

## SHOULD 'DUTIES' PLAY A LARGER ROLE IN HUMAN RIGHTS? A CRITIQUE OF WESTERN LIBERAL AND AFRICAN HUMAN RIGHTS JURISPRUDENCE

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### I. INTRODUCTION

Although the word 'duty' has not been totally eradicated from discussions of 'human rights', the desirable role of 'duties' in modern human rights theory is unclear. If one were to look to international documents as the manifestation of theory, one would note that the emphasis placed on 'duties' varies dramatically as between the Universal Declaration of Human Rights (UDHR), considered the product of Western liberal thought,<sup>1</sup> and the Banjul Charter on Human and People's Rights, a product of 'rights talk' in the African context.<sup>2</sup> Whereas many

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1 See for instance, SP Sinha, "The Axiology of the International Bill of Rights" (1989) 1 *Pace Yearbook of International Law* 21.

2 In the UDHR, duties are mentioned but only in a subsidiary, secondary way in article 29, whilst the Banjul Charter includes duties to the family, the community, and the State. As to article 29 of the UDHR, note though El Daes (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 UDHR: A Contribution to the Freedom of the Individual under Law*, 1983. This explains the fact that the UDHR does not detail the duties and obligations of the individual to

Western theorists regard duty-based systems as the remnants of an outdated spiritual order whose 'charity' operates to the benefit of the powerful, a number of African commentators view duties as an excellent means of ensuring that individuals' basic needs are met in a manner that promotes social cohesion and harmony.

Most of the comparative work between Western liberal and African philosophy has been from the point of view of 'rights' - in essence, to what extent African nations should embrace the 'rights' philosophy. Yet equally important is to what extent the Western discourse is capable of learning from, and to what extent it is desirable for it to learn from the African conception of duties. Part II of this paper therefore, looks at perceptions of 'duty' within modern Western liberal thought. Part III turns to the writings of African scholars.<sup>3</sup> Part IV then looks to the interaction of rights and duties - to what extent traditions of 'rights' and 'duties' can complement each other and the issues involved in crystallising 'duty-based' ideals.

Obviously such an endeavour draws heavily upon the critiques of the cultural relativists<sup>4</sup> who seek to place particular philosophies in their cultural contexts.<sup>5</sup> Yet rather than seeking to evaluate the cultural relativist attack on the current international discourse, the aim of this paper is to examine the differences between Western liberal thought and African thought with regards to duties and explore the possibilities of integration. It does not therefore embrace the either/or quality of many cultural relativists' analyses - that Western liberal notions are suitable only for Western cultures and that African traditional theories are suitable for application only in African nations. Instead it assumes that philosophies can and do influence each other and thus have a dynamic rather than static quality.

Two preliminary points need to be made concerning the scope of this paper. The discussion of 'duties' herein refers to 'duties' owed by individuals to other individuals and not any duties operating as between the State and the individual. Whilst both are important elements of the 'duties' debate, the size of this paper dictates a choice and the former has the advantage of being less influenced by competing theories of the State. Secondly, the problems inherent in seeking to

the State: "History has shown that there is a need for such protection [protection of individual rights vs the State] whereas there is not imperative necessity to safeguard the State against individuals": (at 17). It is noticeable that even when duties are discussed in the international forum, however, it is duties to the State rather than other individuals which are considered.

- 3 The author is rather reluctant to label the African thinkers as fitting within any Western genre of philosophers, for example 'communitarianists' or 'humanists', particularly in the absence of any consistent self-identification/labelling.
- 4 Cultural relativists object to the imposition of other culture's 'human rights' upon a foreign culture - in particular they identify the standards of the current international human rights regime with Western liberal Christian democracies and regard the standards as inapplicable or inappropriate to other cultures.
- 5 Note, for example, Pollis' comment: "[h]uman rights, both their philosophic and or theoretical formulation and their practice, are rooted in the specifics of particular societies and civilizations": A Pollis, "Liberal, Socialist and Third World Perspectives" in P Schwab, A Pollis (eds), *Towards a Human Rights Framework* (1982) at 2. Reference should also be had to Bozeman's warning that it is necessary to combat levelling dispositions which assume that one culture's preferred words and convictions carry a universal accepted truth: AB Bozeman, "Law, Human Rights and Culture" in KW Thompson (ed), *The Moral Imperatives of Human Rights: A World Survey* (1980) at 30.

generalise about philosophies is acknowledged. A concentration on particular writers has been undertaken in an attempt to underline the lack of unity between advocates of particular traditions. The grouping of certain writers under the headings 'Western liberal' and 'African' has been based merely on the perception of a 'common heritage' and self-identified categorisations.

## II. WESTERN LIBERAL TRADITION

The role of duty in modern liberal theory is ambiguous. Reacting to a rich heritage of religious based notions of obligation, modern theorists have concentrated upon promoting 'rights' as a sufficient means of ensuring 'individual dignity'. A lack of clarity is evident in the discussions of the 'source' of duties, their objects and the rationale for duties, and philosophers shy away from articulating duties owed by one human to another because of either one's humanity or one's shared humanity. Whilst viewing 'duty' in a particularly narrow, somewhat confused sense in the abstract, when discussing the relationship between duties and rights, the majority use 'duty' primarily in two senses. Firstly, 'duty' is used to describe the obligations which are correlative to 'rights' (but which represent an inferior system of ensuring the respect of the 'ends' of rights - that is, individual freedom and dignity). Secondly, 'duty' is used to refer to 'duties' which go beyond the scope of rights and which call for abridgement of rights.

### A. Antecedents

The intellectual heritage that Western liberalists have had to draw upon (and react against) is richly endowed with conceptions of moral duties and the centrality of 'duty' to a 'good' life. Although heavily religious in context, human worth was seen as being respected and advanced by dedication to duties in a variety of ways. Aristotle, for instance, emphasised 'moral virtue' in knowing and acting upon 'the good' - a matter which could be determined through rational processes and practised through habit.<sup>6</sup> Augustine's conception of an individual's ultimate (albeit "graced") choice of charity - through love of God and love of one's neighbour<sup>7</sup> similarly placed the emphasis upon one's acting a certain way through a sense of obligation. Whilst a departure in the sense of being distanced from the 'duties to God' tradition, Kant's categorical imperative (those actions are right which conform to principles one can consistently will to be principles for everyone, and those actions are wrong which are based upon maxims that a rational creature could not will that all persons should follow) led to the enunciation of certain 'moral duties' which were to be the unconditional directive

6 Aristotle, *Nicomachean Ethics*, translated by WD Ross, from WD Ross (ed), *The Works of Aristotle, Vol X, Bk I*, Clarendon Press (1925) at 1102a5-1103a3.

7 Augustine, *Enchiridion*, translated by JF Shaw, from Rev Marcus Dods (ed), *The Works of Aurelius Augustine, vol IX* (1892) at Ch CXXI.

for behavior.<sup>8</sup> 'Duties' were thus the staple of ethics for many centuries prior to the emergence of discussion of 'rights' during the Enlightenment.<sup>9</sup>

In the writings of the social contractarians and utilitarians, 'rights' began to take precedence and the emphasis became an individual's realm of liberty as against the State. For Hobbes, no moral obligations existed in the "state of nature",<sup>10</sup> though a sovereign ruler could develop them. For Mills, liberty was the ultimate value, though an "inner feeling for humanity" was accepted as a sound basis for a Utilitarian morality, whilst Bentham, with his discussions of the correlation between rights and duties, shifted the emphasis to rights.<sup>11</sup> As 'duties' lost their centrality, they were discussed as mere correlatives to rights. Duties without principal rights, became a matter of mere charity. Modern liberal theories have continued to affirm the superiority of rights over duties and have relegated duties to a secondary (somewhat unclear) role.

## B. Modern Liberal Theorists

In examining the contributions of some of the primary theorists who tackle the question of rights versus duties,<sup>12</sup> whilst disagreements as to the definition of duties and the extent of correlativity between rights and duties appear, most support the possibly more limited reach of 'rights' as a preferable system for ensuring individual liberty. 'Duties' are either considered too wide or too lacking in foundation or empowerment for effective enforcement. Furthermore, the stress laid upon 'individual' freedom tends to create a hostile environment to extensive notions of obligations to one's neighbour.

### (i) *The Meaning of 'Duty'*

When discussing the abstract concept of duty, most Western liberal theorists have sought to draw a fine distinction between what one ought to do, what one should do, and what it is one's duty to do. White, for instance, speaks of what one ought to do as that which is appropriate, fitting, or 'owing', in the circumstances. Duty is seen as something which has to be done because of who one is, whereas what one should do is dictated by notions of moral good:

8 See for instance, the discussion of Kantian philosophy, in TC Denise, SP Peterfreund, *Great Traditions in Ethics*, Wadsworth Publishing Co (7th ed, 1992) pp 182-3.

9 See for instance, AR White, *Rights*, Clarendon Press (1984) p 21, who traces the use of 'duty' in the writings of the Stoics and Cicero. As to the emergence of 'rights' discourse, see ME Winston, "Introduction: Understanding Human Rights" in ME Winston (ed), *The Philosophy of Human Rights* (1989) 1 at 3. It is often noted that there was no notion of right in Greek philosophy or that of Plato/Aristotle: HLA Hart, "Bentham on Legal Rights" in D Lyons (ed), *Rights* (1979) 125 at 126. See too J Swanson, "Note: The Emergence of New Rights in the African Charter" (1984) 12 *New York Law School Journal of International & Comparative Law* 307.

10 For example, Sir Thomas Hobbes, *Leviathan*, from Sir William Molesworth (ed), *The English Works of Thomas Hobbes of Malmesbury, Vol 11 (1839)*, Scientia (1962) at Ch XIII, 113-16.

11 JS Mill, *Utilitarianism* Longman's, Green (8th ed, 1882) Ch III, pp 40-3. As to Bentham, see D Lyons, "Rights, Claimants and Beneficiaries" in D Lyons, note 9 *supra* 58 at 59.

12 Interestingly, many of the main human rights commentators do not address the question of 'duties' at all, except in peripheral references to "correlative duties": see eg L Henkin, *The Rights of Man Today, Pt One*, Stevens (1978).

It may well be that I ought to feed a starving beggar, but I do not have a duty to feed him in the way that I have a duty to feed my starving children or servants, unless you insist, for example, that it is my 'Christian duty', that is, my duty as a Christian.<sup>13</sup>

One has duties because of one's status - eg as a parent, or worker (though one's status as a human is not discussed). One's 'obligation', on the other hand is a something one has to do because of legal, economic, prudential, or moral considerations; no choice is involved.<sup>14</sup> Raz also works on the premise that one's 'duty' is narrower than what one "ought" to do.<sup>15</sup> Duty for Raz, appears to be what is morally required. Hart too, makes a distinction between obligations and duties: obligations may be voluntarily incurred and arise out of the character of the obligatory actions, whereas duties arise out of the relationship between the parties and are not voluntarily incurred.<sup>16</sup> Mackie, rather more loosely, seems to include notions of what ought to be done, what must not be done, and what is obligatory into the notion of 'duty'.<sup>17</sup> Though the majority refute such a 'simplistic' approach, in the discussions of the relationship between rights and duties, many theorists in fact equate duty and 'obligation'.

Rights theorists spend little time delineating the boundaries of 'human duties' - even those acknowledged to be correlative to rights. The room for disagreement as to what duties humans owe to each other is acknowledged.<sup>18</sup> To some extent, this lack of definition of duties which all humans owe because of their humanity, is a product of the view of 'rights' as all-important and providing for human needs, such that separate consideration of 'duties' is unnecessary. It also, however, reflects the 'non-relational' abstracted view of duties adopted, an approach which places greater emphasis on identifying the duty-holder rather than identifying the recipient's/the recipients' needs, one of the potential rationales for duties.

Interestingly, as Feinberg points out, 'duty' has come to mean action required, a moral modality, rather than a sense of actions due others.<sup>19</sup> 'Duties' are viewed as non-relational and not concerned with whom the exercise of the 'duty' is to benefit. Indeed, there is very little discussion of 'duties' owed to another person because of his or her being human, one's equal, or one's neighbour. In one sense, the concentration on the holder of the duty is consonant with the reasoning behind 'human rights': one has rights by virtue of one's humanity alone; so too one has duties as an isolated individual, regardless of those around him or her. Yet, given the seemingly greater need to identify the subject of one's duties if one is to carry them out effectively than the need to identify the 'other' where one is exercising a

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13 AR White, note 9 *supra*, pp 9, 29.

14 *Ibid*, p 48.

15 For Raz, there exists a category of acts, the supererogatory, which are beyond both duties and "oughts": J Raz, "Right-Based Moralities" in J Waldron (ed), *Theories of Rights* (1984) 182 at 183-4.

16 HLA Hart, "Are There Any Natural Rights" in D Lyons, note 9 *supra* 14 at 17.

17 JL Mackie, "Can There Be A Right Based Morality" in J Waldron, note 15 *supra* 168 at 169.

18 See for example, G Harman, "Moral Relativism as a Foundation for Natural Rights" in ME Winston, note 9 *supra* 148 at 149. Harman argues that 'duties' to assist each other are formulated according to the dominant power relations - thus a duty to help others avoid harm has not been widely advocated because it is to the disadvantage of the powerful.

19 J Feinberg, "The Nature and Value of Rights" in D Lyons, note 9 *supra* 78 at 79.

'freedom right', the absence of a 'relational approach' limits their conception of the enforceability of duties.

(ii) *Relationship Between Rights and Duties*

In discussing the relationship between rights and duties, whilst most Western liberal theorists accept some degree of correlation, the majority reject any complete correspondence.<sup>20</sup> Instead, both duties and rights are seen as having areas of independent operation. For duties, this area is largely conceived of as the area of obligations of a moral or legal kind, whereas for rights, it is the area of freedoms.

With the exception of White, most theorists have not disavowed all correlativity between rights and duties.<sup>21</sup> Instead, in particular situations they see a connection because both the right and the duty arise out of the same circumstance - eg in a debt situation, the duty to pay correlates with the right to receive.<sup>22</sup> Some choose a more limited level of correlation - Raz, for instance, regards a "right as a ground for a duty of another",<sup>23</sup> whilst agreeing that duties exist which do not ground rights. However, the thrust of most theorists' arguments is that rights do not simply grow out of duties and that some duties do not have corresponding rights. Duties in particular are perceived as having a sphere of operation which only partly overlaps with 'rights'.

When discussing the lack of complete correlation between duties and rights, modern liberal theorists argue that the objects/beneficiaries of some duties are without legal power to enforce such claims. With regards to freestanding 'duties', White points to the duty on a judge to pass sentence or a policeman's duty to report offenders<sup>24</sup> as not implying 'rights' of the prisoner/offender to fulfilment of the 'duty'. Similarly, he regards the duty to do something for someone as not being mirrored by the right of the recipient to that something - eg the duty of an employee to serve employer's customers.<sup>25</sup> He also identifies abstract duties - eg the duty of a citizen not to carry offensive weapons.<sup>26</sup> Hart similarly points to

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20 Bentham is often credited with defining a right in terms of an obligation - for instance see, D Lyons, note 11 *supra* at 58. Whilst Bentham certainly stressed the role of imposing obligations and abstaining from imposing them, as determining when rights existed, it would seem misleading to attribute the complete correlation of rights and duties to Bentham. Bentham also recognised a category of duties which he termed "non-beneficial" or "self-regarding" which did not found rights. For Hart's criticism of the narrowness of this exception, see HLA Hart, note 9 *supra* at 133-8. Hohfeld has also argued that there exist a category of correlative rights and duties. It is also possible that Gewirth in arguing that rights and duties emerge from the same source - that is the rationally grounded requirements of human action - that Gewirth would accept the correlation: see for instance: A Gewirth, "The Basis and Content of Human Rights" in ME Winston, note 9 *supra* 181 at 199-200.

21 Rather exceptionally, White argues there to be no necessary connection between rights and duties: "Rights are rights in virtue of some title which gives them to us, whereas duties are duties in virtue of some position or authority which lays them on us and obligations are obligations in virtue of some factor which binds us. We need no more look to the duties (or obligations) of others in order to discover our rights than to look to their rights to discover our duties (or obligations)": AR White, note 9 *supra*, pp 72-3.

22 J Donnelly, "How are Rights and Duties Correlative" (1982) 16 *Journal of Value Inquiry* 287 at 292.

23 Note 15 *supra* at 194.

24 AR White, note 9 *supra*, p 60.

25 *Ibid*, p 61.

26 *Ibid*, p 62.

'duties' that have no corresponding rights. In his terms, many 'duties' such as those owed to babies, animals, or family members have no corresponding person who has either the ability to choose whether or not to receive the benefit or the ability to enforce that benefit.<sup>27</sup> Interestingly, the conception of duties which appears in White's and Hart's arguments encompasses both 'moral duties' and 'positivist' type duties - eg to pay taxes<sup>28</sup> or stop at a red light.<sup>29</sup> Implicit in their arguments is that duties encompass a wider field than rights.

In relation to the correlation of duties to rights, categories of rights having correlative duties have been distinguished from rights having no correlative duties. A prime example given of the latter category is the situation in which two persons come across a stray pound note: each has a right to pick up the pound, but neither has a duty, for example to let the other pick it up.<sup>30</sup> Hart in fact defines "liberties" as a category of rights in which an individual is under no obligation to abstain from certain action.<sup>31</sup> Similarly, the majority of theorists identify a category of 'rights' - often called 'liberties' or 'Hohfeldian privileges' - which do not have particular corresponding duties - eg the right to publish material which exists without there being any corresponding duty on another to assist in publication. Rejecting the argument that someone's right to do something correlates with the duty of another not to interfere, White, for instance, cites the case where someone may have a right to teach or heal but where the subject is under no duty to be taught or healed.<sup>32</sup> The arguments of the theorists in distinguishing 'independent' rights seem rather weaker than their conceptions of 'independent' duties. In marking out distinctive independent 'rights', much attention is given to there being no exact correlation<sup>33</sup> between rights and duties, rather than identifying any possible correspondence. Yet in so far as the rights scheme embodies freedoms by permitting action without requiring action on the part of the actor or those around him or her, the rights scheme is said to provide for more than a duty-based system.

### (iii) *Comparison between Rights-Based System and Duty-Based System*

Accompanying the discussions of correlativity is the assertion that even if the systems are correlative, a rights-based system is superior to a duty-based system. Although they do not really attempt to address any shortcomings as to the 'reach' of rights (in terms of not necessarily covering all the subject matters covered by duties, as canvassed above), 'rights' are said to be inherently superior because of their rhetorical strength, their concentration on the ability and power of the right-holder, their enforceability, their impact, and their ability to be controlled by the right-holder.

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27 Note 16 *supra* at 18.

28 D Lyons, note 9 *supra*, p 68.

29 J Feinberg, note 19 *supra* at 79.

30 AR White, note 9 *supra*, pp 64-5, drawing upon an example of PC Williams. A similar example is cited by HLA Hart, note 16 *supra* at 17.

31 Note 16 *supra* at 14.

32 AR White, note 9 *supra*, p 64.

33 *Ibid*, p 62 for instance: "Any such right which the authority might have could not be a right to be Ved correlative to my duty to V"; As to "loose correlations", see J Donnelly, note 22 *supra* at 292.

Lyons has strongly defended the importance of rights. Whilst accepting that rights do not “secure all that is valuable in human relations”, acknowledging for instance, that they do not deal with charity, generosity, or sympathy, Lyons argues that a right’s connection with justice is a distinct advantage: “As justice is given priority over other values, so it is said that rights must be served ahead of mere desire, preferences, or interests”.<sup>34</sup> The empowerment notion that Williams has so forcefully praised<sup>35</sup> is another component of rights appeal according to Feinberg. For Feinberg, rights are more basic than even correlative duties because of their empowerment function:

Having rights enables us to ‘stand up like men [or women]’, to look others in the eye, and to feel in some fundamental way the equal of anyone. To think of oneself as the holder of rights is not to be unduly but properly proud, to have that minimal self-respect that is necessary to be worthy of the love and esteem of others... To respect a person then, or to think of him [or her] as possessed of human dignity, simply is to think of him [or her] as a potential maker of claims.<sup>36</sup>

Similarly, Wasserstrom states that “[a]s long as one has a right to anything, it is beyond the reach of another properly to withhold or deny it”.<sup>37</sup> Wasserstrom’s argument is that duties deflect attention away from the dignity and the harm suffered by an individual and focus upon the moral sense of the duty-holder who is already often in a powerful position. He contrasts duties, therefore, with rights, which focus upon the worth of the otherwise vulnerable individual.

Furthermore, rights help to define expectations and build security,<sup>38</sup> not only because they are empowering but also (implicitly) because they are inherently more enforceable.

It is common for theorists to assert that rights are more ‘enforceable’, whereas duties, being perceived as a matter for the conscience only, are less enforceable. Wasserstrom, for instance, uses the example of a racist white (American) Southerner: “If the white Southerner fails to do his [or her] duty, that is simply a matter between him [or her] and his [or her] conscience”.<sup>39</sup> In part this attitude is itself a product of the ‘spiritual order’ rationale for duties and the failure to accord a rationalist justification for duties which humans owe to each other. It also reflects the lack of attention given to the person to whom the duty is owed. In rejecting, for instance, the society as the object of duties, the theorists neglect one of the main potential enforcers of general duties. Another assumption made is that once duties are able to be enforced, the system is more properly called a ‘rights-based’ system. Many of these attitudes, however, are challenged by the African model of ‘duty-based’ systems.

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34 D Lyons, note 9 *supra*, pp 6, 11.

35 PJ Williams, “Alchemical Rights: Reconstructed Ideals from Deconstructed Rights” (1987) 22 *Harvard Civil Rights - Civil Liberties Law Review* 401.

36 J Feinberg, note 19 *supra* at 87. A counter-argument could be made (and is made by many opponents of rights) that such a system which emphasises claims against one another is not desirable. A feminist analysis might even suggest that such a system is the result of male theories of competition.

37 R Wasserstrom, “Rights, Human Rights, and Racial Discrimination” in D Lyons, note 9 *supra* 46 at 48.

38 *Ibid* at 49.

39 *Ibid* at 56.



An alternate ground for the superiority of a rights-based system is that 'rights' enjoy more popular appeal than duties. Whilst everyone may want to possess rights, duties may be seen as irksome. According to Mackie, duties are particularly hard to be accepted in a society in which their source is unclear: "Duty for duty's sake is absurd, but rights for their own sake are not".<sup>40</sup> Since secular society rejects divine command, much of the basis for 'duties' has disappeared. The philosophic underpinnings of earlier conceptions of 'duties' (the spiritual 'duties', the categorical imperative) have disappeared to the extent that 'duties' would be seen as being imposed arbitrarily,<sup>41</sup> whereas 'rights' with their connection to an individual's ability to live a human dignified life, 'make sense'. In a similar vein, Shue describes the most important asset of rights as their being "socially guaranteed".<sup>42</sup> Intrinsic in this defence of 'rights' is a natural law perspective which sees inalienable rights as 'self-evident'. The fact of community life and the necessity to maintain it is not regarded as 'natural' or self-evident, thus leading to the need for some greater justification.<sup>43</sup>

Some theorists, such as Harman, have even argued that rights protect, foster, and enhance an individual's dignity better than duties. Duties are seen as potentially requiring sacrifices for the betterment of the whole. The typical example given is that whilst persons may be under a duty not to harm others, this is less than asserting that such people have a right not to be harmed. Once again the battle is fought in the field of sacrifices for the benefit of others. Harman argues that people retain the right to personal integrity, even if invading this right would prevent harm to others - eg a doctor may not kill one patient and distribute that patient's healthy organs among other patients even if the result is to save five people.<sup>44</sup> Given the lack of attention to defining the precise rationales and boundaries of duties, the concentration upon 'one-way' duties (that is, individual to the group) is understandable, though it does ignore the fundamental question which arises in defining either duties or rights - that is, on what ideological basis is one going to define their reach.

In the writings of many modern Western liberal theorists, a rights theory is equated with liberalism, individualism, and natural law (a fact which is hardly surprising given their political views). Duty-based systems are connected with communitarianism and religious ideals. Whilst these categorisations are neither inevitable nor necessarily logical, many of the differences between the Western liberal and African theorists relate not merely to the forms by which individual needs are met but to the ideological rationales. It is difficult to translate a duty-system into a rationalist society without carrying over communitarian ideals, but as will be seen in Part IV, integration rather than assimilation might be possible.

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40 JL Mackie, note 17 *supra* at 171.

41 "Even if we accepted a god, we should expect his commands to have some further point, though possibly not one known to us; pointless commands, even from a god, would be gratuitous tyranny": *ibid* at 171.

42 H Shue, "Security and Substance" in ME Winston, note 9 *supra* 152 at 154.

43 This characteristic of modern liberal theory has come under attack from communitarians. See for instance: P Selznick, "The Idea of a Communitarian Morality" (1975) 75 *California Law Review* 445.

44 G Harman, note 18 *supra* at 148.

### III. AFRICAN SCHOLARS' CONCEPTIONS OF DUTY

Before proceeding to analyse African scholars' conception of 'duty' in the human rights debate, it is necessary to note the problems with embarking upon such a task. Firstly, as briefly noted above, it is worrying that one is importing a foreign frame of reference - both in looking for 'philosophies' and in looking for ideals which bear upon the Western notions of 'human rights' and 'human dignity'. Hopefully, the use of African authors helps to minimise this charge. Whilst recognising the factual basis for Cobbah's claim that a majority of the African academics have received Western training, his conclusion that their efforts are thereby somewhat handicapped<sup>45</sup> seems based upon patronising notions of intellectual domination. Secondly, as much of the material was written for ulterior purposes - often to respond to Western claims that 'human rights' (as presently drafted) are universal<sup>46</sup> or to decry the effects of colonialism,<sup>47</sup> certain questions can be raised about the material's relevance or legitimacy. Whilst the explicit political aims of the writings cannot be avoided, to suggest that the writings are thereby 'different' to those of the Western liberal theorists is to ignore the 'politics' of the 'defence of rights'. Thirdly, whilst it is noticeable that much of the research relies on (disputed) anthropological research as to the operation of 'tribal societies', some may question its use to proffer views of the application of systems to largely industrial societies.<sup>48</sup> However, in so far as the presentation of 'tradition' demonstrates the author's perception of how duty-systems have and can operate, the 'historical accuracy' of the material is of less importance than the model or ideal thereby presented.<sup>49</sup> Fourthly, it needs to be emphasised that the comments concerning these African scholars' conceptions should not be used as necessarily representative of 'African views'. The variety of cultures in Africa should not be underestimated in pursuing a 'Merrie Africa' myth.<sup>50</sup> All that can be presented is an author's view of local custom and comments concerning the strengths and weaknesses of the approach. The concentration, therefore, is and should be upon the views of the authors presented (themselves not necessarily

45 JAM Cobbah, "African Values and the Human Rights Debate: An African Perspective" (1987) 9 *Human Rights Quarterly* 309 at 327.

46 See, for instance, *ibid*; J Ki-Zerbo, "African Personality and the New African Society" in WJ Hanna (ed), *Independent Black Africa: The Politics of Freedom* (1964) 46; DM Wai, "Human Rights in Sub-Saharan Africa" in P Schwab, A Pollis, note 5 *supra*; CC Mojekwu, "International Human Rights: The African Perspective" in J Nelson, V Green, *International Human Rights: Contemporary Issues* (1980) 85; F Nahum, "African Contribution to Human Rights", presented at the Seminar on Law and Human Rights in Development, Gaborone, Botswana, 24-28 May 1982; O Ojo, "Understanding Human Rights in Africa" in F Berting et al (eds), *Human Rights in a Pluralist World: Individuals and Collectives* (1990) 115.

47 See for instance, DM Wai, *ibid* at 116; for a contrary argument, see R Emerson, "The Fate of Human Rights in the Third World" (1975) 27 *World Politics* 201 at 221-2.

48 RE Howard, "Group versus Individual Identity in the Africa Debate on Human Rights" in AA An-Na'im, FM Deng (eds), *Human Rights in Africa: Cross-Cultural Perspectives* (1990) 159.

49 It should be noted that Howard, for instance, objects to the presentation of 'African society' as an ideological creation by the more powerful groups in African society to justify the authority and control based upon such status traditions: see *ibid* at 164, who also cites T Ranger, "The Invention of Tradition in Colonial Africa" in E Hobsbawm, T Ranger (eds), *The Invention of Tradition* (1983) 211 at 254.

50 See SP Sinha, note 1 *supra*; and J Silk, "Traditional Culture and the Prospect for Human Rights in Africa" in AA An-Na'im, FM Deng, note 48 *supra* at 290.

representative given the choice of English-writing authors), rather than the accuracy of representations concerning any unified 'African' culture.<sup>51</sup>

### A. Meaning of Duty

Amongst the African scholars surveyed, it would appear that the concept of 'duty' is regarded as synonymous with 'responsibility' and 'obligation'. They accept with greater consistency and unanimity than amongst their Western liberal colleagues, that 'duties' include what the West terms 'moral obligations'. Behind this breadth, is of course, a wider view of 'society expected behavior' or culturally required behavior. Rembe, for instance, speaks about an individual's responsibility to "lesser placed members of family"- whether children, the aged, the ill, or one's parents.<sup>52</sup> Duties, are seen as both the force and the product of an individual's being a part of the community.<sup>53</sup> Duties are at once the consequence of one's membership of society and the pre-requisite to one's possessing membership of the society.<sup>54</sup> Human dignity rarely appears as a free-standing concept, justifying the 'fruits' of duties.<sup>55</sup> Human dignity, rather, is a product of fulfilling one's role in society.

### B. Scope of the Duties

The primary duties a member of a tribe owes are duties in respect of the well-being of one's kin. Mojekwu, for example, talks of the "concept that the family is a closely knit and compact unit, where everyone was his brother's keeper was instilled in every member of the family when he is young".<sup>56</sup> A member of the family in need is a matter of shame for the whole family. Nahum emphasises the "mutual society" in which another's welfare was a subject of concern and duty of the individual: "To the ancient question, am I my brother's keeper, the answer is an emphatic yes and so is your brother your keeper!"<sup>57</sup> Given that the 'family' spoken of in this context is quite extensive,<sup>58</sup> duties owed to respect others and see

51 Admittedly, the entitling of this section alone tends to imply something distinctively African, and whilst it is the attitude of the author that there is a different emphasis in the works of African authors than, for instance, those from the United States or Britain, it is not intended to represent any unified culture.

52 NS Rembe, *Africa and Regional Protection of Human Rights: A Study of the African Charter on Human and People's Rights, Its Effectiveness, and Impact on the African States*, Centre for the Study of Human Rights (1985) p 84.

53 *Ibid*, p 84.

54 See eg Menkiti, *Person and Community in African Traditional Thought* in RA Wright (ed), *African Philosophy: An Introduction* (3rd ed, 1984) 172.

55 Only rare statements linking duties to shared humanity appear - eg in Deng's study in the Dinka, certain "obligations towards fellow human beings" are noted, presenting evidence of statements of Dinka chiefs, such as "[i]f you see a man walking on two legs, do not despise him; he is a human being. Bring him close to you and treat him like a human being. That is how you will secure your own life": FM Deng, "A Cultural Approach to Human Rights Among the Dinka" in AA An-Na'im, FM Deng note 48 *supra* 261 at 271.

56 CC Mojekwu, *The Nature of Law and Justice in Ibo Society*, Submitted in Partial Fulfillment for the Requirements of the LLM Degree at Northwestern University School of Law, Chicago, 1972, p 64.

57 Quoted in Z Motala, "Human Rights in Africa: A Cultural, Ideological and Legal Examination" (1989) 12 *Hastings International & Comparative Law Review* 373 at 388.

58 See N Sudarkasa, "African and Afro-American Family Structure: A Comparison" (November, 1980) 11 *The Black Scholar* 37.

to their well-being are not insignificant. What is less clear is the exact nature of the duty. Whilst the extent of obligation is said to vary according to the age, sex, and role of the individual, 'well-being' seems to be a rather vague notion which could cover material and spiritual factors. Rather than being a set duty, therefore, it seemed to vary according to the need of one's family and one's own status.

Duties are also seen to exist with respect to one's performance of work and the welfare of non-family members. Concepts of what was 'fair and reasonable' and 'one's duty as a member of society' interplayed to produce acceptable behavior towards non-family members. The exercise of power was subject to 'duties' and was based upon 'obligations' - such that the tribal chief, for instance, was regarded as 'trustee' of the resources of the group, and the power only existed while one's obligations were being fulfilled, as has been discussed by Wai in the context of the Ashanti chiefs.<sup>59</sup> Work was also an obligation inherent in being a community member, such that laziness, like other breaches of 'obligation' constituted a "social stigma"<sup>60</sup> and was a ground for expulsion from the family and hence the community.<sup>61</sup> The system of responsibilities ensured that no-one amassed a grossly unequal share of resources,<sup>62</sup> which was viewed as inconsistent with the welfare of the community.

It would appear that the distinction between duties 'owed by' and duties 'owed to', (that is, whether the focus is on the holder of the duty or the subject of the duty) is not fully embraced in the writings. The emphasis, however, appears to be more consistently upon the duty-holder, though given the reciprocal system of 'duties'<sup>63</sup> within families and within the clan, it is pre-supposed that no-one will be thereby neglected. The society is fundamentally regarded as a 'status society' - one's duties are a product of one's position in society - one's age, sex, and ability - though the 'fruits' of the duties would not necessarily be distributed according to this 'hierarchy'. Duties appear to be owed to persons according to the recipients' needs and their proximate relationship to the duty-holder, rather than particular individuals being entitled to be the object of 'duties'.

Whilst the writers are not unanimous in their presentation of the basis for determining obligations, the common themes which emerge are the fulfilment of individual needs, individual welfare and the welfare of the community. Motala presents varying statements - President Kuanda, for instance, describes a regime based on fulfilling human needs, human need being "the supreme criterion of behaviour",<sup>64</sup> whilst also noting the over-riding principle of respect. According to Motala, respect did not constitute merely the morals of the society but was part of

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59 DM Wai, note 46 *supra* at 116.

60 Note 57 *supra* at 382.

61 Although Motala sees one of the fundamental 'rights' as being that of being part of the extended family, he acknowledges its dependence of fulfilling one's duties; those who failed, lost the protection of the social unit: *ibid* at 381.

62 See J Nyerere, *Ujamaa - Essays on Socialism*, Oxford University Press (1968) p 108: "Inequalities existed, but they were tempered by comparable family or social responsibilities and they could never become gross and offensive to the social equality which was at the basis of the communal life."

63 Note 52 *supra*, p 85.

64 Note 57 *supra* at 381.

the normative structure of the legal system.<sup>65</sup> According to Okoye, the 'welfare' of the family and the community was the end of 'duties':

For us in Africa, the welfare of the African community has always been supreme although, unlike some European idealist philosophers, we did not dispose of the rights of citizens in an arbitrary fashion or treat the state as an absolute moral organism since we have always had structural devices like age-grade and secret societies, division of function, customs and taboos that provided adequate checks and balances in our society.<sup>66</sup>

The significance of this dichotomy between those who acknowledge the importance of the individual and those who look simply to the community may be less than it first appears, however, given the frequent assimilation of the interests of the individual and the community by even 'individually-focused academics'.

### C. Community-Focused Welfare

A sub-theme of discussions of the 'tribal' duty-based system is that an individual's welfare is intimately connected with the community, such that an individual does not exist outside of this group<sup>67</sup> and that his or her only real interest is that of the community. Individuals are thus organised to serve the collective interest. Wai has expressed it in terms of unflinching loyalty to an "organic whole" whether it be a family, a clan, a lineage, or an ethnic group.<sup>68</sup> Individuals are not encouraged to consider their interests as distinct from that of the group, a conception rife in 'rights' theories and the concentration upon the individual. For subordinate members of the group, there is obviously a danger of oppression in such a philosophy - as Howard has pointed out in relation to women.<sup>69</sup> If a person has to fulfil his or her set role for respect, one has no real choice but to fulfil that role, even at the cost of enormous self-sacrifice.

### D. Enforceability of 'Duties'

Rather than seeing duties as a subject for the conscience only, duties are regarded as enforceable - primarily by the community, rather than any would-be recipient of the duty. Such enforcement is certainly not regarded as a weak form of ensuring human needs but is regarded as consonant with the general 'community ethos' and emphasis on community well-being. 'Duties' are regarded as part of the 'law' of the community and are enforced in a similar manner as other laws - primarily through custom and religion. Mojekwu identifies the major factors contributing to compliance with the law: respect for the law and the authority of the people, personal convictions, justice systems (elders), private societal justice (masquerades, violence), societal pressure, and the threat of expulsion (declaration of social ostracism).<sup>70</sup> When duties are promoted,

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65 *Ibid* at 382.

66 Quoted in DM Wai, note 46 *supra* at 120.

67 Note 57 *supra* at 380

68 DM Wai, note 46 *supra* at 120.

69 RE Howard, *Human Rights in Commonwealth Africa*, Rowman and Littlefield (1986) p 18.

70 Note 56 *supra*, pp 222-34; Motala also sees the strength of custom and religion in enforcing "duties", social ostracism being the most severe form of punishment: Z Motala, note 57 *supra* at 403.

compliance is regarded as necessary and in one's own (society's) interests. An individual in need can complain to the elders and have the 'justice' of the situation ruled upon and enforced. Enforcement of duties is not simply seen as a private matter but a public one - all have an interest in each other's behavior and their fulfillment of obligations. Motala also sees the strength of custom and religion in enforcing 'duties', social ostracism being the ultimate form of punishment. Such a system of enforcement is not regarded merely as the exercise of rights. What is emphasised is the failure of individuals, an emphasis which in turn is seen to encourage future compliance because of the dissemination of personal knowledge and respect for one's duties.

Some doubts are, however, expressed as to the translation of this duty-system into a State-enforced system of duties. States are not seen as having sufficient connection or interest, unlike the local community, in sanctioning individual breaches of duty to another. In critiquing the Banjul Charter, for instance, Motala, notes that it is difficult for the State to establish that an individual is not performing his or her duties to the best of his or her abilities and competence.<sup>71</sup> Yet at least at a local level, duties are regarded as enforceable through both custom and 'official channels' of authority.

### E. Relationship between Rights and Duties

In this predominantly 'duty-based system', 'rights' are seen as playing little, if any role, and in fact the existence of rights is questioned. Thus, the question of 'correlativity' does not arise in the same way as for Western liberal theorists. To the extent that 'rights' are seen as the receipt of benefits, they are merely reciprocal duties which are enforceable by the community.<sup>72</sup> Legesse sees no role for rights if rights are conceived as entitlements as against the society.<sup>73</sup> Even for those who acknowledge the operation of freedoms in these societies, such freedoms are perceived as 'privileges' contingent upon one's fulfilment of 'duties' rather than 'rights'.<sup>74</sup> If one does not fulfil one's own duties, one cannot have these 'privileges'. In any case, such privileges are not 'sacrosanct' areas, from which others are forbidden to interfere. The individual areas of freedom are in harmony, rather than in competition with the society and one's community. Thus, according to Ojo, Africans think more of their obligations to their community than any claims against it.<sup>75</sup> Even in accepting some of the 'international' rights, the authors stress the need for duties to co-exist. The State's duties are not distinct from individual's duties. The group (whether it be conceived of as (i) the collective; or (ii) the State as the people's representative) is seen as bearing the primary responsibility for the general welfare, whilst individuals must care for their families and their social groupings.

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71 Note 57 *supra* at 403.

72 Note 52 *supra*.

73 A Legesse, "Human Rights in African Political Culture" in KW Thompson, note 5 *supra* at 124.

74 As to 'privileges' such as free speech, political participation, see Note 48 *supra* at 166, citing also, CE Welch, RJ Meltzer (eds), *Human Rights and Development in Africa*, University of New York Press (1984) pp 322-3.

75 O Ojo, note 46 *supra* at 120.

## **F. Comparison Between Rights-Based System and Duty-Based System**

As to the comparative desirability of rights-based systems and duty-based systems, the dominant approach of African writers favours the duty-based system because of its fostering of a communal attitude. Ake, for instance, disparages human rights systems as involving “a society which is atomized and individualistic, a society of endemic conflict...[and] of people conscious of their separateness”.<sup>76</sup> Similarly, Nahum congratulates African humanism because “it does not alienate the individual by seeing him [or her] as an entity all by himself [or herself], having an existence more or less independent of society. The individual does not stand in contradistinction to society but as part of it”,<sup>77</sup> whilst Legesse declares that “no aspect of Western civilization makes an African more uncomfortable than the concept of the sacralized individual whose private wars versus society are celebrated”.<sup>78</sup> Collective loyalties and ties, thus, are seen as more valuable than claims of individual action. Yet the duty-based system is not seen as oppressing the individual but as merely providing for the individual's welfare within the proper community setting. The individual's welfare is furthered in harmony, rather than in competition with the welfare of the community.

It is evident, therefore, that the African writers have quite a different perception of the way in which duty-based systems can operate as well as more certainty as to one's enforceable responsibilities to one's kin and one's group. The question therefore is to what extent the Western dominant discourse should seek to expand and re-consider the role of 'duty' in furthering and fostering 'human dignity' and individual well-being.

## **IV. A GREATER ROLE FOR DUTIES IN THE DOMINANT DISCOURSE?**

Although the focus of 'Western-African' discussions has often been the extent to which Africa is or should be receptive to the largely Western drafted human rights model, an equally important issue is whether it is desirable for the dominant Western discourse to pay greater attention to 'duties'. Whilst it is obvious that much of the 'status' hierarchical organisation of the duty-based system in Africa is animal to the liberal theorists' insistence upon equal human dignity and opportunity, there might be some advantages, particularly in the welfare field, of drawing upon the 'brother's keeper' aspect of the duty-based philosophy. This section is designed to highlight some of the advantages and disadvantages of encouraging duties as a means of ensuring basic needs are met and addresses the possibility of duties and rights working in tandem.

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76 C Ake, *The African Context of Human Rights*, quoted by RE Howard, note 48 *supra* at 173.

77 Quoted in RE Howard, *ibid* at 160.

78 *Ibid* at 160.

### A. Advantages of Integrating a Duty-Based System

Were the dominant discourse to pay greater heed to the possible operation of a duty-based system rather than simply reacting to past religious hierarchical models, the system might be able to foster a greater respect for one's 'neighbour'. In so doing, individuals might be encouraged to share more of their resources with those who are presently lacking, such that a more equitable distribution would result. Where the present emphasis on 'rights' tends to place 'duties' only on the State, and allows the State to emphasise its role in enabling exercise of freedoms, rather than maintaining its populations' basic needs,<sup>79</sup> a 'duty-based' system emphasises the role of the individual to assist those who are a part of one's community. It is possible that the present emphasis on 'inalienable human dignity' could be used to transform the present 'hierarchical duty' system into one which imposes duties on humans because they are humans, sharing a common existence on earth with other humans, all of whom possess dignity and basic needs.

As a preliminary point, it should be noted that contrary to the arguments of Western liberal theorists, it would seem possible to base a system of 'duties' on rationales similar to those which presently support 'human rights'. Rather than having to resort to religious justifications which are far from universally accepted, it is possible that humans could be regarded as bearing a certain level of responsibility for each other, simply because of their shared humanity. In this sense, one is taking into account the fact that humans' behaviour affects each another, rather than starting with a hypothetical state of nature, yet such a theory would not seem an incredible base for a social theory. Having incorporated this level of realism into the base social theory, there would appear to be a number of advantages to framing at least some of the provision of needs in terms of 'duties' rather than rights.

Giving 'duties' greater prominence in the international scheme leads to a greater range of 'goods' being 'socially guaranteed'. Were the Western theorists able to accept the 'obligations' field of duties used in the area of correlativity debates as the appropriate range of duties, a greater range of benefits would be ensured. Furthermore, as Raz has recognised, using 'duties' enables some communal goods to be recognised which cannot easily be reduced to a matter of rights - for example a 'duty' to preserve the historic atmosphere of Oxford.<sup>80</sup>

By identifying the 'duty-holders' as individuals and the community, the enforcement of obligations is potentially enhanced. Whilst the State could act as the mediator and enforcer of such individual and community obligations, even where a State was not operating effectively, obligations would remain in existence. Furthermore, individual and community obligations are likely to be more easily incorporated into the culture of a society, than are State 'correlative duties', such

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79 Even though the international bill of rights currently includes the State's obligation with respect to civil and political rights as well as economic, social, and cultural rights, the 'obligation' with respect to the latter category is downplayed in terms of 'legal obligations' see eg D Trubek, "Economic, Social and Cultural Rights in the Third World" in T Meron, *Human Rights in International Law: Legal and Policy Issues, Vol I* (1984) 205.

80 J Raz, note 15 *supra* at 194.



that social stigmatisation could be brought to bear to enforce greater compliance.<sup>81</sup> Where the State does play the dominant role in enforcing 'duties', one has identifiable persons who are responsible for the welfare of an individual - for example, one's family and one's community. The 'family' and the 'local area' are arguably sufficiently strong institutions as to be regarded as appropriate duty-holders. At present, even some 'rights' (eg to support) are put in the form of 'duties' - eg duty to maintain one's children and the duty to pay taxation, confirming the conclusion that 'duties' may in fact be more enforceable than 'rights', even where the two are correlative.

Despite the fears of Western liberals that emphasising 'duties' would weaken enforceable action and neglect the empowerment function of 'rights', it is also possible that a 'duty' system properly founded in conceptions of 'human dignity' could equally foster a sense of self-worth in recipients and lead to greater compliance in terms of provision of benefits. It could be argued (contrary to the 'noblesse oblige' image), that a person might more readily and with greater grace fulfil his or her duty, than provide a benefit because of someone's right. Emphasis on duty means that the provider's and recipient's interests coincide, whereas an emphasis on 'rights' implies competition and antagonism.<sup>82</sup>

## B. Addressing the Problems in Integrating a Duty-Based System

Transplanting a 'duty-based' system into the dominant discourse would not be wholly without difficulty, however. Vital to the success of such a venture would be the ability to achieve consensus upon responsibilities, foster a strong communal ethic at the cost of the present emphasis on individual freedom, come to terms with the diffusion of relationships in industrial society, and work out the inter-relationship between rights and duties.

Given the predominant refusal of the liberal model to incorporate the 'communal individual' and its casting the 'Good-Samaritan' type obligations to the field of the "super-erogatory",<sup>83</sup> strenuous efforts would be required to foster an environment receptive to persons taking responsibility for the welfare of their fellow-beings. In the present, almost Darwinian mind-set, the individual is regarded as ultimately responsible for his or her own economic security, save that the State might conceivably have inherited some obligation to provide a safety net. At present, 'individual freedom' is valorised. Duties, in imposing positive steps which an individual must take towards, for example, his or her kin or society, take away from the ability of the individual to act in any way provided his or her actions do not impinge on other's freedoms. Duties in the African model go further than merely correlative rights. They involve greater sacrifice. They attempt to impose responsibility in a culture whose 'free market' morality has rejected the 'brother's keeper model'. The receptivity of Western culture to such a

81 One does face the question, however, whether any culture can 'incorporate' philosophic ideas or whether philosophy will only present values already existing within a given culture.

82 The advocating of a more communal approach is somewhat similar to arguments of the communitarians - see, for example, S Avineri, A De-Shalit, *Communitarianism and Individualism*, Oxford University Press (1992).

83 J Raz, note 15 *supra*.

morality is not, however, totally incredible given the upsurge in communitarian-style philosophies<sup>84</sup> and the increasing awareness of the many individuals who remain uncared for in our individualistic structure.

In attempting to mimic the emphasis on community well-being and shared responsibility in a duty-based system, difficulties would arise in avoiding the possible oppression and neglect of individuals who lack status and ties in our communities. The 'hierarchy' of age and gender appears firmly entrenched within the African model. To fairly distribute responsibilities and benefits according to more 'just' criteria would require the substitution of concepts of universal dignity, respect, and responsibility for the status hierarchy. A further risk to be countered is that a 'duty-based system' can deliberately exclude certain individuals - those individuals who cannot live up to society's expectations. In order to affirm the element of 'inalienable human dignity' within such a system, one would have to remove the ability for an individual to forsake being a recipient of 'duties' because of one's behavior. Whilst removing the tool of 'ostracism' from the armoury of enforcement mechanisms potentially weakens the strength of 'duties', it is possible that duties could be defined with sufficient precision to permit more general societal (and possibly legal) enforcement.

The different societal organisations in post-industrial societies also require some modification for a 'duty-based system' to be effective. Firstly, the dominant 'nuclear family' is a much smaller core unit than the extended family of African society. Secondly, community ties are more diffuse, leading to some difficulty in identifying with precision to whom one owes duties. Whilst some have argued that without a tight kinship organisation, a duty-based system cannot operate, it would seem that Western law and culture retains some 'status obligations' (eg that of a parent to care for his or her children) and that further examination could yield a list of obligations which one owes to one's immediate family, one's neighbour, and one's community (drawing heavily upon existing notions of moral obligations). The difficulties of defining the exact duties owed, the objects of the duties, and the means of fulfilling the duties<sup>85</sup> is not in itself a damning indictment of the applicability of a duty-based system since engaging in the process would be an important means of promoting the 'change of heart' away from individualistic atomism.

If such cross-pollination is to occur, one has to ask the further question of whether rights and duties could work together. Despite the preference of some

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84 See P Selznick, note 43 *supra*.

85 The numerous questions which need to be addressed can be exemplified through an example: if one owes a duty to one's indigent neighbour to assist/provide him or her with his or her basic needs, is it a duty to help a particular person in impoverished circumstances, or is a duty owed overall to all persons in impoverished circumstances? What resources is an individual expected to expend? Does payment of State taxation for relief purposes fulfil such an obligation? It is important not to confuse the 'duty-based system' being discussed in this paper with the Reagan/Thatcherite 'privatisation' campaigns, absolving the State of its responsibilities. The State is indeed likely to have to play a facilitative role in distributing the resources from those who owe duties to their neighbours, those in need.

commentators for a 'rights-based' system without the complication of 'duties',<sup>86</sup> it is at least arguable that rights and duties could fruitfully work together as a means towards the achievement of universal respect for and promotion of human dignity. Obviously, such a process would involve difficult decisions as to which topics to allocate to which system, but whereas the 'rights' system seems ideal for questions of freedoms, the 'duty-based' system seems to have advantages for the provision of benefits. States could still have a primary role in enforcing and promoting both systems.<sup>87</sup>

## V. CONCLUSION

Despite the difficulties which would be encountered, this paper points to the possibility of the dominant Western rights discourse fruitfully integrating elements of the African writers' 'duty-based system'. The foundations of a wide obligation base are already present, whilst the existing emphasis on the universality of human dignity could be used to soften the hierarchical nature of 'status-based duties'. Whilst the acceptance and promotion of individual duties might require a significant ideological shift towards a 'community outlook', such a shift would lead to progress in achieving many present desires - including ensuring the material welfare of individuals. Perhaps the overall significance of this paper is to underline that the present human rights system is not necessarily a comprehensive, exclusive means of ensuring respect for human dignity. Promoting a greater emphasis on individual duties and a community outlook is one means by which the existing system could seek to further ensure respect for human dignity.

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86 Bailey for instance, fears that the inclusion of 'rights' into present international documents such as the Banjul Charter, weakens rights by restricting them: P Bailey, *Human Rights: Australia in an International Context*, Butterworths (1990) p 27.

87 With respect to the enforcement of duties in the Banjul Charter, for instance, note Umozurike's argument that States have a responsibility to inculcate the underlying principles and ideals in their subjects: UO Umozurike, "The African Charter on Human and Peoples' Rights" (1983) 77 *American Journal of International Law* 902 at 907.