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Accountability and Obligations Come Apart

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Critical Notice:
Wrongs and Rights Come Apart
By Nicolas Cornell*

Abstract

Nicolas Cornell's *Wrongs and Rights Come Apart* argues that accountability practices are rooted in wrongs, that obligations are rooted in rights, and that these are two distinct relations. Cornell's argument convincingly pushes back against a widely held family of views in moral and legal philosophy according to which there is a necessary conceptual relation between, on the one hand, rights and obligations, and, on the other, wrongs and accountability practices. This is the Obligation-Accountability Nexus (OAN). But Cornell frames his arguments against the OAN as arguments against all 'rights-based' or 'juridical' views. This Critical Notice argues that this is a mistake. There is a coherent rights-based view that rejects the OAN but nevertheless posits a restricted juridical domain in which rights and wrongs are contingently correlated. This overlooked juridical view gives an independently attractive argument against the OAN and yields more compelling accounts of moral deliberation and moral community.

Keywords: *Obligation; Accountability; Rights; Independence*

Introduction

Nicolas Cornell's *Wrongs and Rights Come Apart* advances two interlocking theses. The first is that the wrongs we do to others are not conceptually tied to their rights. We can wrong someone without violating their rights—or, indeed, without violating *anyone's* rights—and we frequently do. The second thesis is that our remedial concerns are more closely linked to wrongs than to rights. A complete picture of our moral lives therefore requires appreciating the sharp distinction between an ex ante deliberative perspective in which we attend to others' rights and our corresponding obligations, and an ex post remedial perspective in which we attend to the wrongs that we have done.

This positive picture is motivated by Cornell's critique of a view that insists that our ex post remedial reasons are sharply constrained by our ex ante

*Nicolas Cornell, *Wrongs and Rights Come Apart* (Harvard University Press, 2025) pp 304, ISBN 9780674244979. All parenthetical numbers are page references to this book.

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obligations. The starkest version of such a view would insist that rights—and correlative obligations to respect rights—fully exhaust our moral reasons for action. "[W]hen all interpersonal life is understood" in terms of rights, Cornell worries, "[i]t pinches our heart, denying our connection to others" (22). Such a view overlooks that "we are accountable to others when we act badly in ways that matter to them," even when our actions do not violate anyone's rights (21). *There is more in heaven and earth than is dreamt of in your Rechtsphilosophie*, is the idea.

Cornell advances his negative and positive cases largely through comprehensive and subtle engagement with a wide range of literary and philosophical examples. His attention to the details of interpersonal life across a range of contexts—commercial warranties, sex, sweatshops, friendship, school, etc.—is admirable, readable, and consistently piques the reader's interest. Those with interests across a wide range of topics in moral theory and private law will find Cornell's discussions consistently rewarding.

The significance of pulling wrongs and rights apart is what they take with them. Rights ground many of our most important moral obligations. Moreover, it is often appropriate for someone who has been wronged to hold the wrongdoer accountable. If rights and wrongs come apart, therefore, then so do obligations and accountability relations. If this is correct, then a lot of recent work in moral philosophy is on the wrong track. Consider what I will call the *Obligation-Accountability Nexus* (*OAN*):

> ***Obligation-Accountability Nexus***: *A* has a moral obligation to φ if and only if it is appropriate for some agent *C* to hold *A* accountable for failing to φ (without excuse).[1]

The *OAN* is arguably endorsed, explicitly or implicitly, by a wide range of philosophers working on relational normativity.[2] If Cornell is right, this thesis is false because sometimes *A* wrongs *C* without violating an obligation or violating

1. I actually think many endorse an 'if and only if and because' claim, but I leave that aside because it is not necessary for what follows. The two main variants of the *OAN* are the second-personal and bipolar accounts. These differ on how to understand what makes it appropriate for *C* to hold *A* accountable. For a bipolar view, it is appropriate if and only if *C* has a claim against *A*. For the second-personal view, it is not necessary for *C* to have a claim so long as they have "representative authority" as a member of the moral community. Stephen Darwall, "Bipolar Obligation" in Russ Shafer-Landau, ed, *Oxford Studies in Metaethics Volume 7* (Oxford University Press, 2012) 333 at 337. See also Janis David Schaab, "Moral Obligation: Relational or Second-Personal?" (2022) 9 Ergo 1322 at 1347, n 15.
2. See e.g. R Jay Wallace, *The Moral Nexus* (Princeton University Press, 2019) [Wallace, *The Moral Nexus*]; Ariel Zylberman, "Relational Primitivism" (2019) 102:2 Philosophy & Phenomenological Research 401; Margaret Gilbert, *Rights and Demands: A Foundational Inquiry* (Oxford University Press, 2018); Michael Thompson, "What is it to Wrong Someone? A Puzzle About Justice" in R Jay Wallace et al, eds, *Reason and Value: Themes from the Moral Philosophy of Joseph Raz* (Clarendon Press, 2004) 333; Darwall, *supra* note 1; Stephen Darwall, *The Second-Person Standpoint*: *Morality, Respect, and Accountability* (Harvard University Press, 2006).

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a right, and it is nevertheless sometimes appropriate for *C* to hold *A* accountable when that happens.[3]

The *OAN* is a thesis about obligation and accountability generally. Closely related to the *OAN*—yet importantly distinct—is a legal principle "sometimes called the '*Palsgraf* Principle:'"[4]

> **Palsgraf *Principle***: (1) *A* is liable to *C* for φ-ing if and only if *A* wrongs *C* by φ-ing; (2) *A* wrongs *C* by φ-ing if and only if *A*'s φ-ing violates *C*'s right; and (3) *A* violates *C*'s right by φ-ing only if *C* is a member of a class that is *properly aggrieved* by *A*'s φ-ing.

One common way to think about the class of 'properly aggrieved' individuals is in terms of those who are reasonably *foreseeably* harmed by *A*'s φ-ing and actually harmed by *A*'s φ-ing.[5] This is arguably how Judge Cardozo analyzed liability in *Palsgraf v. Long Island Railroad Company* itself. The important point is that the set of individuals properly aggrieved by *A*'s φ-ing will be a subset of those who are injured by *A*'s φ-ing: Some people—the properly aggrieved—stand in a special relation to *A*'s φ-ing in virtue of which they have special standing to hold *A* liable, either by blaming or resenting *A*, demanding an apology or legal remedy, or the like.[6]

Let us say that a 'rights-based' or 'juridical' view is one that accepts the *Palsgraf* Principle in some form. Cornell's case against the *OAN* might seem to imply a case against the *Palsgraf* Principle and hence against all rights-based views. This is because, as we will see, one reason you might have for endorsing the *Palsgraf* Principle is that you endorse the *OAN* and you take the former to be an implication of the latter. Indeed, when Cornell frames his opponent as a "rights-based view," he seems to have in mind either the *Palsgraf* Principle or something quite like it (271, n 1). This is evident in Cornell's claim that Cardozo or anyone who agrees with his reasoning in *Palsgraf* "has mistakenly come to believe that the only way that we are tethered to each other is by having rights" (210). So, in Cornell's view, his arguments that rights and wrongs come apart—i.e., his arguments against the *OAN*—are *ipso facto* arguments against rights-based views.

This is what I will argue against. My strategy is to show that there is a coherent and attractive version of a rights-based view that accepts something like the

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3. In the book's chapters on "The Unclaimable" (115) and "The Complaintless" (133), Cornell also argues the other direction: Sometimes *A* violates an obligation even though there is no *C* for whom it is appropriate to hold *A* accountable. This can be the case when the violation of an obligation does not consist in the violation of a right, as when we violate obligations to animals, the environment, or to preserve valuable cultural artifacts. These sorts of cases might seem sufficient to falsify any simplistic versions of the *OAN*, but they are not my focus here. For discussion and defense of the *OAN* that takes into account these kinds of cases, see Wallace, *The Moral Nexus, supra* note 2.

4. Steven Schaus, "Wrongs to Us" (2023) 121:7 Mich L Rev 1185 at 1186, citing *Palsgraf v Long Island Railroad Co*, 248 NY 339, 162 NE 99 (1928) [*Palsgraf*].

5. See Jed Lewinsohn, "'I didn't know it was you': The impersonal grounds of relational normativity" (2025) 59:1 Noûs 191 at 192.

6. See especially Benjamin C Zipursky, "Rights, Wrongs, and Recourse in the Law of Torts" (1998) 51:1 Vand L Rev 1.

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Palsgraf Principle—i.e., it strongly restricts the class of the properly aggrieved—but rejects the *OAN* as a general account of obligation and accountability. This version of a juridical view agrees with Cornell's central claim that wrongs and rights come apart and indeed offers an independently attractive explanation of why the general thesis tethering rights and wrongs together is false. But on the overlooked alternative I will articulate (and partially though incompletely defend), we ought to maintain a distinctive juridical domain that closely tracks the *Palsgraf* Principle: In that domain, wrongs consist in the violation of rights and we are liable to a special form of accountability only when we commit wrongs by violating rights. Crucially, this juridical view specifies what being liable (sometimes) involves: It involves being subject to accountability practices that, in the absence of certain legitimating features, would violate one's *freedom as independence*. Because this freedom-threatening way of holding one another accountable is (sometimes) valuable, it makes sense to carve out a distinctive juridical, rights-based domain.[7] And in *that* domain, it is important to restrict the class of properly aggrieved and not let ex post accountability outstrip ex ante obligations—even if, as Cornell and others argue, this should not be a worry in morality generally.

This Critical Notice proceeds as follows. Part 1 reconstructs Cornell's primary arguments and contrasts them with related views. Part 2 motivates and articulates a version of a rights-based, juridical view that Cornell overlooks, and argues that this view provides independent grounds for rejecting the *OAN*. This shows that rejecting the *OAN* does not entail rejecting all rights-based views. Part 3 elaborates and criticizes Cornell's most direct argument for rejecting the *OAN*, along with his views of moral deliberation and moral community. It suggests reasons to favor the juridical case against the *OAN* and its pictures of moral deliberation and accountability. Part 4 concludes.

1. Reconstructing Cornell's Case for the Separation of Wrongs and Rights

This Part reconstructs Cornell's principal arguments that wrongs and rights come apart. It then briefly situates Cornell's view in a growing literature.

7. Not all who endorse the existence of a distinctive juridical realm will agree that it is justified in virtue of the *value* of relations of independence. See e.g. Ernest J Weinrib, "Defending the Juridical" (2025) 38:2 Can JL & Jur 540. I am sympathetic to non-instrumental justifications (if 'instrumental' means *causally* instrumental as opposed to *constitutively* instrumental): see J Colin Bradley, "Corrective Justice Beyond Private Law" in Paul B Miller & John Oberdiek, eds, *Oxford Studies in Private Law Theory, Volume III* (Oxford University Press, 2025) 23 at 27. But I am also persuaded by Felipe Jiménez's view that we should be able to provide—perhaps *in addition* to a purely juridical, non-instrumental justification—a public justification that appeals to the attitudes of ordinary citizens: see Felipe Jiménez, "Justifying Private Law" in Paul B Miller & John Oberdiek, eds, *Oxford Studies in Private Law Theory, Volume II* (Oxford University Press, 2023) 1. My undefended premise is that an instrumental appeal to the value of independence is more likely to satisfy this publicity condition. Thank you to an anonymous reviewer for raising this issue.

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1.A. Wrongs Without Rights

Cornell sets up a dilemma for the rights-theorist—who wants to maintain that a person is wronged if and only if their right is violated—by constructing a series of cases where an agent *A* wrongs *C* by either (i) violating *B*'s right, or (ii) violating a general standard of conduct, or (iii) acting badly or imprudently. In these kinds of cases, the rights theorist must either (a) say that *C* had a right, the violation of which explains why *A* wronged them; or (b) deny that *C* was wronged (because no right of theirs was violated). But Cornell argues that neither response is plausible: To say *C* had a right in these cases implausibly stretches the concept of a right, and to deny that *C* was wronged is just to deny manifest reality. The inescapable conclusion is that *A* wrongs *C*. And since *A* can wrong *C* without violating *C*'s rights, then there is a sense in which wrongs and rights come apart.

Cornell offers three kinds of cases. The first kind involves a third party who is wronged by the violation of a second party's rights: *A* violates *B*'s right and thereby wrongs *C* (27).

> ***Third-Party Beneficiary***: *A* promises *B* in return for some favor that they will confer some benefit on *C*. Without excuse, *A* does not confer the benefit.

> ***Palsgraf***: *C* is waiting on the far side of a train platform. The railroad's employee *A* negligently tries to help *B* board a moving train, thereby dislodging some explosive fireworks that ignite and cause a heavy object to fall on and injure *C*.

Cornell's second species of case drops rights violations altogether. These are cases where *A* violates some "general public norm"—including "the demands of the law, morality, or simply 'human need'"—and thereby wrongs *C* (51). Cornell's view is that, "as a general matter, we may be wronged by wrongful conduct that affects us" (49).

> ***Competition Wrongs***: *C* owns a store in town. *A* opens a new store on the same street and systematically exploits tax and regulatory loopholes as a way of keeping costs and prices down, thereby diverting business away from *C*.

Cornell's third kind of case 'speculatively' expands the claim one step further and drops the requirement that *A* acts wrongly at all. Sometimes *A* acts *imprudently* and thereby wrongs *C*. "Because others have a stake in our lives and our actions," Cornell contends, "our imprudence and poor choices can wrong them" (52).

> ***Good Will Hunting***: *A*, a natural genius, has an opportunity to leave the economically depressed neighborhood where he grew up alongside his friend *C*, who has no comparable opportunity. *A* declines the opportunity and stays in the neighborhood.

There are two general strategies for avoiding the conclusion that these cases are instances where *C* is wronged without a violation of their rights. The first is to insist that any time we are inclined to agree that *C* is wronged, it is *because* they had a right against the wrongful conduct. The second is to deny that *C* was

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wronged at all, *because* they did not have a right against the conduct that caused them harm. Cornell argues that neither response is plausible.

This argument largely hangs on Cornell's stipulated interpretations of the nature of rights and wrongs. Horn one of the dilemma rests on Cornell's view—largely assumed here, although defended in previous work—that rights are necessarily ex ante reason giving.[8] A right gives the rightsholder control over another's action. Typically (though not necessarily) a rightsholder can waive or alienate a right, and can enforce or make demands grounded in the right. And rights usually impose deontic requirements on others. For that reason, we should not be promiscuous in assigning rights. Cornell has previously suggested that the concept of a right can "be softened to capture simply a standing to be wronged, at which point it has lost its solid form" and become "buttery."[9] But when a right is understood simply as a way to say that a wrong was done, the concept loses its explanatory force. Cornell argues that we can attribute a right to *C* in the above cases only if we attribute to them a "buttery" right, but not a "solid" right.

The sting of the second horn of the dilemma depends on Cornell's account of wrongs. In lieu of an analysis of wronging, Cornell gives us a heuristic set of marks.[10] To determine whether someone is wronged, we need to attend to the kinds of responses that seem appropriate. As Cornell sees it, we are in the vicinity of a wrong when some of the following responses are fitting: (i) the second-person reactive attitude of resentment; (ii) the first-person reactive attitude of guilt; (iii) complaint; (iv) apology; (v) some form of remedial action like compensation or repair; (vi) forgiveness (12). Cornell reports the intuition that many of these responses would be appropriate in the above cases, and that any attempt to deny that *C* is wronged is hard-hearted, reflecting a "theory-driven refusal to engage with actual life" (43).

1.B. Wrongs Without Reasons

Cornell's second argument that wrongs and rights come apart is that wrongs, unlike rights, do not always give ex ante reasons for action (as opposed to ex post reasons for repair). This argument depends on the following claim:

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8. See Nicolas Cornell, "Wrongs, Rights, and Third Parties" (2015) 43:2 Philosophy & Public Affairs 109; Nicolas Cornell, "Ripstein's Buttery Rights: Comments on '*Private Wrongs*'" (2016) 14:1 Jerusalem Rev Leg Stud 22 [Cornell, "Ripstein's Buttery Rights"].

9. Cornell, "Ripstein's Buttery Rights", *supra* note 8 at 22ff. Both Cornell and Ripstein borrow the imagery from Wenar: see Leif Wenar, "The Nature of Claim Rights" (2013) 123:2 Ethics 202 at 228. For further development of a similar argument, see Brendan de Kenessey, "Two Concepts of Directed Obligations" (2024) 109:3 Philosophy & Phenomenological Research 913 at 926-27.

10. Cornell offers a "rough analysis" of wronging: "X wrongs Y in doing ϕ *iff* Y had a stake in X's doing ϕ and X cannot justify doing ϕ to Y" (215). This account is "roughly" based on an interest theory of rights (19). For doubts that an interest theory of rights will be able to distinguish the properly aggrieved from others while satisfying some plausible theoretical constraints, see Lewinsohn, *supra* note 5 at 198-205.

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> ***Wrongs Give No Reasons***: "[T]he fact that X's φ-ing would wrong Y does not constitute a reason for X not to φ—at least, not in the way that the fact that Y has a right that X not φ constitutes a reason for X not to φ" (69).

Or as he sometimes puts the point more simply, "potential wrongings do not provide any reasons" (69). Cornell supports this claim again by appealing to intuitions about examples. We are invited to share the intuition that in these cases, the fact that φ-ing will wrong but ρ-ing will not wrong gives no reason to ρ rather than φ.

The first cluster of cases involves promises that do not create obligations but the violation of which wrongs the promisee. In other words, *A* wrongs *C* by φ-ing, but has no obligation not to φ (70, 74, 76, 78).

> ***Warranty***: *C* hires *A* to fix *C*'s roof. *A* promises *C* that the repaired roof will last for 20 years. In fact, it fails the following winter.

> ***Promise to Feel/Believe***: *A* promises *C* that they will not be angry if *C* tells them what they have done (/will believe *C*'s version). In fact, *A* is angry (/does not believe them) when *C* tells them.

> ***Sexual Promise***: *A* promises *C* that she will have sex with him if *C*'s team wins the game. *C*'s team wins the game, and *A* decides not to have sex with him.

In the first cases, *A* promises something beyond their control: A state of affairs will obtain, or they will feel or believe something specific. But *A* cannot have an obligation to bring about something beyond their control. *A* nevertheless wrongs *C* when what was promised does not occur. *Sexual Promise* has a different structure, but the same basic idea: *A*'s promise does not create an obligation because of a fact about sex: Whether a person should have sex is, Cornell asserts, "entirely responsive to whether she wants to have sex" (79). Nevertheless, Cornell invites the reader to share his intuition that the telltale signs of wronging—resentment, complaint, apology—will be present if *A* breaks the non-binding promise.

Next, Cornell presents a class of cases where an agent faces a practical conflict, with equally weighted reasons on the side of two actions, and where the fact that one action will do wrong does not intuitively generate a reason that breaks the tie (81).

> ***Pyrotechnics***: *A* permissibly sets off explosives in a designated area but negligently forgets to broadcast the obligatory loud warning message prior to detonation. *B*, who would have heeded a warning, wanders up to the explosive. At the same time, *C* is blown into the area by a freak tornado. *A* can save *B* or *C* but not both.

Cornell has the intuition that it is permissible for *A* to save either *B* or *C* and that *A* does not have a special reason to save *B*, who is in danger because of *A*'s negligence, over *C*, who is in danger because of a freak accident. The fact that *A* wrongs *B* but not *C* provides no reason for *A* to save *B* instead of *C*.

Wrongs Give No Reasons is, in one respect, highly counterintuitive. As I will discuss in Part 3, it seems obvious that one way of fully respecting our deep

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interconnectedness to others is to treat the fact that we might wrong them as a reason in practical deliberation. To deny this is to adopt a heavy explanatory burden. In another sense, the conclusion that Cornell supports with this claim seems to be just that wrongs and rights possess different properties and so are not equivalent. If the claim that "wrongs and rights come apart" is just the claim that "wrongs and rights are not the same," then it would not be interesting.

But Cornell's effort to pull apart our ex ante obligations from our ex post remedial relations is interesting. At the heart of the book is a novel account of moral deliberation and moral community rooted in just this difference between the kinds of rights-grounded reasons for action we have ex ante and the wrongs-grounded reasons for repair we have ex post. As noted in the Introduction, these accounts are meant to displace the *Obligation-Accountability Nexus*.

1.C. Accountability and Obligations Come Apart

If the claim that wrongs and rights come apart is philosophically significant, it is because it has some significance for our understanding of moral obligation and accountability. In what I take to be one of the most important passages in the book, Cornell indicates why he thinks it is important to separate wrongs from rights:

> To be a rightholder is to deserve a place in someone else's action. That place in another's action is neither because of nor mutually constituting with accountability relations. Those descriptions fail to grasp the conceptual independence [of rights and wrongs]. One's rights are a source of the reasons; accountability only comes later, depending in part on whether someone conformed to the reasons that she had (93).

In this passage, Cornell denies the *OAN* when he says that our other-directed reasons for action are "neither because of nor mutually constituting with accountability relations." The problem with the *OAN*, for Cornell, is that it is frequently appropriate to hold *A* accountable for failing to φ without excuse even if they had no obligation to φ.[11] Obligations are determined by rights, while accountability relations are determined by wrongs. Since rights and wrongs come apart, obligations and accountability also come apart.

Rejecting the *OAN* is significant. It, or something close to it, is affirmed by a range of moral and legal philosophers who are engaged in the same basic project as Cornell: attempting to explain how our social connections to one another are shaped by rights and wrongs—how, in other words, rights and wrongs contribute to the formation and maintenance of a moral community. According to the *OAN*, *what it is* to have a moral obligation is that it is appropriate for others to engage in social practices of holding one another accountable, and that each of us is, in some sense, vulnerable to those accountability practices. Jay Wallace puts the idea as follows:

11. As noted above, Cornell also argues against the other direction of the biconditional, but this is not my focus.

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> [Moral obligations] are not merely considerations that have [a] kind of normative importance in the context of first-personal deliberation. They also have an essential role to play in providing the basis for a shared social life, via their role in a practice of interpersonal accountability.[12]

As we have seen, Cornell rejects this picture as an inadequate way of capturing the full scope of our interconnectedness. Obligations do *not* form the basis of our practices of interpersonal accountability. To think they do is radically hard-hearted, ignoring the many ways that our duties to repair and redress wrongs far outrun our obligations to treat or avoid treating one another in specified ways. If others appear in our moral lives only when we deliberate about what to do, we are missing half the picture.

1.D. The Turn Against Palsgraf

Over the last decade, Cornell has been out front of a growing number of theorists who are broadly sympathetic to non-consequentialist and relational theories of morality and private law, but who call into question various aspects of either the *Palsgraf* Principle or the *OAN*.[13] I briefly mention a few entries in this growing literature, before suggesting what is distinctive about Cornell's approach.[14]

Brendan de Kenessey has argued that our talk about "directed obligations" is systematically ambiguous between two importantly distinct notions: constraint relations and accountability relations.[15] These map pretty well onto what Cornell means by rights and wrongs, respectively. De Kenessey similarly argues that constraint relations and accountability relations come apart: Sometimes *A* has an obligation to *C* to φ (grounded in *C*'s right), but *C* cannot hold *A* accountable because *A* had decisive reason not to φ; and sometimes *C* can hold *A* accountable for failing to φ, not because *C* had a right that *A* φ but because *A*'s failure to φ set back *C*'s welfare interests in an unjustifiable way.

Like Cornell, Jed Lewinsohn aims to "prize apart the determinants of permissible action, on the one hand, and proper aggrievement, on the other."[16] Unlike Cornell, however, Lewinsohn is attracted to a restrictive interpretation of who counts as 'properly aggrieved'. He is open to some version of a *Palsgraf* Principle, but denies that there is a coherent individualistic conception of rights that can accurately carve out the properly aggrieved.[17] In his view, who counts as

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12. Wallace, *The Moral Nexus*, *supra* note 2 at 71.
13. See Cornell, "Wrongs, Rights, and Third Parties", *supra* note 8.
14. For a helpful (critical) overview, see Julian Jonker, "Directed Duties and Moral Repair" (2020) 20:23 Philosophers' Imprint 1.
15. De Kenessey, *supra* note 9 at 924. De Kenessey notes one minor difference: The wrongs that consist in violations of what de Kenessey calls "accountability obligations" are only a subset of the wrongs Cornell recognizes (*ibid* at 914). See also Brendan de Kenessey, Book Review of *Wrongs and Rights Come Apart* by Nicolas Cornell (2026) 136:2 Ethics 403 at 408 [de Kennessy, Book Review].
16. Lewinsohn, *supra* note 5 at 214.
17. Steven Schaus is also sympathetic to a version of the *Palsgraf* Principle that rejects an overly individualistic conception of rights and legal subjects. His motivation is however quite different. Schaus argues that loss-of-consortium claims can be compatible with the *Palsgraf*

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properly aggrieved should be determined by "a social or legal policy that is itself justified, i.e., that serves legitimate social goals (e.g., deterring harmful conduct) and fairly distributes benefits and burdens," including the burden of being held accountable by a properly aggrieved person.[18]

Finally, Adrienne Martin has defended a related view according to which we have directed obligations that do not correspond to others' claim-rights, often arising out of what she calls "personal bonds."[19] Yet for Martin, when we violate these directed obligations, it is more appropriate to say that we *let down* the person to whom it was owed, rather than that we *wrong* them.[20] (I will suggest later that I think Martin's locution is helpful.)

Several features distinguish Cornell's intervention. First, Cornell has a very expansive understanding of who is properly aggrieved by *A*'s actions. For Cornell, it is sufficient for *C* to be properly aggrieved that *A* acted badly or imprudently and that *C* had a 'stake' in *A*'s action. Second, as we will see, the *Wrongs Give No Reasons* thesis plays an important role in Cornell's argument against the *OAN*. Third, Cornell offers a distinctive account of moral deliberation and of moral community: On the one hand, we saddle ourselves with a constrained picture of moral community if we focus too much on others' rights; on the other, it is a mistake to focus in deliberation on the wrongs we might do to others. In what follows, I elaborate and offer some criticisms of each of these elements of Cornell's view.

2. The Juridical Alternative

Cornell frames his argument that wrongs and rights come apart as a rejection of rights-based or juridical theories. But I think that is too fast. What he overlooks is that there is a coherent rights-based view committed to a version of the *Palsgraf* Principle, but which rejects the *OAN* as the explanation of the *Palsgraf* Principle because it rejects the *OAN* altogether. Ultimately, I will argue that the juridical view provides both a more compelling rationale for rejecting the *OAN* as a general principle and a more compelling account of moral community.

2.A. Motivating the Juridical View

Rights-based theories, Cornell tells us, "mistakenly come to believe that the only way that we are tethered to each other is by having rights" (210). In such views, as

Principle if we are willing to recognize plural subjects like spouses as rightsholders. See Schaus, *supra* note 4 at 1188.

18. Lewinsohn, *supra* note 5 at 213.

19. Adrienne M Martin, "Personal Bonds: Directed Obligations Without Rights" (2019) 102:1 Philosophy & Phenomenological Research 65 at 65.

20. Martin draws on Cheshire Calhoun's notion of *indecent* action, and Julia Driver's notion of *suberogatory* action: see Cheshire Calhoun, "Common Decency" in *Moral Aims: Essays on the Importance of Getting It Right and Practicing Morality with Others* (Oxford University Press, 2016) 103; Julia Driver, "The Suberogatory" (1992) 70:3 Australasian J Philosophy 286.

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Cornell would have it, if a person is not wronged in the sense of having their right violated, then that person is no different from a mere bystander: Mrs. Palsgraf is normatively indistinguishable from a journalist at the other end of the train platform who watched it all happen. But such a view overlooks the banal fact that "as important as rights are, they do not exhaust our interpersonal moral relations" (182). Even if the railroad did not violate Mrs. Palsgraf's rights, it is still specially connected to her in virtue of having wronged her.

I do not think most rights-based theorists would accept this characterization of the position. Rights theorists regularly distinguish between a 'core' part of morality and the rest of ethical life. There are many ways to characterize this distinction by singling out a special part of morality. For example, as the part of ethical life that deals with what we owe to each other;[21] or the part that deals with *Recht* as opposed to *Moral* or duty as opposed to virtue;[22] or as 'deontic' morality and obligations;[23] or as the "morality system."[24] Cornell himself acknowledges that there is a "special subset of our duties, the subset concerned with respecting the normative space of others" (213 [footnote omitted]).[25] For reasons that will become clear, I refer to the singled out part of morality as the 'juridical' part. There are many different reasons for singling out a juridical part of morality (I will give what I take to be the most compelling reason below), but I am not aware of any theorist for whom the point of emphasizing the juridical realm is to deny the significance of the *rest* of normative life. For example, in a passage that Cornell quotes, Arthur Ripstein claims that an example does not involve a wronging "*in the sense that is of interest to us here*" (48 [emphasis added]).[26] He thus makes clear that he is not saying there is *no* sense in which there is a wronging.

What is the point of making this kind of distinction? The purpose is not, as Cornell suggests, to attempt to "cordon[] off the personal from the moral" (56 [footnote omitted]). The point is that there are important differences in kind between the ways we affect one another.

Sometimes we disappoint, frustrate, let down, or confuse one another. These may be morally significant and may call for morally significant responses: a sense of betrayal, disappointment, regret, anger, confusion, pity, self-doubt, resentment, and so on. But sometimes we affect others in a way that implicates their freedom or their status as an equal in the community. And this may call for a

21. See e.g. TM Scanlon, *What We Owe to Each Other* (Harvard University Press, 1998).
22. See Immanuel Kant, "The Metaphysics of Morals (1797)" in *Practical Philosophy*, translated & edited by Mary J Gregor (Cambridge University Press, 1996) 353.
23. See Kieran Setiya, "What Is Morality?" (2021) 179:4 Philosophical Studies 1113; GEM Anscombe, "Modern Moral Philosophy" (1958) 33:1 Philosophy 1.
24. Bernard Williams, *Ethics and the Limits of Philosophy* (Harvard University Press, 1985) at 174. Although Williams is, of course, critical of this approach.
25. Cornell acknowledges there is such a subset but does not offer a characterization of it (213). De Kenessey suggests in a Cornellian spirit that foreseeable rights infringements might unify a distinctive and important subset: see de Kenessey, Book Review, *supra* note 15 at 407.
26. See Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy* (Harvard University Press, 2009) at 77-78.

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distinctive kind of response that in turn implicates the freedom or moral status of the alleged wrongdoer.

When *A* is liable to *C* for φ-ing, *C* can hold *A* accountable for failing to φ without excuse.

What does it mean for *C* to hold *A* accountable? As we will see in the next Section, accountability comes in many varieties, from silently blaming, to heated demands, to civil recourse in court. For now, I will assume that at least *some* ways that *C* can hold *A* accountable threaten *A*'s freedom (in some sense), even when it is conceded that *A* has acted badly or wrongly. The most obvious version of this is if *C* holds *A* accountable via a coercive legal mechanism like tort remedies. But 'softer' forms of accountability can be freedom-threatening too.

Since it can threaten other people's freedom, the power to hold someone accountable is therefore a highly consequential power. This gives us reason to limit the class of persons who qualify as properly aggrieved, i.e., to whom *A* can be liable for their actions.[27] A natural way to restrict the class of properly aggrieved persons is to articulate a juridical domain in which those who are wronged and authorized to hold others accountable in a freedom-threatening way are those whose rights were violated. In other words, for *A* to be exposed to freedom-threatening liability from *C*, it is necessary that *A* violated *C*'s rights. And it is a short walk from here to the *Palsgraf* Principle.

2.B. Freedom, Accountability, and the Distinctiveness of Right

Cornell denies that being answerable or accountable to someone for wronging them "entails a lack of freedom" (61). But there are different ways to talk about freedom and about accountability and it is important to clarify which we have in mind. When Cornell insists that "[f]reedom, whatever it means, isn't about being able to act wrongly without facing others to answer for it," I think he papers over some important distinctions on which the rights-based approach depends (62). I will sketch a way of making these distinctions rooted in Kant's concept of a juridical domain of right [*Recht*]. This is not the only way to do it, but Kant's approach remains influential and will help fix ideas.

Kant distinguished three kinds of freedom. The first is metaphysical freedom, or the freedom to act at all. This is what is at issue in debates about free will, metaphysical determinism, and the connection between freedom and moral responsibility.[28] The second is practical freedom, or what Kant called "autonomy."[29] This is the capacity to act well, in accordance with right reason. Kant famously worried that we might possess metaphysical freedom but lack practical freedom if, for instance, moral principles cannot motivate action on their own.

27. According to civil recourse theory, this is part of the motivation for substantive standing rules in tort: see Zipursky, *supra* note 6.

28. See Immanuel Kant, *Critique of Pure Reason*, translated & edited by Paul Guyer (Cambridge University Press, 1998).

29. Immanuel Kant, "Critique of practical reason (1788)" in Gregor, *supra* note 22, 133 at 166 [Ak 5:33].

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The third is what Kant called "independence."[30] This is the freedom to act without subjection to the coercive power of others.

The concept of accountability is, in turn, sensitive to these distinctions between kinds of freedom.[31] A first kind of accountability has to do with whether it makes sense to attribute actions to a creature lacking metaphysical freedom.[32] A second way to speak of accountability connects it to morality in the sense at issue when we talk about autonomy and doing what is right. Here we speak about accountability to one's reasons for actions and accountability to one's own conscience. We also speak about a kind of accountability to other persons, though not necessarily in a way that implicates 'directed obligations'. Finally, a third kind of accountability corresponds to the third kind of freedom—independence—and a wholly interpersonal, juridical space of *Recht*. This kind of freedom is not about our freedom to do well, but rather about our freedom from subjection to others' power. The corresponding kind of accountability is a vulnerability to enforcement that *prima facie* subjects us to others' powers—whether through laws or through 'softer' forms of social coercion.

Rights-based theorists are not always careful to distinguish these different senses of freedom and accountability. But at least a plausible version of the rights-based theory is interested in the third kind of freedom and the third kind of accountability. The third kind of freedom as independence might mean being able to act wrongly (in the sense of violating moral duties) without being answerable for it in the third sense of coercive enforcement. But that would not imply anything at all about whether the (moral) wrongdoer is answerable in the first or second sense.

To decide whether *A* has wronged *C*, the rights theorist would ask whether *C* had a right and whether *A*'s action breached the boundaries of that right. The answer might be "no" even where *A*'s action violated some norm, causes *C* harm, and warrants an indignant response from *C*. Cornell would instead answer whether *A* has wronged *C* only by asking whether it would seem appropriate for *C* to engage in some of the responses characteristically associated with wrongs: resenting, complaining, demanding apologies, retaliating, etc. Cornell recognizes that these responses come in many shades. He distinguishes, for instance, between *C*'s merely grumbling or feeling resentment, on the one hand, and *C*'s invoking the coercive powers of the state, on the other. He says the first kind of response does not implicate *A*'s freedom, but the second might (61). But Cornell insists we focus on the first, non-coercive case, because if we take the class of more 'serious' wrongdoing that calls for coercive enforcement as our paradigm, we risk "detaching wrongs from moral dialogue and personal reactive

30. Immanuel Kant, "The metaphysics of morals (1797)" in Gregor, *supra* note 22, 353 at 393 [Ak 6:237-38].

31. For similar suggestions without the Kantian framework, see David Shoemaker, *Responsibility from the Margins* (Oxford University Press, 2015); Philip Pettit, *When Minds Converse*: *A Social Genealogy of the Human Soul* (Oxford University Press, 2025) at 209.

32. See e.g. PF Strawson, "Freedom and Resentment" (1962) 48 Proceedings of the British Academy 187; Derk Pereboom, *Living Without Free Will* (Cambridge University Press, 2001).

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attitudes," and therefore risk "losing any foundation in ordinary interpersonal life" (62). The idea seems to be that legal remedies tend to be stilted and artificial, while reactive attitudes are closer to the flesh and blood of moral life.

At the same time, however, Cornell concedes that *sometimes* the expression of reactive attitudes "can be a serious and primal sanction" (62 [footnote omitted]). From this he concludes that it would be "odd to treat the availability of legal remedies as encroaching on our freedom but not to regard reactive attitudes similarly" (62). Cornell evidently means this as a *tollens*: Both legal remedies and reactive attitudes can involve a 'serious and primal sanction'. So, either both coercive legal remedies and reactive attitudes encroach on our freedom, or neither do. Since (by assumption) reactive attitudes do not encroach on freedom, neither do legal remedies. This is a counterintuitive conclusion. Cornell tries to make it palatable by pointing out that as long as you act within your rights, exposure to coercive legal enforcement subjects you to "*no additional constraints* on what you may do" and for that reason does not limit your freedom (62 [emphasis in original, footnote omitted]). But I am not sure Cornell is entitled to this move. He elsewhere maintains that you can wrong others even when you act within your rights, but if wronging someone exposes you to remedial action, then surely that remedial response adds a constraint on what you do by replacing a non-penalized with a penalized option.[33] Cornell concedes that there is a "practical sense" in which exposure to coercive enforcement constrains freedom: "One frolics less freely in a space bordered by landmines than in one bordered only by fences" (63). In my view, he undersells how significant this fact is. Even if proliferating those with standing to hold one accountable in a freedom-threatening way does not change one's first-order obligations, it multiplies the occasions for negotiating the scope of obligations and remedies, i.e., possible occasions of subordination or unfreedom.

More importantly, one person's *tollens* is another person's *ponens*. The more straightforward view is that *both* outright coercion *and* the expression of reactive attitudes at least sometimes raise issues of freedom. We might think that it is precisely because the expression of reactive attitudes can sometimes have a real, practical, censorious, and sanctioning function that they sometimes *do* encroach on freedom, analogously to the way legal sanctions encroach on freedom. That is not to say legal and non-legal sanctions are identical; they pose somewhat different threats. Legal sanctions tend to be more coercive, but not always: Sometimes we sanction with reactive attitudes in a more 'serious' way for more 'serious' offenses than the coercive enforcement of the law. Compare the legal enforcement of a $500 contract with the kind of blame that ruins a marriage or excommunicates one from a circle of friends. Moreover, informal non-legal sanctions may be more difficult to appeal and (as we will see below) in some ways *more* difficult to reconcile with independence.

33. On penalties and options, see Philip Pettit, *On the People's Terms: A Republican Theory and Model of Democracy* (Cambridge University Press, 2012) at 51-53.

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When a rights theorist denies that somebody was wronged because their right was not violated, I propose this means that the actor is not answerable *in the third sense* and that trying to make them answerable in that sense would implicate their freedom as independence. Because it implies nothing about the first or second kinds of answerability, there is nothing heart-pinching or inhuman about this kind of view. Cornell's assertion that Cardozo or anyone who agrees with his rationale in *Palsgraf* "has mistakenly come to believe that the only way that we are tethered to each other is by having rights," is therefore unjustified (210). It makes all the difference that in *Palsgraf*, Cardozo was asked about the railroad's liability in tort to coercive legal sanctions. He was not asked whether it would be appropriate for Mrs. Palsgraf to resent the railroad's executives or for them to send Mrs. Palsgraf some flowers to her hospital room with a sincere apology.[34] Indeed, the rules of evidence in most Canadian provinces and American states already acknowledge this difference: Apologies are often inadmissible as evidence in tort suits.[35] This allows people to take a kind of interpersonal responsibility without implying anything about freedom-threatening liability.

2.C. The Juridical Case Against the OAN

On the face of it, there is an affinity between the juridical approach just sketched and a principle like the *OAN*. The *OAN* says that *what it is* to have an obligation to φ is to be appropriately held accountable for failing to φ without excuse. Constraint and accountability are run together in a way that serves to limit the class of the properly aggrieved and thereby reduce our exposure to freedom-threatening accountability. Indeed, it is tempting to justify a juridical approach and the *Palsgraf* Principle by appealing to the *OAN* or something like it.[36]

But not only is the juridical view not committed to the *OAN*, properly understood it provides a powerful argument against the *OAN* as a general principle. The juridical view carves off a special part of deontic morality from the rest of ethical life. This allows us to say that in addition to the indefinite ways we are intimately wrapped up in one another's actions, there is a special set of cases that involve rights, wrongs, and a special way of holding one another accountable. That special way of holding one another accountable implicates our freedom, understood along the lines of what Kant called 'independence'. This kind of freedom requires not being subject to the uncontrolled power of another person to interfere with

34. This example relies on the assumption that, depending on context, sometimes resentment is a freedom-threatening sanction while sometimes it is not. I believe—but do not defend here—that this is generally true of the reactive attitudes: They are often related to accountability but do not conceptually presuppose much about accountability. Agent-regret—where one feels regret while knowing one is not responsible—is one prominent example.

35. See Jennifer Wimsatt Pusateri, "It Is Better to Be Safe When Sorry: Advocating a Federal Rule of Evidence that Excludes Apologies" (2020) 69 Kan L Rev 173 at 193-94.

36. This is arguably the strategy suggested by Dougherty and Frick, and by Stephen and Julian Darwall: see Tom Dougherty & Johann Frick, "Morality and Institutional Detail in the Law of Torts: Reflections on Goldberg and Zipursky's *Recognizing Wrongs*" (2022) 41:1 Law & Phil 1; Stephen Darwall & Julian Darwall, "Civil Recourse as Mutual Accountability" (2011) 39:1 Fla St UL Rev 17.

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your own rights. Some forms of holding one another accountable—including but not limited to coercive enforcement—threaten this kind of freedom.

This dynamic raises distinctive moral and political questions. Specifically, this kind of freedom-implicating way of holding one another accountable implicates questions of *authority*. To permissibly hold one another accountable in a way that does not violate each other's independence, we need authority to do so. But we do not come by this authority for free. As a result, sometimes *A* has an obligation to do something and when they fail to do it (without excuse), nobody has the authority to hold them accountable for it. This is conceptually incoherent according to the *OAN*. But it is a familiar feature of moral life. The simplest case is when the content of the moral obligation or the scope of the appropriate response is the object of reasonable disagreement. Where there is reasonable disagreement, *C* can insist on a freedom-implicating remedy only by holding themselves out as a superior moral authority. But doing so would not be compatible with the alleged wrongdoer's independence.[37]

Accountability practices require *legitimating conditions*. But whether those legitimating conditions obtain is contingent. In my view—which I can only state here—the legitimating conditions are best understood as social practices that provide a publicly-acknowledged way to determine both the applicable moral standard, and the norms and procedures of adjudication and for determining an appropriate remedy.[38] It might be tempting to say that what authorizes *C* to hold *A* accountable is just the fact that *A* wronged *C* by violating their rights. Or that all persons have an intrinsic authority to hold one another accountable. But that is too quick. The constitutive aim of a juridical system—at least of the kind I am exploring—is maintaining the mutual independence of the parties.[39] And independence precludes *C*'s imposition of a remedy on *A* in the face of reasonable disagreement, even if *C* is correct and knows it. When *C* can draw on a shared background of social practices to hold *A* accountable, they can do so legitimately and with authority. But whether *A* has a moral obligation is a completely different matter, and it is implausible to suppose that *that* question turns on the existence of contingent social practices.

Because *A* can have a moral obligation to φ even if nobody has the authority to hold them accountable for failing to φ, the *OAN* is false.[40]

It is crucial to note that this argument does not provide a case against the juridical view and its version of the *Palsgraf* Principle. It only shows that for a juridical realm to be legitimate, contingent social practices must be in place. In this view, the *OAN* is false because it overstates the connection between obligations

37. This can be true even if it is all-things-considered permissible to impose the remedy. For a similar suggestion, see Thomas Nagel, "Moral Conflict and Political Legitimacy" (1987) 16:3 Philosophy & Public Affairs 215.

38. A legal system is a paradigmatic way to provide legitimating conditions, but I doubt it is necessary.

39. See Bradley, *supra* note 7 at 26.

40. I develop this argument at greater length elsewhere. See "Obligation, Accountability, and Independent People," [unpublished, on file with author].

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and accountability as a necessary conceptual truth. But the truth in the vicinity is that there is a limited domain in which it is *good* for accountability and obligations to correspond: There are ways of holding one another accountable that it is valuable to be able to perform, but that threaten one another's freedom if done in the absence of legitimating conditions. We therefore have reason to instantiate those legitimating conditions for at least some part of our interpersonal lives. And there is good reason for those practices to conform to the *Palsgraf* Principle.

3. Cornell's Argument Against the *OAN*

I have argued that if we focus on the freedom-threatening aspect of an important kind of accountability practice, we have good reason to restrict the class of properly aggrieved along the lines of the *Palsgraf* Principle. That is the primary motivation of a juridical view. I have also shown that the juridical view not only is not committed to the *OAN* but provides an argument against the *OAN*. So, an argument against the *OAN* is not an argument against all rights-based views. Now I want to examine Cornell's most direct case against the *OAN* and suggest that it is unconvincing. This provides some additional reason to favor the juridical approach.[41]

3.A. Wrongs in Deliberation

Cornell's rejection of the *OAN* follows most directly from:

> ***Wrongs Give No Reasons***: "[T]he fact that X's φ-ing would wrong Y does not constitute a reason for X not to φ—at least, not in the way that the fact that Y has a right that X not φ constitutes a reason for X not to φ" (69).

Or as he puts the point more simply: "potential wrongings do not provide any reasons" (69). This is a counterintuitive thesis for reasons Cornell himself articulates. Cornell stresses two features of moral life that point toward the commonsense view that wrongs do provide reasons for action. The first is his position that "[o]ne of the remarkable things that we can do as conscious, self-governing, temporally extended agents is think about one normative perspective while we inhabit another" (180). At the moment of action, he tells us, we occupy "a kind of limbo", suspended between our options and the consequences they might have (87). The second is Cornell's insistence that "focusing on the wrong that one might commit is a way of drawing our attention to the other person, something all too often missing" (92). It is a way of drawing "attention to the fact that moral obligations are often not just free-floating, but rather they are owed to other persons" (92). Surely,

41. I call this 'Cornell's most direct case', but it is important to note that because the arguments throughout the book work together in a complementary way, there is some artificiality in separating one out at a time. A reason to nevertheless focus on this argument is that it would still stand even if one were not moved by Cornell's case-based arguments intended to produce a dilemma for rights-based views.

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one might think, the benefit of this remarkable intertemporality is that we can try to peek into the future and anticipate the consequences of our actions, including the harms and wrongs they might impose on others. Doing so might seem a reasonable way to take others into account in the way morality requires.

But Cornell denies that wrongs give us any ex ante reasons for action. There is some truth, Cornell concedes, to the idea that thinking about the wrongs we do to others brings them into our deliberation in a meaningful way by giving us reasons to avoid acting in a way that wrongs them. This, he says, is a "poetic truth" that gives us *motivating* reasons (93). But it does not give us *justifying* reasons (93). The basis for this is not obvious. After all, in Cornell's view, other people are the sources of our moral obligations. And if a reason draws our attention to the source of our moral obligations, then it seems like a justifying reason. But Cornell's view is that other people are the sources of our obligations insofar as they are rights-holders, but *not* insofar as they stand to be wronged. Focusing on the wrong we might commit has motivational benefits insofar as it draws our attention to other people; not because it does so in a way that puts us directly in touch with our reasons for action, but because it reminds us of other people, who happen *also* to be sources of our real reasons for action.

Cornell prefers this indirect view of the relationship between wrongs and justifying reasons because he thinks it would be "odd" to deliberate with a view toward what one might later come to regret, including the wrongs one happens to do to others (90). "To think about what wrongs one might commit would be to attend to something epiphenomenal" (87). It would be like going "through life trying to avoid having regrets" (87-88), and "there seems to be something amiss about *making a choice merely to avoid regret*" (90 [emphasis in original, footnote omitted]). Focusing too much on the wrongs we might do to others would be to act too much like Holmes's infamous Bad Man, concerned only with liability.[42] The jurors who punish corporate defendants who figure liability as a cost of doing business rightly identify something odious in such behavior.

This argument is not convincing. For one, it is only an argument against treating wrongs as *motivating* reasons: Cornell's complaint is that the person who is motivated by avoiding liability has deliberated badly, analogous to the way someone who is motivated by avoiding regret has deliberated badly. But we are looking for an argument against treating wrongs as justifying reasons.[43] Second, there is some tension: Cornell also insists that it is at least sometimes *good* to treat wrongs as motivating reasons because it reminds us that morality is about other

42. See OW Holmes, "The Path of the Law" (1897) 10:8 Harv L Rev 457 at 461.

43. Cornell holds that the Bad Man *also* makes a mistake about his justifying reasons (89). My point is that his argument for this claim only relies on the inaptness of certain patterns of deliberation. One could in principle link the two through an internalist thesis that limits moral justifying reasons to the considerations that are apt in moral deliberation. This would be significantly stronger than more familiar internalist theses that limit justifying reasons to a proper subset of the considerations that are *possible* in self-conscious deliberation. (It is stronger because many considerations are thinkable while still inapt constituents of deliberation.) Absent such a thesis, Cornell seems to have given an argument about motivating reasons, not justifying reasons.

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people. Perhaps his view is that we should sometimes focus on wrongs, but not too often; we need to find the right balance between (a) respecting rights, (b) avoiding wrongs because we are avoiding liability or regret, and (c) avoiding wrongs because they remind us of the moral value of other people. Maybe that is correct. But nothing about the argument explains why wrongs do not provide justifying reasons.

The main argument Cornell provides for the view that wrongs do not provide justifying reasons is his discussion of the cases in Part 1.B above. Those cases are meant to show that we can wrong someone without acting counter to any reasons either because we fail to fulfill a promise that created no reasons for action or because our reasons are perfectly balanced in favor of competing options and the presence of a wrong provides no tie breaker. I will make two observations about that argument. First, I do not share many of Cornell's intuitions about these cases. For example, in *Sexual Promise*, it seems to me that *A* can acquire a duty to have sex with *C* through her promise. Suppose in the context of a committed relationship between two adults, one says to the other: "I promise to perform sex act x, which I know you like, if you promise to perform sex act y, which I prefer." These promises create rights and obligations. Of course, the duty to perform can be *overridden*. In *Sexual Promise* as described, *A*'s duty can probably be overridden easily. But that does not mean it is not an obligation or that *C* lacks a right.

Second, these cases seem to introduce a tension in Cornell's conception of wrongs.

Cornell suggests that for *A* to wrong *C*, it is necessary that *A*'s action is somehow subpar: They act contrary to the weight of their reasons, even if they do not violate an obligation (210-14).[44] But in the cases Cornell adduces for the argument that wrongs do not provide reasons, he claims to identify wrongs that occur when *A* acts consistently with the weight of their reasons. This seems true of his account of wicked promises and sexual promises (77-81). If *A*'s only reason to have sex is that she wants to have sex (79), then if she breaks a sexual promise to *C* because she does not want to have sex, she does not act contrary to what she has reason to do, because she has *no* reason to have sex with *C*. But Cornell maintains that *A* might still wrong *C* in that case.

I have suggested that *Wrongs Give No Reasons* is a very strong thesis and that Cornell's appeals to cases and to the oddity of deliberating to avoid wrongdoing do not provide an adequate defense.[45] But maybe we can argue that wrongs do

44. De Kenessey reads Cornell this same way: see de Kenessey, Book Review, *supra* note 15 at 406.

45. The juridical view I prefer endorses a thesis in the neighborhood of *Wrongs Give No Reasons*, and it is worth briefly distinguishing the two. A defender of the juridical view can accept that what Cornell calls 'wrongs' (call them 'Cornell-wrongs') normally do give justifying reasons. In other words, if *A*'s ϕ-ing will Cornell-wrong *C*, that gives *A* justifying reason not to ϕ (at least in the mine run of cases). Now, suppose that ϕ-ing will Cornell-wrong *C* and *A* has an obligation not to ϕ. Suppose also that at time t_1, the society lacks the legitimating social practices that would authorize *C* to hold *A* accountable in a freedom-threatening way and *C* does not have a right against *A*'s ϕ-ing. But at time t_2, suppose the society has adopted the relevant

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not provide justifying reasons for action if we can paint a picture of moral deliberation and moral community that does without wrongs as justifying reasons. I turn to that now.

Cornell's picture seems to be this: We have the morally interesting capacity to think ahead and consider the possible consequences of our actions for other people. We can predict the possible wrongs we might produce. The revulsion or anticipatory regret it would be appropriate to feel in response to a predicted wrong has psychological force. It reminds us that other people have rights and that those rights give us powerful reasons for action. At the same time, it would be "odd" or "amiss" to focus *too much* on possible wrongs. We really should just focus on our reasons, which often means focusing on others' rights and the obligations they produce. *After* we act—and escape limbo—we will see how the chips fall when we reflect on "material facts about what has happened between us" (200). But we will then be in a *wholly new scenario*. And whether we have to make amends, ex post, is not determined by whether we acted rightly, ex ante.

It might help to make this more concrete. Return to *Good Will Hunting*. Hunting is considering staying in his hometown rather than chasing his ambition and fully exploiting his talents. On no plausible moral account would Hunting violate a duty to others by staying home. But Cornell believes Hunting at least plausibly wrongs his friends by doing so. Suppose Hunting agrees with Cornell. He might reflect on the wrongs he predicts he might do, and this might be a useful way of reminding him that his friends are the source of important moral reasons. But if he keeps reflecting, he will realize that in the case at hand those friends do not give him *any reasons whatsoever* not to waste his talents. He can predict that they will resent him (or, as I think is more plausible, that they will be disappointed, perplexed, envious, perhaps piteous). But it would be a mistake to take this prediction as putting him in touch with justifying reasons. Suppose, then, that Hunting stays home and it turns out that his friends do resent him and press valid complaints against him for having wronged them. *Now* Hunting is on the hook. *Now* he is answerable to his friends. They can demand apologies or maybe even ice him out for a while.

And now—despite having possessed the remarkable moral capacity to reflect on future wrongs to his friends and to predict this all would happen—Will Hunting is simply in a new situation and must account for wrongs which he had no direct reason to prevent.

I do not find this to be a plausible picture.[46] Often, in the face of some unexpected harm to others, the virtuous thing to do is to say, "It does not matter how

legitimating social practices, and *C* now has the authority to hold *A* accountable in a freedom-threatening way for failing to ϕ without excuse. In my view, *A* does not have any justifying reasons at t_2 that they did not already have at t_1. That is to say: *Freedom-threatening liability gives no reasons*. This is similar in spirit to Cornell's *Wrongs Give No Reasons* thesis. The crucial difference is that the juridical view does not equate Cornell-wrongs with acts that expose one to freedom-threatening liability.

46. It may seem unfair to focus on this kind of case, where Hunting does not violate anyone's rights nor even violate a general standard of right conduct in his community. He simply acts imprudently, or, at most, violates an imperfect duty to himself. And it is not clear that Cornell

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we got here. We need to figure out how we are going to carry on." This may involve taking accountability for things that are not your fault.[47] It may involve not insisting that you did nothing wrong. It may involve a single-minded focus on repair. In my view, this is the attractive truth that Cornell relies on. But emphasizing it too much yields an inaccurate picture of moral deliberation.

3.B. Moral Community

Perhaps more importantly, Cornell's picture produces a distorted account of moral community. Part of Cornell's complaint against the *OAN* and some rights-based views is that they conflate moral community with a system of rights. Because wrongs are an important part of the way we relate to others, and because wrongs and rights come apart, a system of rights only reflects a partial view of our moral interconnectedness.

Cornell's alternative picture of moral deliberation anchors his alternative picture of moral community. In the ex ante deliberative perspective, we focus on the rights of others and the obligations those rights ground. But this, in Cornell's view, is an incomplete, heart-pinching way to see moral life. How do we get the rest of it into view? *Not* by focusing on the wrongs we might to do others while deliberating ex ante. We act and then we wait and observe. What turns out to sever the connection between rights and obligations, on one side, and wrongs and accountability relations, on the other, is *time* and the contingency it reveals. It is then time that brings us back together again by revealing the wrongs that our actions turned out to cause. The full picture of our interconnectedness comes into view when we, ex post, survey the terrain and repair the wrongs we turn out to have done.

I doubt that we fully realize the extent of our interconnectedness only when we wrong one another. Here is another way to think about the link between moral community and accountability. Above I suggested that *A* can have a moral obligation to φ even if nobody has the authority to hold them accountable for failing to φ. This will be the case when the legitimating conditions for accountability are absent because, for instance, we have not developed the appropriate social practices. Although this is a familiar enough phenomenon, it signals an unstable moral situation. It is *good* when victims have the authority to hold wrongdoers accountable. Doing so is an important way of asserting one's dignity and is an important component of self-respect.[48] This implies that when wrongs and rights

wholeheartedly embraces his suggested analysis of this case. But it is in fact the kind of case where Cornell's thesis that wrongs do not give reasons for actions should be most compelling, because in this kind of case, the agent's reasons against taking the action that wrongs others are at an ebb. Yet even so, it seems plain that insofar as Hunting's actions will wrong his friends, he has reason not to take them, even if in taking them he violates no rights or prohibitions.

47. *Cf* David Enoch, "Being Responsible, Taking Responsibility, and Penumbral Agency" in Ulrike Heuer & Gerald Lang, eds, *Luck, Value, & Commitment: Themes from the Ethics of Bernard Williams* (Oxford University Press, 2012) 95.

48. *Cf* Jonker, *supra* note 14 at 27-32.

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come apart due to a deficit in authority, we fail to live in a fully-developed moral community. That in turn suggests a practical response: We must figure out what it takes to constitute the authority needed to hold one another accountable. This could involve either reducing reasonable disagreement or developing institutions or social practices to work through reasonable disagreement. On this picture, the fullness of our interpersonal life is not something revealed to us through the wrongs that unfold in time. It is something we reveal and build through our active cooperation to develop and sustain social practices. I submit that this is a more attractive picture and that it falls out of the kind of juridical approach I have suggested: one that embraces the *Palsgraf* Principle but denies the *OAN*.

4. Conclusion

In rejecting the picture of moral community he attributes to the rights-based theory, Cornell invokes Marx's critique of liberal rights (21, 200-01). Marx would agree with Cornell that conflating a system of rights with a moral community would be a mistake because being a subject in a system of rights—with nothing more—renders us each no more than "an imaginary member of an illusory sovereignty."[49] But I do not see how Cornell's humane entreaties to focus on the myriad ways we can adversely affect one another address this Marxian concern. Marx's arguments were directed both against liberals who underestimated the breadth of our interconnectedness and also against those (so-called 'True Socialists') who neglected the political efforts needed to fully develop and nurture those connections.[50] Confronting both these challenges requires converting an important, freedom-implicating subset of abstract rights into concrete rights: turning imaginary members into real members and illusory community into genuine community. This is just what a rights-based view that rejects the *OAN* recommends. It recommends building a juridical sphere sustained by egalitarian social practices. Not to displace the rest of ethical life, but to situate it against a backdrop of mutual independence.

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49. Karl Marx, "On the Jewish Question" in Joseph O'Malley, ed, *Marx: Early Political Writings* (Cambridge University Press, 1994) 28 at 36.

50. See Bruno Leipold, *Citizen Marx: Republicanism and the Formation of Karl Marx's Social and Political Thought* (Princeton University Press, 2024) at 206-16.

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