in the same way as human rights.*<sup>195</sup>

In the context of the Cold War, with the shadow of fascism in the not-too-distant past, countries like West Germany feared that naming individual duties to the community would permit states to use an individual's failure to perform duties as a justification for denying rights. These fears were not unfounded. In fact, in the same UN report, the Soviet Union plainly referred to duties as a "precondition" for the enjoyment of human rights.<sup>196</sup>

Perhaps for this reason, initiatives to codify responsibilities were delayed until the post-Cold War era. In 1997, a year before the fiftieth anniversary of the Universal Declaration of Human Rights, an organization of elite statesmen from around the world called the InterAction Council proposed a new international agreement: The Draft Declaration of Human Responsibilities.<sup>197</sup> Designed both to commemorate and to complement the UDHR, the draft document called for a shared "global ethic" that balances the rights of individuals with basic human

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194. *Id.* at 22 (emphasis added).

195. *Id.* at 23 (emphasis added).

196. *Id.* at 30.

197. See InterAction Council, *supra* note 11, at 195.

responsibilities.<sup>198</sup> While many of the document's signers were leaders from Europe and North America, by no means did they constitute a homogeneous clique. Some members, such as Jimmy Carter and Oscar Arias Sánchez, were Nobel Peace Prize winners and pillars of the international human rights movement. Others, like Michael Gorbachev, Helmut Schmidt, and Valéry Giscard d'Estaing, stood at the helm of traditional European powers. The list also included leaders from smaller states, such as Lee Kuan Yew, the former premier of Singapore who famously prioritized efficient governance, economic growth, and a concern for "Asian Values" above universal human rights.<sup>199</sup> Even Henry Kissinger and Robert McNamara, two of the Cold War's most prominent realists, signed on as supporters of the initiative, along with an array of other leaders representing academia, international organizations, and NGOs. Despite diversity in backgrounds and ideologies, the backers of the declaration agreed on an unambiguous, if ambitious, premise: "[All] people, to the best of their knowledge and ability, have a responsibility to foster a better social order, both at home and globally."<sup>200</sup> Noting that an over-emphasis on rights could lead to "conflict, division and endless dispute"<sup>201</sup> the draft declaration called for all people to acknowledge the need for responsibilities, and then outlined specific obligations.

The proposed Declaration of Human Responsibilities failed to make an impact. Rather than complementing the UDHR as envisioned, the document unleashed a barrage of criticism from almost every conceivable sector. Legal scholars argued that individuals already possessed obligations, which, though implied, were firmly established by international law, making the declaration superfluous and vague at best.<sup>202</sup> Feminist scholars saw patriarchal motivations behind the call to balance rights and responsibilities, particularly in its insistence on family and domestic responsibilities.<sup>203</sup> Amnesty International alleged that the declaration would "muddy" the understanding of universal human rights, and raised the possibility that the document could provide cover to authoritarian regimes in

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198. *Id.*

199. *See* Sen, *supra* note 29, at 33–34.

200. *See* sources cited *supra* note 11.

201. *See* sources cited *supra* note 11.

202. *See* Saul, *supra* note 19, at 572.

203. SIOBHÁN MULLALLY, GENDER, CULTURE AND HUMAN RIGHTS: RECLAIMING UNIVERSALISM 8 (Colin Harvey ed., 2006).

denying their citizens basic rights.<sup>204</sup> Perhaps critics even saw the document as emblematic of a nascent and problematic “responsibilities movement” in international human rights law.<sup>205</sup> In response to these calls for greater emphasis on obligations, the United Nations General Assembly passed the “Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.”<sup>206</sup> This document, however, does not pick up the standard of individual responsibility in human rights law. Instead, the General Assembly’s resolution reinforces the traditional view that the duty to respect or to promote human rights lies solely with states.<sup>207</sup> The “human responsibilities movement” proved to be less of a threat to the traditional human rights regime than scholars and activists feared at the time.

#### IV. DATA ON INDIVIDUAL DUTIES IN NATIONAL CONSTITUTIONS

As noted earlier, duties talk has largely been supplanted by references to responsibilities with human rights. The chart below, taken from Google’s N-Gram database, illustrates the simultaneous proliferation of rights talk, the long slow decline of duties language, and the relatively recent but steady growth of responsibilities:

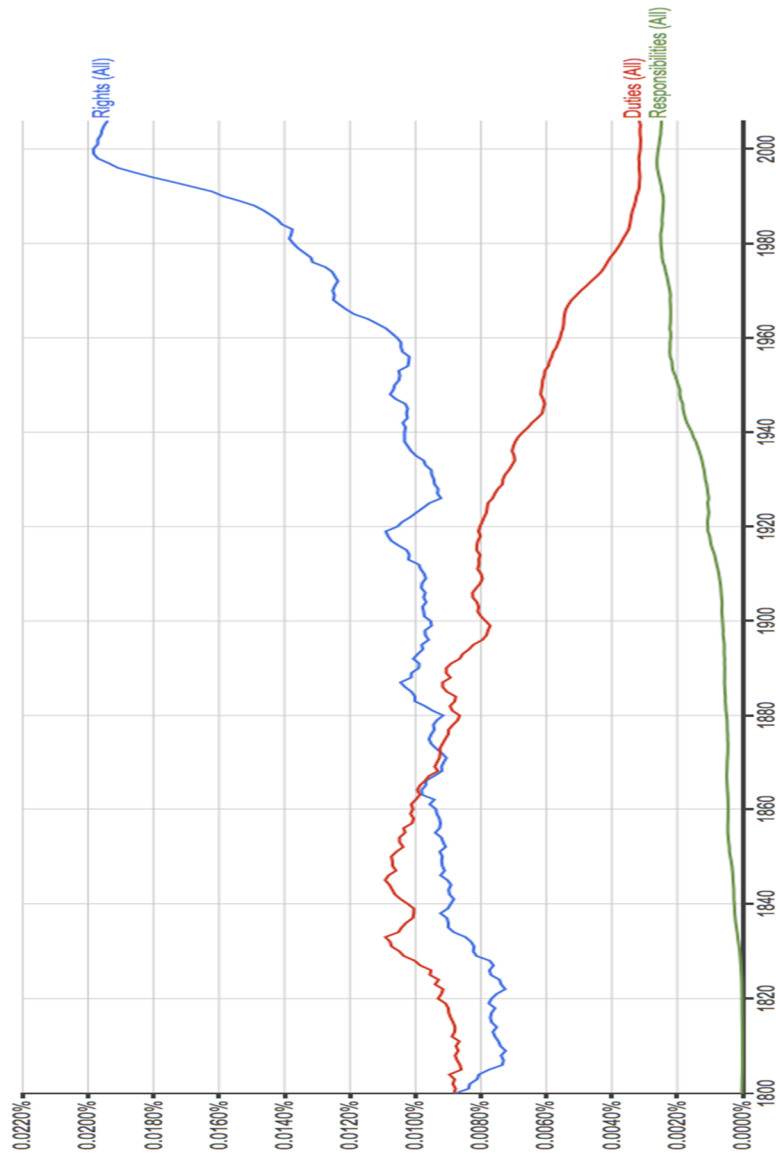
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204. See Amnesty Int’l & Int’l Secretariat, *supra* note 16, at 5; see also McGregor, *supra* note 16, at 21 (noting the resistance to the draft declaration was based on fear that it would undermine existing universal rights).

205. Saul, *supra* note 19, at 574.

206. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, U.N. Doc. A/RES/53/144 (Dec. 9, 1988).

207. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, annex, at 3 (March 8, 1999).



**N-Gram for Rights, Duties, and Responsibilities  
1800-2008.**<sup>208</sup>

208. Google Ngram Viewer, GOOGLE, <https://books.google.com/ngrams/graph?content=rights%2Cduties%2Cresponsi>

Despite these historical trends, and the failure of duties to be explicitly incorporated into the UDHR, the rights and duties concept did not die out: it found its expression in national constitutions rather than in international treaties. The seeming contradiction, a dearth of responsibilities language in international human rights treaties alongside a wealth of responsibilities in global constitutions, is illustrative of the distinct traditions that make up the global discourse on human rights. Using data from the CCP,<sup>209</sup> we analyzed the frequency and content of individual duties and found that the rights and duties concept has been resilient over time and across regions.<sup>210</sup> Duties of individuals have become a standard part of constitutional repertoire, particularly in nations outside the American and British common law tradition. By examining duties in national constitutions systematically, we aimed to assess the frequency and geographic concentration of individual duties in national constitutions as well as the diffusion of the duties over time and space.<sup>211</sup> Constitutions vary considerably in structure, style, and specificity. A single duty can be referred to using different language, even though it conveys the same basic obligation for individuals. Therefore, working inductively, we grouped the particular articles found in global constitutions by topic, creating 27 separate individual duty categories (duty to vote, duty to defend the nation, etc.). Coding duties provisions was not always straightforward. As noted earlier, obligations may not be stated explicitly to be legally binding, or, they may be expressed in synonymous terms (“citizens must” versus “citizens have the duty”). For consistency, our study only counts explicit mentions of “duty” or “obligation” of citizens that appears within an article of a written constitution.<sup>212</sup>

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bilities&year\_start=1800&year\_end=2000&corpus=15&smoothing=3&share=&direct\_url=t1%3B%2Crights%3B%2Cc0%3B.t1%3B%2Cduties%3B%2Cc0%3B.t1%3B%2Cresponsibilities%3B%2Cc0 (last visited Nov. 6, 2016).

209. The database of all constitutions of independent states since 1789. For more information on the database design and methodology, see *About the CCP*, COMPARATIVE CONSTITUTIONS PROJECT, <http://comparativeconstitutionsproject.org/about-ccp/> (last visited Nov. 6, 2016). See COMPARATIVE CONSTITUTIONS PROJECT, *supra* note 48.

210. See Zachary Elkins, Tom Ginsburg & Beth A. Simmons, *Getting to Rights: Treaty Ratification, Constitutional Convergence, and Human Rights Practice*, 54 HARV. INT'L L.J. 61, 72 (2013).

211. Only individual duties were included in the analysis. Duties of the state, community or other entities were excluded.

212. While we employ the term “responsibility” in our discussion, the coding process did not include this term. As noted above, “responsibility” has a broader

After conducting this analysis, we find that duties are a truly global phenomenon; almost two-thirds of all independent states (62%) feature at least one duty of individual citizens. As one would expect, vertical duties that individuals owe to the state, such as the duty to pay taxes or perform military service, are among the most common duties (see chart below). But other duties, horizontal duties to protect the environment (33% of constitutions), work (20%), and care for and educate children (27%) also rank among the most common of all duties.

We have derived two clear findings from the descriptive data on duties in constitutions. The first is that duties are especially common in Latin American nations. They have, on average, 5.95 duties per constitution, whereas non-Latin American countries have on average 3.9 duties in their constitutions. The second finding is that there is a strong difference between the former colonies of the United Kingdom and the rest of the world. The United Kingdom itself does not have a written constitution, but no former British colony (including the United States) features a duty of the individual in its constitution. We do not yet know whether this is a result of common law legal systems or is due to some other feature of the British tradition.

Recent scholarship on the diffusion of human rights norms has established a clear link between the provisions in international agreements and those in national constitutions. Tom Ginsburg, Zachary Elkins, and Beth Simmons found that the drafters of national constitutions borrow from the repertoire of human rights provisions established by international agreements, and that once established, these rights provisions tend to be durable over time—once a provision is included in the “menu of rights”, it tends not to disappear.<sup>213</sup> But unlike what Ginsburg, Elkins, and Simmons find in the case of human rights provisions, the prevalence of duties in constitutions has not diffused downward from international human rights instruments.<sup>214</sup> Nor have duties diffused in the other direction—

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set of meanings, only some of which were synonymous with the idea of individual obligation we refer to in this Article. On the other hand, “duties” and “responsibilities” are used more or less interchangeably in the constitutional provisions studied. The exclusion of “responsibility” and related terms such as “must” and “are required to” likely undercounts the frequency of explicit citizen obligations within our sample.

213. Elkins, Ginsburg & Simmons, *supra* note 210, at 72.

214. Tom Ginsburg, Svitlana Chernykh & Zachary Elkins, *Commitment and Diffusion: How and Why National Constitutions Incorporate International Law*, 2008 U. ILL. L. REV. 201, 202–03 (2008).

from constitutions into international human rights law—because, with the exception of the American Declaration and the African Charter, international human rights instruments have not included any detailed enumeration of individual duties. It does appear likely that language in constitutions has diffused horizontally from one constitution to another; in the case of duties to the environment, for example, a number of constitutions have quite similar language, suggesting that they borrowed phrasing from other constitutions, and from international declarations such as the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration).<sup>215</sup> It is not our purpose here to provide an account of what factors lead to the adoption of individual duties in constitutions. Rather, we have used this data to map the overall spread of the idea of individual duties to help refine our typology and theoretical understanding of individual responsibilities in human rights thinking.

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215. See U.N. Conference on the Human Environment, Declaration of the United Nations Conference on the Human Environment (June 16, 1972).

**Analyzing the CCP Data:****Number of Constitutions Containing the Most Common Individual Duties**

<u>Duty Provision</u>	<u>Number of Constitutions</u>
Defend sovereignty	83
Obey the laws	66
Protect environment and natural resources	64
Pay taxes	53
Educate and raise children	52
Serve the nation (military or civilian service)	45
Work	39
Respect the rights of others	38
Protect national heritage and culture	26
Protect property	26
Receive education	21
Assist parents and the elderly	21
Work toward the common good	20
Promote national unity	19
Respect national symbols and values	18
Vote	17
Other	16
Cooperate with authorities to uphold laws	16
Fulfill professional obligations	15
Owe allegiance to the nation	15
Participate in public life	12
Promote health	12
Protect peace, democracy, and social justice	11
Protect the rights of children and family	9
Recognize duties and responsibilities	9
Promote education	5
Promote human rights	3



V. FROM DUTY TO RESPONSIBILITY: DUTIES AND  
THE RIGHT TO ENVIRONMENT

What is at stake when we debate duties? For some human rights advocates, any kind of talk about individual duties raises the specter of repressive statism and limitations on individual liberty. These fears have existed from the founding moments of the contemporary human rights system, as when Malik, the Lebanese delegate to the UDHR Drafting Committee, questioned the idea of duties to the state because the greatest threat to individual rights was often the state itself.

Even contemporary thinkers, who are sympathetic to cosmopolitan ethics in general, express skepticism about individualized obligations to promote human rights.<sup>216</sup> In the context of the 21st century, however, where attention has tipped decidedly in favor of rights, we may be able to rediscover an older understanding of individual human duties as explicitly complementary to human rights to address pressing global problems. In doing so, we recognize that the linking of rights and duties is a deeply-rooted principle in the history of human rights. Among the traditions we discuss here, rights and duties are not two separate concepts, but rather a single interconnected concept that may be thought of as a rights and duties concept.

Importantly, the concept of coupling rights and duties displays the agency of norm entrepreneurs from the Global South, illustrating how universal concepts of rights can exist in harmony with local political traditions and philosophies. These Southern norm entrepreneurs, especially those from Latin America in the late 1940s, revived the rights and duties model. Some suggest that it was Catholic social doctrine that led to the emphasis on duties in the Americas, borrowing from encyclicals such as the *Rerum Novarum*—the foundational document of contemporary social justice in the Catholic Church.<sup>217</sup> We argue that attention to duties comes from a more diverse set of philosophical traditions in the region, and therefore, represents a kind of compromise between those who only wish to emphasize the rights of individuals *against* society and those who view society as an organic whole. In this way, duties of individuals

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216. See Noah Feldman, *Cosmopolitan Law?*, 116 YALE L.J. 1022 (2007) (discussing the renewal of interest in cosmopolitan duties under international law).

217. See Mary Ann Glendon, *The Influence of Catholic Social Doctrine on Human Rights*, 10 J. CATH. SOC. THOUGHT 69, 70 (2013).

offer an example of a kind of hybrid model of international human rights that emerged when actors on the semi-periphery of the world system appropriated and redeployed legal and theoretical concepts of the Global North.<sup>218</sup>

Scholars of international law often argue that universal human rights ideas are imposed on the international community by powerful states seeking to create institutions favorable to their interests.<sup>219</sup> Other scholars have critiqued the tainted origins of human rights in Western, liberal, and secular thought by arguing that Universalist rhetoric of human rights can crowd out other local strategies or vocabularies that promote human dignity.<sup>220</sup> Still others have proposed that human rights represent the latest version of the European *mission civilisatrice*, a secular religion serving the needs of Western governments by taking advantage of vulnerable people.<sup>221</sup> Historians have similarly critiqued commonly accepted narratives of the development of human rights. Notably, Sam Moyn has argued that origins of human rights ideals are less universal and more recent than most historians of the subject would like to admit.<sup>222</sup> Taken together, these critiques have highlighted the contingent, contested, and socially-constructed nature of the rights themselves. Yet, our investigation into duties suggests that critiques of rights may, ironically, overlook the intellectual contributions of actors from the Global South, which sought to balance individualism and collectivism.

The discussion of the position of duties in the American Declaration helps illustrate how, even when assimilating and articulating Enlightenment ideals about universal rights and duties, Latin American states and their representatives offer alternate interpretations of those concepts; ones that offer possibilities for strengthening the moral legitimacy of international human rights.<sup>223</sup> Southern protagonism arguably increases the legitimacy of global governance projects, including the human rights and duties project. Amitav Acharya, for

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218. See Arnulf Becker Lorca, *Universal International Law: Nineteenth-Century Histories of Imposition and Appropriation*, 51 HARV. INT'L L.J. 475, 503 (2010).

219. See EVANS, *supra* note 2, at 8.

220. See Kennedy, *supra* note 9, at 114.

221. See generally HOPGOOD, *supra* note 58 (arguing that universal human rights are not well-adapted to today's social environment).

222. See e.g., MOYN, *supra* note 58.

223. See Louise Fawcett, *Between West and non-West: Latin American Contributions to International Thought*, 34 INT'L HIST. REV. 679 (2012).

example, critiques the study of normative change because it ignores the appeal of local and regional norms and because it fails to recognize the agency of local and regional actors. Acharya then developed the concept of norm 'localization,' a process through which local actors actively reconstruct global norms to create a fit between those norms and prior local norms.<sup>224</sup> Acharya's concept of norm localization is related to the concept of norm "vernacularization," which was proposed by anthropologist Sally Engle Merry. Merry points to social movements as human rights intermediaries that help vernacularize international human rights discourses,<sup>225</sup> meaning that they negotiate between "the language of international human rights preferred by international donors . . . and cultural terms that will be acceptable to at least some of the local community."<sup>226</sup>

This linking of individual rights and duties by norm entrepreneurs in the Global South has been largely overlooked, or mentioned only as an artifact of regional thinking. Revisiting the history of the American Declaration of the Rights and Duties of Man and the African Charter of Human and People's Rights offers historical insights into the development of thinking about human rights and duties in the mid-twentieth century. Both of these cases suggest that the topic of individual rights and duties can provide insight into the way norms can be shaped, shared, and adapted by States on the periphery or semi-periphery of the international legal system.

A brief examination of the duty to protect the environment reveals an illustrative example of norm localization at work. The Comparative Constitutions data reveals that the Right to Environment is both one of the most common and more recent individual duties in world constitutions. Many constitutions written since 1990 are likely to include a duty to protect the environment. Countries from every region of the world include the duty to protect or preserve the environment, including twenty from African countries, thirteen from European countries, eight from Asian countries, and three from Middle

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224. See Amitav Acharya, *How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism*, 58 INT'L ORG. 239, 241 (2004); see also Amitav Acharya, *Norm Subsidiarity and Regional Orders: Sovereignty, Regionalism, and Rule-Making in the Third World*, 55 INT'L STUD. Q. 95, 97 (2011).

225. See Sally Engle Merry, *Transnational Human Rights and Local Activism: Mapping the Middle*, 108 AM. ANTHROPOLOGICAL ASS'N. 38, 39 (2006).

226. *Id.* at 42.

Eastern countries. We see that this duty is not associated with any particular religion, as many countries from a wide range of religious traditions are represented among those with constitutions that include the duty to protect or preserve the environment. The table below presents a range of different ways that the duty to the environment is phrased in a selection of different constitutions from around the world. We see that the right to live in a healthy environment is often mentioned in the same article, and even in the same sentence with the duty to defend and protect it.

**Selected language from constitutions with a right to a healthy environment:**

Country and Year of Constitution	Phrasing
Angola (2010)	“Everyone has the right to live in a healthy and unpolluted environment and the duty to defend and preserve it.” <sup>227</sup>
Bhutan (2008)	“Every Bhutanese is a trustee of the Kingdom’s natural resources and environment for the benefit of the present and future generations and it is the fundamental duty of every citizen to contribute to the protection of the natural environment, conservation of the rich biodiversity of Bhutan and prevention of all forms of ecological degradation including noise, visual and physical pollution through the adoption and support of environment friendly practices and policies.” <sup>228</sup>
Bolivia (2009)	“The duties of Bolivians are . . . to protect and defend the natural resources, and to contribute to their sustainable use in order to preserve the rights of future generations . . .to protect and defend an environment suitable for the development of living beings.” <sup>229</sup>

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227. ANGOLA [CONSTITUTION] 2010, art. 39.

228. BHUTAN [CONSTITUTION] 2008, art. 5.

229. BOLIVIA [CONSTITUTION] 2009, art. 108.

Brazil (1988)	"Everyone has the right to an ecologically balanced environment, which is a public good for the people's use and is essential for a healthy life. The Government and the community have a duty to defend and to preserve the environment for present and future generations." <sup>230</sup>
Burkina Faso (1991)	"The right to a healthy environment is recognized; the protection, the defense and the promotion of the environment are a duty for all." <sup>231</sup>
Cape Verde (1980)	"Everyone shall have the right to a healthy, ecologically balanced environment, and the duty to defend and conserve it." <sup>232</sup>
Colombia (1991)	"The following are duties of the individual and of the citizen . . . to protect the country's cultural and natural resources and to keep watch that a healthy environment is being preserved." <sup>233</sup>
Côte d'Ivoire (2000)	"The protection of the environment and the promotion of the quality of life are a duty for the community and for each physical or moral person." <sup>234</sup>
Cuba (1976)	"It is the duty of the citizens to contribute to the protection of the water and the atmosphere, and to the conservation of the soil, flora, fauna, and all the rich potential of nature." <sup>235</sup>
Egypt (2014)	"Every individual has the right to live in a healthy, sound and balanced environment. Its protection is a national duty." <sup>236</sup>
Estonia (1992)	"Everyone has a duty to preserve the human and natural environment and to compensate for damage caused to the environment by him or her." <sup>237</sup>

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230. CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] 2009 art. 225 (Braz.).

231. BURKINA FASO [CONSTITUTION] 1991, rev. 2012, art. 29.

232. CAPE VERDE [CONSTITUTION] 1980, rev. 1992, art. 70.

233. CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] 1991 art. 3.

234. CÔTE D'IVOIRE [CONSTITUTION] 2000, art. 28.

235. CUBA [CONSTITUTION] 1976, rev. 2002, art. 27.

236. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 46.

237. ESTONIA [CONSTITUTION] 1992, rev. 2011, art. 53.

Gambia (1996)	“The exercise and enjoyment of rights and freedoms are inseparable from the performance of duties and obligations, and accordingly, every citizen shall . . . protect and conserve the environment of The Gambia.” <sup>238</sup>
Hungary (2011)	“Natural resources, in particular arable land, forests and the reserves of water, biodiversity, in particular native plant and animal species, as well as cultural assets shall form the common heritage of the nation; it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations.” <sup>239</sup>
Panama (1972)	“The State, and all the inhabitants of the national territory, have the obligation of promoting economic and social development that prevents environmental contamination, maintains ecological balance, and avoids the destruction of ecosystems.” <sup>240</sup>
Poland (1997)	“Everyone shall care for the quality of the environment and shall be held responsible for causing its degradation.” <sup>241</sup>
Somalia (2012)	“All people in the Federal Republic of Somalia have a duty to safeguard and enhance the environment and participate in the development, execution, management, conservation and protection of the natural resources and environment.” <sup>242</sup>
Sri Lanka (1978)	“The exercise and enjoyment of rights and freedoms are inseparable from the performance of duties and obligations and accordingly it is the duty of every person in Sri Lanka . . . to protect nature and conserve its riches.” <sup>243</sup>

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238. GAMBIA [CONSTITUTION] 1996, rev. 2004, art. 220.

239. MAGYARORSZÁG ALAPTÖRVÉNYE [THE FUNDAMENTAL LAW OF HUNGARY], ALAPTÖRVÉNY. art. P.

240. PANAMA [CONSTITUTION] 1972, rev. 2004, art. 119.

241. POLAND [CONSTITUTION] 1997, rev. 2009, art. 86.

242. SOMALIA [CONSTITUTION] 2012, art. 45.

243. SRI LANKA [CONSTITUTION] 1978, rev. 2015, art. 28.

Timor-Leste (2002)	"All have the right to a humane, healthy, and ecologically balanced environment and the duty to protect it and improve it for the benefit of the future generations." <sup>244</sup>
Turkey (1982)	"It is the duty of the State and citizens to improve the natural environment, to protect the environmental health and to prevent environmental pollution." <sup>245</sup>
Ukraine (1996)	"Everyone is obliged not to harm nature, cultural heritage and to compensate for any damage he or she inflicted." <sup>246</sup>
Vanuatu (1980)	"Every person has the following fundamental duties to himself and his descendants and to others . . . to safeguard the national wealth, resources and environment in the interests of the present generation and of future generations." <sup>247</sup>
Venezuela (1999)	"It is the right and duty of each generation to protect and maintain the environment for its own benefit and that of the world of the future." <sup>248</sup>
Yemen (1991)	"Each individual shall have a religious and national duty to protect the environment." <sup>249</sup>

We argue that combined attention to rights and duties of individuals has a long pedigree that includes important contributions of Latin American and African diplomats and legal scholars. We also establish that individual duties, although infrequent in international human rights law, are very prominent in national constitutions and are often interspersed with rights-related language. One reason that duties are not well established in human rights law or discourse is because diplomats, scholars, and activists cogently critique individual duties on normative and political grounds.

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244. TIMOR-LESTE [CONSTITUTION] 2002, art. 61.

245. TURKEY [CONSTITUTION] 1982, rev. 2011, art. 56.

246. UKRAINE [CONSTITUTION] 1996, rev. 2014, art. 66.

247. VANUATU [CONSTITUTION] 1980, rev. 1983, art. 7.

248. BOLIVARIAN REPUBLIC OF VENEZUELA [CONSTITUTION] 1999, rev. 2009, art. 127.

249. YEMEN [CONSTITUTION] 1991, rev. 2001, art. 35.

Today, there is a resurgence of the talk of duties and responsibilities, but most discussion focuses on the duties of international institutions.<sup>250</sup> Seen in this way, the primary challenge is to reform our global institutions, whether they be the World Trade Organization or the United Nations Security Council. Legal experts who propose to build a more diverse duty-bearer regime tend to be most concerned about expanding duty-bearers to include international organizations, transnational corporations, and non-state actors such as insurgent groups, rather than stressing the duties of individuals.<sup>251</sup> We support these efforts, but believe that this more diverse regime should include individual obligations. Attention to individual responsibilities need not detract from the significant project of ensuring that global institutions collectively promote the basic human rights of the poor and the socially marginal.

The situation in the first part of the 21st century is quite different from that of 1948. Today, there is a dense body of international human rights law that spells out a wide range of rights and puts in place a growing set of institutions designed to implement, and occasionally enforce, such rights. This does not mean that rights are being fully or universally enjoyed—far from it. Still, it suggests that in the task of promoting rights, it may be useful to move beyond the obvious and important duties of the state and the newer and important responsibilities of international organizations and corporations to reconsider the horizontal duties of individuals to other individuals and to society, including international society.<sup>252</sup> Such duties can be important ways to supplement or complement state duties and enhance the respect for rights.

In particular, we wish to draw attention to the duties that individuals have to protect the environment and to respect and promote the rights of other individuals. There are many duties listed in constitutions, but the most important in our minds are the ones that stress the duties of individuals to protect the environment and to respect the rights of others. As such, we argue that more attention to these kinds of duties may help

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250. See Pogge, *supra* note 36, at 64.

251. See also Steven Ratner *Corporations and Human Rights: A Theory of Legal Responsibility*, 111 YALE L.J. 443 (2001); see generally van Genugten, *supra* note 49 (exploring the human rights legal regime with respect to different duty-bearers in changing times).

252. On responsibilities of corporations for human rights practices, see Ratner, *supra*, note 251.



enhance human rights rather than subvert them. Stressing duties as useful complements to human rights could be an essential tool to address global public policy challenges, especially on issues related to global climate change where emphasizing rights is unlikely to help advance the issue unless an entire network of duty-holders is also mobilized.

We argue that part of the dismissal of duties stems from the way they are framed or located in political thought. Because many associate duties with conservatism, religion, authoritarianism, and communitarianism, they may feel that attention to duties will necessarily imperil rights. There are good reasons to be skeptical when states, such as Russia with its troubled records of compliance, present resolutions in the Human Rights Council about “traditional values of humankind” as a vehicle for promoting human rights. Moreover, there is concern when Islamic states say that the right to free speech should be limited by a duty not to blaspheme. However, we believe it is possible, and even necessary, to come from a strong human rights perspective and speak about the importance of individual duties—especially those duties that involve protecting the environment and respecting or promoting the rights of others. In doing so, we hope to echo ideas described by Martha Nussbaum and others as the capabilities approach, which stress the full flourishing of the human person in harmony with her environment.<sup>253</sup> Again, this view requires stressing the relational quality of human rights while concurrently stressing the inherent dignity of the individual.

We do not argue that new human rights treaties should be written that incorporate explicit articles about individual duties. Instead, we recognize that rights are always relational and thus rights and duties always coexist. Nevertheless, within this existing framework of human rights law, much more can be done to highlight not just our individual rights, but also our individual duties to protect rights. We call for a more in-depth awareness and application of the words in the common preamble to both the ICCPR and the ICESCR: “Realizing that the individual, having duties to other individuals and to the community to which he

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253. See generally Martha C. Nussbaum, *Human Functioning and Social Justice: In Defense of Aristotelian Essentialism*, 20 POL. THEORY 202 (1992) (examining the realm of essentialism in the context of moral and non-moral human functioning).

belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant.”<sup>254</sup>

Much more can be done to highlight that protecting rights is a long-term project involving partnerships between states, international institutions, civil society, and individuals. In these partnerships, all sides have complementary duties and responsibilities to promote rights. Duties and rights do not need to come into conflict with one another, but can mutually reinforce one another. Our proposal is not to rewrite the law, but to rediscover the history of rights and duties, and thus use it to build new constituencies for combined attention to rights and duties with the goal of addressing the world’s most pressing needs.

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254. International Covenant on Economic, Social and Cultural Rights, *supra* note 176, pmb. (1966).