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On Revaluing the Currency of Human Rights

Katherine Eddy

Department of Politics and International
Relations/Centre for the Study of
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Katherine Eddy (St Anne's College, Department of Politics and
International Relations, University of Oxford)

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On Revaluing the Currency of Human Rights

An odd thing has been happening in the debate over human rights in recent years. Those in favour of welfare rights¹ as human rights have joined their opponents in bemoaning the proliferation of rights-claims in political debate. They have chastised activists and theorists for debasing the currency of human rights with what they see as an indiscriminate and quite possibly irresponsible use of the concept to lend rhetorical force to an ever growing number of dubious moral and political claims.²

This new development is interesting precisely because rescuing the integrity of the discourse of human rights used to be the stated aim of those who thought we should give up on welfare rights as human rights altogether. According to these earlier theorists, 'welfare rights' were worthy societal goals, at best aspirational, if not dangerously utopian, but they were not real rights.³ Maurice Cranston, in a now-famous critique of the human rights credentials of the social and economic rights set out in the (1948) Universal Declaration of Human Rights, argued that to conceive of claims to a paid vacation, or to social security, as genuine human rights risked bringing 'the whole concept of human rights into disrepute,'⁴ depriving them of their moral and political force. L. W. Sumner suggested that though 'employment, social security, health care, and education' were undoubtedly human necessities, 'we would normally be more reluctant to say that governments are obligated to ensure their full enjoyment by all citizens, or that the failure to do so in any particular case would necessarily constitute an injustice.'⁵

Welfare rights proponents responded by pointing to the arbitrariness of excluding welfare rights from the class of valid human rights: if human rights were grounded in human dignity, and if their ultimate purpose was to protect human agency, then welfare rights clearly warranted inclusion in the catalogue on both counts.⁶ There could be 'no freedom without bread'⁷; no dignity for the poor, sick and starving. These arguments are convincing, but while they successfully stake a claim for the inclusion of welfare rights into the catalogue, they offer no clear limit on what is to count as a genuine human right. In a recent spate of reflective writings on the concept of human rights, however, welfare rights proponents have set out to fill this conceptual gap.⁸ This time the aim is to exclude even more dubious rights, like 'the right to

peace', the right to 'be free from dishonour' or the right to be 'the highest attainable standard of physical and mental health', that, so the argument goes, threaten to discredit the language of human rights altogether. In a remarkable mirror of the arguments earlier advanced against welfare rights, there is a perceived need to avoid undermining the urgency and pre-emptive political status of the most basic human rights, but this is now combined with a commitment to doing so without excluding welfare rights from the catalogue.

In the course of this paper, I consider three recent attempts to 'revalue the currency' of human rights: the agency conception, the pluralist conception and the negative duties conception. Under the agency conception, the term 'human right' is reserved only for those rights necessary to protect individuals' capacity to be autonomous agents. In Part 1, I outline this conception as it is put forward in James Griffin's work, and argue against it for two related reasons: (1) it is too narrow in its approach to the grounds of human rights, and (2) it is too narrow in its understanding of the concept of human dignity. In Part 2, I present the pluralist account, where human rights are understood to be grounded in any number of values or interests, but where the importance of the interest is said to act as a check on the number of genuine human rights. I argue that there is a difficulty in relying on the importance of interests to rule out the more dubious of human rights claims. In Part 3, I look at the negative duties account of human rights, as it appears in Thomas Pogge's work. Although I reject his negative duties thesis, I argue, in Part 4, that Pogge's focus on the state as the agent against whom human rights are held is more than simply strategic, and, in Part 5, defend the claim that human dignity is especially vulnerable to 'official threats'. I argue, however, that there is reason to doubt that the state could adequately fulfil the human-rights-based duties it owes its citizens by simple forbearance; rather, the state may be said to wrong its members, and to violate their human rights, when it fails to provide them with the means to realise their basic needs. In the final section, I provide a sketch of a 'dignity based' account of human rights that supports this conclusion and, I hope, avoids the difficulties of the agency, pluralist and negative duties conceptions.

1. Griffin's Substantive Account:

Human Dignity as Agency?
James Griffin, seeking a modest, substantive, and

determinate philosophical account of the 'existence conditions' of human rights, argues that central to the concept is their protection of our status as autonomous agents:

We human beings have the capacity to form pictures of what a good life would be and to try to realise these pictures. We value our status as agents especially highly, often more highly even than our happiness. Human rights can then be seen as protections of our agency – what one might call our personhood. They are protections of that somewhat austere state, the life of an agent and not of a good or happy or perfected or flourishing life. It is not that what human rights protect is the only, or the most, important aspect of our life. But we attach special importance to it, and that is reason enough to mark it off, too, with the language of human rights.⁹

Although Griffin casts his theory as centrally concerned with the protection of human status and personhood, the role of status in his account is not to be confused with the role status plays in the work of deontologists like Francis Kamm¹⁰ and Thomas Nagel.¹¹ The Kamm/Nagel 'status theory of rights' also avers that our status as persons is what grounds our rights, but only in the sense that it is the fact about us that requires others to act in rights-respecting ways. On the status theory account, status is not what we hope to protect when we respect people's rights; rather, it is in recognition of a person's status that we are bound to respect rights. Rights simply represent appropriate and necessary constraints on our behaviour towards bearers of human status. This means that no amount of rights-violating could deprive a person of that status; she has that in virtue of who she is, not how we treat her.¹²

Seeking to avoid this conclusion of the status theory, roughly that failing to respect rights does not actually threaten the value from which the right is derived, Griffin cashes out status more tangibly into two essential constituents of personhood: 'autonomy': the value of 'choosing one's path through life', and 'liberty': the ability to follow through on one's choice.¹³ A successful argument for the existence of a human right has to show that the right protects one of these twin values of personhood.

The promise of this more substantive account is that it will help us to separate the valid rights-claims from those of a more questionable pedigree. Furthermore, unlike more formal theories, which delineate the concept of human rights by reference to the special role they play in moral theory, Griffin's account purports to make clear the link between the rhetoric of dignity and status often invoked as the ultimate grounds of human rights and the most basic of the rights usually claimed to be universally human. The difficulty is that, as Griffin admits, it seems unlikely that we will arrive at a sufficiently constrained and determinate account of the existence of conditions of human rights by grounding them solely in the values of personhood. These values are, he points out, far too open-ended to yield an appropriately circumscribed list. So what we need is a further ground, which he calls 'practicalities'. The existence of a human right 'must depend, to some extent, upon its being an effective, socially manageable, claim on others.'¹⁴ It is because of the need to take account of practicalities that we do not have the right to the performance of any duty that will serve our agency, only those that are feasible, and the respect of which will not impinge too much on the lives of the potential duty-bearers.

There is, however, a separate worry about Griffin's use of the language of status and dignity, unrelated to the problem of profligacy. It leaves him open to the following objection: if we were truly concerned with human dignity and status, rights-based arguments would be more appropriately cashed out in the language of equality, not agency. Griffin himself recognises that equality is the most likely candidate for a third ground of rights but he nonetheless feels justified in limiting himself to 'personhood values' (autonomy and liberty) and 'practicalities'.¹⁵ The reason? Equality, be it in terms of outcomes or opportunities, may be plausible as a requirement of fairness or justice but human rights 'do not exhaust the whole moral domain; they do not exhaust even the whole domain of justice and fairness.'¹⁶ In short, grounding welfare rights in substantive equality would set the bar far too low. Not every unfairness or inequality is a human-rights violation. As for a more formal, Dworkinian, focus on 'equal concern and respect' as the ultimate grounds of rights, this is dismissed as too vague a principle to guide our deliberations about who has rights to what.

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Suppose we agree with Griffin that the abstract right to 'equal concern and respect' is too vague, and that no one can have a human right to an equal outcome or opportunity because this would be to confuse fairness with basic human rights. There is, I think, still a third way that equality could feature in a theory of human rights: we can understand equality as bound up with human dignity. To say that equality is 'bound up' with human dignity is to put the point elliptically, but I will try to set out an equality account of human dignity below. My claim is that if the equality account of human dignity is compelling then rights that protect human agency will not necessarily (or sufficiently) protect human dignity.

Equality and Dignity

It is at least plausible that the focus of a dignity-based argument might not be on securing the necessities for life as an agent, but on securing the necessities of a minimally decent (i.e. non-humiliating¹⁷) life. As has been pointed out by Amartya Sen and others, however, what is necessary for a minimally decent or dignified existence may change relative to the society in which the claimant finds herself; it will be conditioned by how others in that same society are faring. If this equality understanding of dignity is correct, then we should expect to find gaps between the concerns of dignity and the concerns of agency; that is, we should expect to find instances where what is necessary for a dignified or decent existence is different from what is necessary for the life as an agent. I do not say much in support of this position here, but I will suggest two instances where I think the concerns of agency and human dignity come apart.

First, consider the normative force of the claim to decent clothing.¹⁸ Whether or not the good is necessary for my agency depends on the climate in which I find myself; but we can imagine that in warm countries, at least, the inability to secure decent clothing is not a sufficiently significant intrusion on my freedom to count as a threat to my ability to be an agent. If this is true, then, on Griffin's account, I cannot have a right to decent clothing. Griffin might be right to insist upon this. But it does seem true that my dignity suffers when I am unable to conform to the standards of decency in my society; insofar as I fail to do so, I may plausibly see myself as excluded from the 'concept of humanity prevalent in [my] society'.¹⁹

There are arguments to the effect that not having decent clothing might affect one's agency as well, of course. It could be that without a decent suit, I can't get a job, and without a job, I can't earn a decent salary and be in control of my own life; or that my lack of decent clothing causes me to feel embarrassed when I go out in public which hinders my ability to pursue my chosen path in life. But even if these (rather forced) chains of argument are ultimately persuasive in yielding an agency-based reason to care about otherwise trivial goods, it seems true that there is a threat to one's dignity that comes from lacking the kinds of things that others in one's society deem necessary for a decent existence, independent of the extent to which these goods enable us to be self-determiners. We should expect, at least in some societies, that the threshold of what is required for a decent or dignified existence will be set at a different level from the threshold of what is required to be an autonomous agent.

It might, indeed, be set lower. Consider the case where a drought afflicts a village of formerly prosperous farmers. The drought affects all together and everyone ends up struggling to stay alive. Imagine, too, that there is no comparative group; the members of the afflicted society have no knowledge, even of far-off lands, where people fare better; all are rendered equally destitute. In this case, they lose their autonomy, they lose their liberty, but do they really lose their dignity or their status as persons? It seems wrong to describe their plight as an affront to their human dignity precisely because all are affected equally. There is no comparative group of persons against whom their plight can be measured; no prosperity to lend indignity to their misfortune.

The difficulty with Griffin's account, then, is not its focus on autonomy and liberty, but the attempt to understand human dignity and status exclusively in terms of these values. As I have argued, the formal version of the status theory does not treat status as an interest to be promoted but as a fact about us that gives others a reason not to treat us in certain, proscribed ways, whereas a more substantive focus on dignity or status as the ultimate grounds of human rights would require considerations of context and relative standing to enter into the decision of what the agent is ultimately entitled to as a matter of right.

Faced with this objection, the proponent of the

agency account can simply abandon the link with dignity, and straightforwardly understand human rights to be grounded in autonomy and liberty. (I consider an objection to this move below.) But Griffin would, I think, be unwilling to discard dignity as the core of his conception, since his aim is to provide an account of human rights that illuminates the history of the concept, as well as its current uses in human-rights instruments and declarations. Human dignity features prominently in both.

Agency and Dignity

The proponent of the agency account has another reason, apart from historical consistency, to hold on to dignity as the value underpinning the language of human rights. As I will argue, a dignity-based human-rights theory can help explain why not all threats to my agency count as human rights violations. Griffin's theory, of course, accommodates this possibility: he concedes that when the duty required to protect a person from a threat to her agency is too burdensome, or impracticable, she has no right to its performance. On Griffin's account we first ask whether being deprived of some good would threaten my ability to be a self-determining agent, and then we go on to consider whether it would be practicable to proffer it to me, i.e., whether the posited right is 'an effective, socially manageable, claim on others.'²⁰ Only if both constraints are met can we say that I have a human right to the good.

It is by reflecting on the value of human dignity that we can see why some agency-based claims would not count as human rights; that is, why denying me what it is not feasible to provide me, despite the harm that I suffer as a result, is consistent with my human dignity. We can, for example, imagine instances where person X's lacking some good (e.g. expensive medical treatment) will drastically affect her ability to be an autonomous agent: without the treatment she will remain permanently disabled, or perhaps even die. But X's dignity and status as a person are not threatened by the fact that no one is under a duty to provide her with expensive medical treatment. Only if expensive medical treatment is denied X when it is practicable to provide it to her can we say that the denial is a threat to her status as a person. The reason it is such a threat is less because of the effect of the denial on her life than what it says about our respect for her when we do not do what we could to help, despite the seriousness of her injury and the importance of

her need. In conceding this, however, it seems that we drive another wedge between the status of persons said to be motivating Griffin's account and the agency interests we are told human rights exist to protect. I can lose my agency without losing my dignity or my status.

Combining Practicalities and Personhood with Universality

A separate difficulty with the role of practicalities in Griffin's account is, according to a recent paper by John Tasioulas, that it looks as if it would undermine the universal pretensions of just about any human right. When practicalities are included as a constraint on the 'existence conditions' of human rights, does this mean that rights have to be universally practicable, at all times, in all places, in order to count as genuine human rights? If so, this would imply that if a right is impracticable or unnecessary at time T in society S, it is not a human right. But if a right is rejected from the class of human rights because it is unrealisable in certain contexts, would this not require us to conclude that, because it is impracticable to set up an impartial judiciary in the Congo, or to guarantee security of the person in war-torn Iraq, persons have no rights to fair trials or security of the person? The 'personhood' constraint gives rise to similar worries when combined with the requirement that human rights be universal. If universality means that a right must be necessary for personhood at all times, in all places, in order to count as a genuine human right, then this would imply that because the agency of the hunter-gatherer is not threatened when we deny her opportunities for free public speech, there is no universal right to free speech.²¹

The agency conception of human rights, then, seems lacking in three respects: (1) it appeals to human dignity as the grounds of human rights but does not capture the comparative (or equality) aspect of human dignity; (2) it understands human dignity as centrally concerned with one's capacity to be a free and autonomous agent, but there is a broader understanding of human dignity at work in cases where one's agency is threatened and it is not practicable or justifiable to expect others to prevent the harm. In such cases whether or not one's dignity is undermined depends on the reasons one is treated in a particular way, not just the harm to one's autonomy and liberty posed by that treatment; (3) neither the 'practicalities' nor the 'personhood' constraint seems plausible when we add in the requirement that human rights

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be universal; the combination of all three conditions narrows the range of human rights unduly.

2. The Pluralist Account

John Tasioulas has put forward an account of human rights that admits a weaker practicalities constraint aimed at avoiding the last of these difficulties: an interest can give rise to a human right if there is some realistically (though not necessarily immediately) available means of protecting it in the modern world.²² This means, then, that 'human rights would be possessed by humans qua human, but not necessarily at all times and all societies throughout history.'²³ He also broadens the possible grounds of rights to allow for a plurality of values and interests to give rise to human rights, not just those related to autonomy and liberty. Thus, if we accept his pluralist account, we also seem to have an answer to the first two worries about the agency conception: there would be no need to understand human dignity as uniquely concerned with agency and there would be no obvious bar to accepting equality as a possible ground of human rights.

Tasioulas also defends the pluralist account as a better reflection of Griffin's own reasoning about human rights. As Tasioulas points out, Griffin needs to look to values other than autonomy and liberty in order to explain which liberties concern 'personhood'. I do not have the right to drive my car the wrong way down a one way street precisely because there is no significant value in driving wherever I might wish, but I do have the right to, say, religious freedom, since religion (or the freedom to be without it) is an important aspect of the good life.²⁴ But, says Tasioulas, 'if one is willing to grant non-personhood values a significant, albeit indirect, role in shaping...human rights norms through their impact on the values of personhood, is it not artificial to deny them a direct justificatory role in the manner of the pluralist account?'²⁵

Say we accept Tasioulas's suggestion and substitute a plurality of interests for the personhood values; do we not end up with even more rights-claims? Apparently not. As with Griffin, Tasioulas posits two interrelated constraints that are to limit the number of universal human rights: the importance of the interest²⁶ and the burdensomeness of the duties to which it is likely to give rise.²⁷ Tasioulas thinks that these will constrain the class of valid human rights to an appropriately

modest level. Thus, even if we accept a pluralist grounding for human rights:

it is highly implausible that we all have a right to all that is needed for a good life. This would likely impose burdens on others that are too onerous to be justified. Instead, only those interests that are sufficiently important ground rights that warrant the imposition of counterpart duties on others.²⁸

Tasioulas presents two views in this passage: (1) persons cannot have rights to all that is needed for a good life because the duties attendant on such rights would be too burdensome; and (2) whether or not an interest grounds a right depends on how important the interest is. The first view is plausible, but the second cannot be right. Some of the most important interests we have do not give rise to rights, and the fact that they do not is no reflection of their importance. A child's interest in being loved by her parents might be one of the most important interests she has; similarly, our friendships, the admiration of our peers, might be far more important to us than the right to speak freely or the right to vote.²⁹ The reasons these interests do not ground rights are many. Some of these reasons are related to the burdensomeness of the counterpart duty, some are related to the difficulties inherent in conceiving of the interest as giving rise to a duty (if you were my friend, or loved me, because you had a duty to, then what kind of relationship would we have?). The argument that an interest is not sufficient to ground a right need not deny the importance of the interest at stake. Thus, Tasioulas's description of human rights as protecting those interests 'sufficiently important' to give rise to counterpart duties is misleading. We will not arrive at an account of which interests ground human rights by reflecting on the importance of the interest.

Tasioulas might respond that we need not worry about the apparent anomalies of important interests which do not ground duties, as we already know these are not protected by human rights. The point is, rather, that because not all the interests to which a pluralist attributes value are sufficiently important to ground duties in others, pluralists are not committed to a massively expanded catalogue of human rights as a consequence of adopting a pluralist approach to what is of value. His claim, then, is not the obviously mistaken one that all important

interests give rise to human rights in virtue of their importance; but the weaker, more sensible one, that only those interests that are sufficiently important to ground duties in others give rise to human rights.

The difficulty is that there are relatively trivial rights that are (a) universally held by all, and (b) sufficiently important to ground duties in others, but which are not typically understood to be human rights. These include rights not to be lied to,³⁰ rights to have promises made to one kept, rights not to be pinched, and so on. Surely there is a difference between these kinds of universal moral rights and human rights. But how are we to characterise that difference if we have given up on the personhood ground and our measure of the importance of an interest is its ability to ground a counterpart duty?

So far we have looked at a substantive account that is too successful in its attempt to narrow the analytical boundaries and a pluralist account that is broad enough to capture most of our intuitions about rights, but which does little to explain the peculiar stringency and urgency of human rights. I suggest that in order to capture that stringency and urgency we reintroduce the personhood ground, but reformulate it as the 'dignity constraint': in order for a person to have a human right it must be true not just that the agent's interest is important enough to give rise to a duty in another, but that the failure to perform that duty will amount to a threat to her human dignity. In doing so, we accept the contention that values and interests other than autonomy and liberty may justify human rights. We also, however, give ourselves reason to deny that every universally held interest that is important enough to give rise to a duty in another gives rise to a human right. (My human dignity is not threatened when my friend fails to meet me at the train station at 2.p.m. as she promised she would; it is not threatened when my student tells me she was too ill to write her essay when in fact she was too lazy.) Having given up on the attempt to understand human dignity exclusively in terms of autonomy and liberty, however, we are left with the task of explaining what constitutes a threat to human dignity. I attempt the beginnings of such an account in Part 5. First, however, I look at one final attempt to 'revalue the currency' of human rights that is perhaps the most striking in its commitment to firming up the analytical boundaries of the concept.

3. The Negative Duties Conception

The early attacks on welfare rights as human rights claimed that because welfare rights were positive rights to the provision of goods, they had no pretensions to the urgency and importance of more traditional civil and political rights. Real human rights, so it was argued, protect persons from wrongful state action, but do not entail duties to provide assistance, or at any rate, do not put such duties on a moral par with prohibitions against state interference with bodily integrity and personal liberty. Welfare rights proponents responded with the claim that welfare rights could be conceived of as imposing negative duties as well as positive ones: my right to adequate nutrition gives rise to a duty not just to provide me with food when I'm starving, but an even more stringent duty not to threaten my food source. They also pointed out that the traditional catalogue of civil and political rights entailed positive duties as well as negative ones: my right to vote gives rise to a duty not just to forbear from interfering with me on the way to the polling booth, should their happen to be an election, but also to set up regular elections, ensure that there are accessible polling booths, access to information about candidates, and the like. In short, the negative/positive rights distinction was roundly criticised as too crude to justify the exclusion of welfare rights from the catalogue of genuine human rights.

Finessing the Negative/Positive Distinction

Though the distinction may be too crude, the claim that even the most traditional human rights have both positive and negative dimensions does not answer a more subtle variant of the 'negative rights' objection to welfare rights as human rights. It can be expressed as follows:

Yes, we accept that some of the more traditional civil and political rights require more than mere forbearance in order to be fully met. They require, in some instances, that the state act positively to avoid wronging its citizens. But the core of these rights is nonetheless a negative duty, and the state only has positive duties to protect the exercise of these freedoms because otherwise it would be complicit in the resulting harm to the citizen. The state has a positive duty to provide fair trials to people

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as a precondition of the imposition of punishment; it has a duty to run free and fair elections as a condition of fair coercive government. But the state is not in any similar sense complicit in the harm a person suffers from poor health; a person doesn't have the right to health care, or food, or shelter, because the state is not to blame for the harm she suffers when these needs go unmet.

Thomas Pogge's account offers an answer to this objection. Indeed, his defence of welfare rights is unique in that he accepts the premise from which it begins: 'human rights require that we not harm others in certain ways – not that we protect, rescue, feed, clothe and house them.'³¹ Pogge grants that human rights will sometimes give rise to more than duties of simple forbearance, but the positive duties we associate with human rights are remedial. They exist because we have previously, and avoidably, committed a wrong; to be precise, they exist because the coercive social order that we are involved in upholding imposes upon others a situation in which they lack secure access to the object of their rights. We have a (negative) duty not to impose such an order on others; and we have a duty to help those in need only in so far as they suffer as a result of such an imposition. On this account, then, human rights are not held against all other humans, but against the 'coercive social order' to which one is subject:

By postulating a human right to X, one is asserting that any society or other social system, insofar as this is reasonably possible, ought to be so (re)organized that all its members have secure access to X, with "security" always understood as especially sensitive to persons' risk of being denied X or deprived of X officially: by the government or its agents or officials. Avoidable insecurity of access, beyond certain plausibly attainable thresholds, constitutes official disrespect and stains the society's human-rights record. Human rights are, then, moral claims on the organization of one's society. However, since citizens are collectively responsible for their society's organization and its resulting

human-rights record human rights ultimately make demands upon (especially the more influential) citizens. Persons share responsibility for official disrespect of human rights within any coercive institutional order they are involved in upholding.³²

Pogge's account, then, relies on a negative duties thesis identifying as human-rights-based duties those that stem from the state's negative duty not to threaten people's 'secure access' to the object of their rights, and an institutional thesis, that identifies the state³³ (and by derivation the citizens that support and uphold its institutions) as the agent responsible for protecting human rights. He favours an institutional approach because he thinks it provides a determinate way of assigning human-rights-based responsibilities, and the negative duties thesis because it 'narrows the gap' between civil and political rights on the one hand, and social and economic rights on the other; 'it does not sustain the thought that civil and political human rights require only restraint, while social and economic human rights also demand positive efforts and costs. Rather, it emphasizes negative duties across the board.'³⁴ I consider the institutional thesis in the next section, and begin with some worries about the negative duties thesis.

The Negative Duties Thesis

The argument for welfare rights that appears in Pogge's work is grounded in the claim that the state has a negative duty to refrain from denying or depriving persons of secure access to the means to meet their basic needs.³⁵ Though in practice particular states may have positive duties to provide for those who are unable to provide for themselves, these derive from a prior breach of the negative duty not to deprive or deny persons of secure access to the object of their rights.

The obvious worry that arises for the welfare rights proponent considering Pogge's argument is that not every instance of a person falling below some basic needs threshold will be attributable to the state having previously deprived or denied that person access to the means to meet her basic needs. Consider, for example, the case of someone who loses her house in a flash flood. She would not seem to have a right to assistance on Pogge's account since the state didn't deprive her of secure access to shelter. But Pogge also claims that 'Avoidable insecurity of access...constitutes official

disrespect and stains the society's human-rights record.' He says that the state must not 'avoidably restrict the freedom of some so as to render their access to basic necessities insecure'.³⁶ If we take 'avoidable restriction' of 'secure access' in and of itself to amount to a human rights-violation, then it would seem that the state does have a duty to provide emergency shelter to flood victims, simply in virtue of the fact that it is possible to do so; we 'avoidably restrict' the access of the flood victims to shelter when we refuse to provide them with it.

On 'avoidable restriction'

Is this last duty 'not to avoidably restrict access' simply a positive duty dressed up as a negative duty? Am I not 'avoidably restricting' your access to a good any time I refuse to proffer it to you? If I don't give you my shoes, don't I avoidably restrict your access to them? In a later article on health outcomes Pogge argues that the state's 'foreseeably and avoidably' engendering practices under which persons lack access to basic goods is sufficient to establish causal responsibility for the harm they suffer as a result. More precisely, the state can be said to have 'contributed substantially' to a person's lack of some basic good, V, when it either (1) officially mandated that she should not get V; (2) legally authorised practices that have caused her not to have V; or (3) 'foreseeably and avoidably engendered' the practices that lead to her not having V.³⁷ According to Pogge it would be enough to establish substantial contribution under (3) to show that 'certain persons, suffering severe poverty within an ill-conceived economic order, cannot afford' to purchase V.³⁸

Adherents to the negative duties thesis should worry about an ambiguity here. It seems the economic order is characterised as 'ill-conceived' because it (avoidably) leaves X without 'secure access' to basic good V. But this is quite different from establishing state-responsibility for X's privation by showing that, but for some concerted state action or policy, X would have had good V. It is not true, for example, that, (a) but for some concerted state action, the flood victim would have had shelter; though it may very well be true that (b) had the state not avoidably passed a budget that made inadequate provision for natural disaster relief, X would have had shelter.

I don't know whether Pogge would accept (b) as evidence of official disrespect of human rights, but I want simply to highlight the circularity that enters

into the decision about what counts as 'foreseeably and avoidably engendering' rights-threatening policies. Whether the state is wrong to engender an economic order that leaves people's needs unfulfilled, and thus whether its policies are, in fact, 'ill-conceived', seems to depend on the prior judgement that the state has a positive duty actively to pursue policies that are likely to promote secure access to the good in question.

In sum, there are two difficulties with Pogge's negative duties thesis, depending on how we read it. If the account does insist that only causal responsibility for harm to an agent generates a positive duty to assist her, then the flood victim has no right to state assistance; if, on the other hand, 'avoidable insecurity of access' is, in itself, evidence of a rights-violation, then the theory seems to be premised on a positive duty. We can, however, hold on to the causal responsibility argument without abandoning the flood victim. For, as I shall argue, the state causes dignitary harm to an agent simply in virtue of remaining (avoidably) indifferent to her abject need. Before I get to that discussion, however, I will consider the second prong of Pogge's theory: that human rights are, as he puts it, 'especially sensitive' to official threats.

4. The Institutional Thesis

The institutional thesis is perhaps even more controversial than the negative duties thesis. Whether we find it convincing, as John Tasioulas has pointed out, depends on what we take to be a paradigm case of a human-rights violation.³⁹ As I shall argue here, the institutional focus has firm roots in the rights considered to be some of the least controversial members of the catalogue of human rights: namely, civil and political rights. For example, to deny me the right to vote is to threaten my status as a person, but we cannot explain that threat without reflecting on the sense in which the wrong belongs primarily to those who exercise political power. (Your neighbour doesn't wrong you by failing to provide you with the means to exercise your right to vote.) The same is true of rights to a fair trial, or to freedom of expression. Thus, we already have amongst the catalogue of human rights paradigm cases where the fact that the state is the duty-bearer is integral to conceiving of the right-holder as having been wronged when her right is not respected. We need to invoke facts about the state, its duty to respect the equal worth of its citizens, and its coercive power, in order to explain why the failure

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to provide the citizen with voting opportunities, fair trials, and freedom of expression, is wrongful.

That civil and political rights are state-centred does not entail that the same is true of all rights, however. In the examples above, the state has a duty to provide fair trials as a condition of fair punishment and imprisonment; it has a duty to provide polling booths as a condition of fair government, and each of these functions is unique to governments. But anyone can assault me, or steal from me, and it is surely wrong for anyone to do so. We don't need to invoke the state in order to explain the nature of every serious wrong.

If serious wrongs can be perpetuated by agents other than the state, then why insist that human rights are held only against states? Recall the argument of Part 2: human rights are special and distinct from other forms of rights in that they are concerned to protect human dignity. We would, then, have reason to insist that human rights are held only against states if it were true that the state alone was capable of threatening human dignity.

The prospects for this defence of a state-based conception of human rights are not promising, however. The contention that human dignity only suffers as a result of official or state threats is subject to a number of powerful counter-examples.⁴⁰ Does the human dignity of the rape victim or the tortured prisoner really cease to be under threat if her aggressor is not employed by the state or working in some official capacity? Surely there are some wrongs so horrible as to threaten the dignity of the victim no matter who the perpetrator happens to be. While insisting that human rights can only be held against states would give us grounds for a neat conceptual line between what counts as a human right and what does not, the claim that human dignity is uniquely subject to threat by the state is implausibly strong.

The weaker and more plausible position that will be defended here is that human dignity is especially, though not uniquely, vulnerable to state threats. In support of this weaker thesis, I will argue that state's involvement in perpetuating or failing to mitigate certain harms is sufficient to render them dignity-threatening. We can borrow an example from Pogge's work to illustrate the point: think about what it would mean to a person if because of certain characteristics he bore, his ethnicity or his religion, the state looked the

other way in the face of attacks on his person, and failed to prosecute or even attempt to punish his aggressors.⁴¹ It is the state's treatment of him that undermines his dignity or status as a person of equal human worth: it is as if to say to him, you are not worthy of protection, our laws need not be tailored to your concerns.

If successful, the argument would explain why some wrongs (like bodily harm, theft, etc.) amount to human rights violations only when perpetuated by the state. It would also give us an answer to the objection to welfare rights raised at the beginning of Part 3. Recall that the worry expressed there was that the state is not complicit in the harm that an agent suffers from being unable to meet her basic needs: I can starve, or die of exposure, in the absence of any wrongful state interference. What I want to suggest is that there is a harm to human dignity that occurs when persons are (avoidably) unable to satisfy their most basic human needs, intrinsically bound up with the state's (or the community's collective) indifference to their plight. My claim is this: when the state remains avoidably indifferent to its members' inability to meet their basic needs, its attitude of indifference is the cause of, and therefore the state is complicit in, the threat to human dignity that necessarily results from its omission.

5. A Digression on Human Dignity

Let me first say a little more about the meaning of the concept of 'human dignity' being deployed here. First, a threat to human dignity is a threat to a person's self-respect as a human being: i.e., the reasonable feelings she has about her own worth as a person.⁴² It is not, then, the dignity of her particular station, class or achievements. Though the dignity of the Mercedes-owner may be said to suffer when his car breaks down and he is forced to ride the bus, his human dignity is not thereby threatened.⁴³ Granted, the Mercedes-owner's sense of his own worth suffers from his being forced to ride the bus, but it is not his sense of worth qua human, but his sense of worth qua Mercedes-owner. Second, human dignity carries with it both subjective and objective dimensions: a threat to dignity is not simply a question of hurt feelings, but wrongful treatment that is (a) inconsistent with a person's intrinsic worth, and (b) has the effect of undermining her (reasonable) feelings about her own worth as a person. The former is the objective aspect of a threat to human dignity, and the latter the subjective element.

In what follows, I offer a few comparisons of cases where the harm to the individual's interest is identical, but where the state's role in causing the harm is such as to render it a threat to human dignity. The aim is to go some way towards isolating the features of state-caused harm that render it, and not its comparator, dignity-threatening.

Consider, first, two cases of an inability to speak freely. In the first case, Sick cannot speak freely because she has got laryngitis; in the second case, Silent cannot speak freely because she is threatened by the state with imprisonment should she choose to speak. If we agree that Silent's human dignity is threatened by her unfreedom, but that Sick's is not, one plausible reason for the difference might be that it is the state's exercise of coercive power that silences Silent.

Compare, however, two more similar cases: Scared is threatened with 'serious repercussions' by the local Mafia should she speak out against their activities; Silent is in the same situation as before: her case is identical to Scared's, except that it is the state, and not the Mafia, that threaten her with repercussions should she speak out. In both cases the individual's silence is coerced, but it is Silent's, and not Scared's, human dignity that is threatened by the coercion. Though the intuition may not be shared, let me explain the reasoning that supports the distinction. In Silent's case, the state both (1) wrongfully breaches the duty it owes her to treat her with equal concern and respect, and (2) threatens her (reasonable) feelings of her own worth as a person in doing so. In this instance, the subjective threat is plausibly attributed to the objective wrong: she is made to feel less worthy because she has been treated in a way that is inconsistent with her worth.

One might, of course, argue that both the wrong and the effect are present in Scared's case as well. The argument in support of such a position would go something like this: all persons are entitled to respect, qua human, from all other persons; the Mafia, in threatening Scared, deprive her of the respect she is owed qua human, and thus, the Mafia threaten Scared's sense of self-worth.

We can best counter this objection, not by denying the premise about the respect owed to all persons by all persons, but, instead, the conclusion that one's self-worth is threatened by the failure of a criminal organisation to accord one the respect that is one's

due. Not every instance of disrespect is dignity-threatening. When, for example, my neighbour steals my car, my sense of worth-as-a-person does not seem to me to be thereby threatened, though the thief surely disrespects me by taking my property, by his unconcern for my interests, and the way his conduct affects them. If this, however, is the argument we deploy, then we need to explain just what it is about the violation of the state's duty to treat those subject to its coercive power with equal concern and respect that renders its wrongful treatment of them a threat to human dignity. We also need to explain what is behind the intuition that the failure to respect persons does not necessarily translate into a threat to self-worth.

In answer to the second question, let me venture the following: a person's sense of her worth-as-a-person need not suffer by the mere fact of a wrongful act against her; it does suffer when those who have a duty to treat her in a way that is consistent with her equal worth treat her in a way that is inconsistent with that worth. They have a duty to treat her in a way that is respectful of her status as an equal, they fail to do so, and so she is made to feel, not that they were wrong, but that she is not, in fact, worthy of such treatment. The person subjected to treatment that is dignity-threatening by the state in the course of the exercise of its coercive power is made to feel as if it is right that she is so treated. The state's act, unlike the Mafia's, carries at least the outward presumption of legitimacy. Thus the message sent to Silent is not just that she must be silenced, but that it is right that she be silenced.

If this is the tack we need to take to defend the distinction between the Mafia case and the Government threat case, then we are no longer claiming that the subjective threat to one's sense of self-worth follows analytically from treatment that is inconsistent with one's status as a person, but that it follows, more specifically, from treatment that is inconsistent with the peculiar duty of states to treat those under its control with equal concern and respect. Thus, the reasonableness of one's feelings of lack of self-worth depends not just on the wrong that one suffers, but on whether the wrong (reasonably) makes one feel less than human. The argument in sum is that insofar as the state (a) exercises coercive power; (b) has a duty to treat those subject to its power with equal concern and respect; and (c) its acts carry the presumption of legitimacy, its wrongful acts have the potential to threaten

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the sense of self-worth of those subject to them.

Consider yet another instance of the frustration of an interest in free speech: this time, both acts of silencing purport to be legitimate, but are nonetheless quite different in their dignity-threatening effects. Shouty is a member of the George W. Bush Fan Club. Unfortunately, she persistently criticises George W. and is consequently threatened with having her membership revoked should her vocal criticism at the club's meetings and dinners persist. The board of the George W. Bush Fan Club argues, perhaps sensibly, that her persistent criticism is inconsistent with her status as a 'fan', and thus warn her that expulsion will be the consequence of any future vitriol. Contrast this case, again, with that of Silent, who is threatened with the effective deprivation of her civic freedoms should she choose to speak.

Two facts seem relevant in making Silent's and not Shouty's threat a threat to her human dignity: first, in being expelled from the George W. Bush Fan Club, Shouty is not denied something to which she is entitled simply in virtue of being human; she is denied access to a particular way of being human. Insofar as citizenship is open to all persons who live within borders, not in virtue of anything they do, profess or believe, then it has a special, albeit imperfect, link with humanity: the duties the state owes to its citizens are duties it owes them as persons, regardless of their particular interests, talents, beliefs or capacities.⁴⁴ Thus, rejection from the state is, in some sense, a rejection from humanity, a denial of one's status as a human. Second, there are opportunities for Shouty to exercise her right to criticise George W. outside the George W. Bush Fan Club; there may be some cost to her being forced to leave the club in order to do so, but she is nonetheless able and permitted to speak out outside the club. Silent is faced with no such option; perhaps she can leave her state, but the costs are much greater.

The argument of this section can, then, be summarised as follows: persons' human dignity, in light of the special features and duties of states – (a) their exercise of coercive force; (b) the presumption of legitimacy; (c) their 'monopolistic' character; and (d) the duty of equal concern and respect they owe their citizens – is especially vulnerable to state threats. The argument does not support the conclusion that human rights can only be held against states, but it does explain why

some wrongs only constitute human rights violations when perpetuated by the state.

6. The Dignity Conception of Human Rights

I want, now, to sum up the argument of the previous sections, by providing a preliminary sketch of the dignity-based argument for the existence of a human right. It has three related premises:

1. X has an interest (I) qua human which is sufficient to ground a maximally stringent (i.e., non-trivial, not easily outweighable) duty (D) in another (Y).

The measure of the stringency of a right is, roughly, the amount of good that it takes to justify its infringement: the right to have promises made to one kept is less stringent than the right to be free from attacks on one's person. Y might permissibly breach the duty to keep a promise to meet X for a drink after work, if, say, Y's child were sick and required Y's attention. If, on the other hand, the only way for Y to return home to tend to her sick child were to injure X in some way, it is less clear that Y would be justified in doing so (though it might depend on how serious the injury to X was, and how sick Y's child was). Though I do not specify what is meant by the requirement that a right be maximally stringent, since I think that minimally stringent rights will be filtered out by the human dignity constraint, a familiar, though perhaps unhelpful, characterisation of maximally stringent rights is as those rights the infringement of which is only justified in order to prevent the violation of other, maximally stringent rights.⁴⁵

2. If Y failed to perform the duty (D), Y would wrong X.

This premise might seem superfluous: after all, how could Y fail to perform a maximally stringent duty she owes X and not thereby wrong X? Even if the claim is implicit in the first premise, it bears making explicit, because, as I argued above, it reminds us that we cannot make an argument for the existence of a right simply by reflecting on the importance of the interest at stake and the need for something to be done about it. The fact that X has a right depends on there being a Y who would wrong X, should Y fail to perform the duty D; the intelligibility of my right to freedom of expression is not simply grounded in the goodness of me speaking my mind, but the sense in which the state would wrong me were it to prohibit me from doing so.

3. Y's failure to perform the duty (D) threatens X's human dignity.

This premise follows the identification of an interest that grounds a maximally stringent duty in another, but this does not mean that dignity is a secondary concern in the argument from interest to human right. All the ordering is meant to suggest is that the 'dignity constraint' acts as a filter, limiting the class of human rights.

Conclusion

The theorists surveyed in this paper are unified in the aim of revaluing the currency of rights, while at the same time exposing as groundless the strategies used to exclude welfare rights from the class of valid human rights. I have tried both to provide a survey of the work being done in this area, and to raise doubts about three of the most prominent conceptions. Human rights, I argued, do seem to be peculiarly concerned with dignity and the status of persons, but they protect a number of interests, not just personhood values like autonomy and liberty. Once we accept that human rights may be grounded in a plurality of interests, how do we avoid the charge of profligacy? Though a tempting strategy, the complete answer cannot be to rely on the importance of the interest. Important interests (like the interest in expensive medical care, the interest in having a family, or the interest in being loved) are often not protected as human rights because of the burdensomeness or inappropriateness of counterpart duties. If we cannot rely on the importance of the interest, or on its being grounded in a particular kind of value to tell us whether an interest gives rise to a human right, we need another strategy. We won't find it by retreating wholeheartedly to formalism, however. The framework X has a universal human right, if (a) the right is held by all persons, (b) against all other persons, (c) in virtue of the kind of being X is, would lead to the inclusion of rights that do not fit easily into the catalogue: like promising rights, and truth-telling rights. In order to exclude these (and other similar rights) from the class of valid human rights, we have reason to insist that for a human right to have been violated, the violation has to constitute a threat to human dignity. We have further reason to believe that human dignity is especially vulnerable to state threats. A state need not, however, have caused a person's inability to meet her basic needs in order for it to have a duty to help alleviate them. The state wrongs the

agent, and threatens her dignity, by avoidably failing to help alleviate her suffering. Its indifference to her abject need is a human-rights violation so long as we understand its omission to harm the dignity of

the agent in a way that is inconsistent with the state's overarching duty to respect the dignity of its citizens and their status as beings of equal human worth.

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Endnotes

¹ For the purposes of this paper, I assume that a welfare right is a right to be guaranteed secure access to the means to realise a basic need; on my account, the most plausibly candidates for human welfare rights are rights to food, shelter and basic medical care.

² For the clearest expression of this concern see James Griffin, 'Discrepancies between the Best Philosophical Account of Human Rights and the International Law of Human Rights,' *Proceedings of the Aristotelian Society* (2001), 'First Steps in an Account of Human Rights,' *European Journal of Philosophy* 9 no. 3 (2001). See also James Nickel 'Poverty and Rights' *Philosophical Quarterly* 55, no. 220 (2005), Thomas Pogge, *World Poverty and Human Rights* (Oxford: Polity Press, 2002), John Tasioulas, 'Human Rights, Universality and the Values of Personhood,' *European Journal of Philosophy* 10, no. 1 (2002).

³ See, for example, Marc Bossuyt, 'La distinction juridique entre les droits civils et politiques et les droits économiques, sociaux et culturels,' *Revue des droits de l'homme* 8 (1975), 'International Human Rights Systems: Strengths and Weaknesses,' in *Human Rights in the Twenty-first Century: A Global Challenge*, ed. Kathleen E. Mahoney and Paul Mahoney (Dordrecht: Martinus Nijhoff, 1993), Cranston, 'Human Rights: Real and Supposed', Charles Fried, *Right and Wrong* (Cambridge, Mass.: Harvard University Press, 1978), Thomas Nagel, 'Equality,' in *Mortal Questions* (Cambridge: Cambridge University Press, 1979), Onora O'Neill, *Towards Justice and Virtue: A constructive account of practical reasoning* (Cambridge: Cambridge University Press, 1996), and L. W. Sumner, *The Moral Foundations of Rights* (Oxford: Clarendon Press, 1987).

⁴ Cranston, 'Human Rights Real and Supposed,' 52.

⁵ Sumner, *The Moral Foundations of Rights* 16-17.

⁶ See, for example, Alan Gewirth, *Human Rights: Essays on Justification and Applications* (Chicago: Chicago University Press, 1982).

⁷ 'If someone takes away your bread, he suppresses your freedom at the same time. But if someone takes away our (political) freedom, you may be sure that your bread is threatened...' Albert Camus, *Resistance, Rebellion and Death* (New York: Knopf, 1960) as quoted by welfare rights proponent Edward Broadbent in 'Social Justice and Citizenship: Dignity, Liberty and Welfare' *Governing Modern Societies* (Toronto: University of Toronto Press, 2000.)

⁸ See the works listed above in footnote 2; as well as Amartya Sen, 'Elements of a Theory of Human Rights,' *Philosophy & Public Affairs* 32, no. 4 (2004).

⁹ Griffin, 'Discrepancies Between the Best Philosophical Account of Human Rights and the International Law of Human Rights,' 25. See also James Griffin, 'Welfare Rights,' *Journal of Ethics* 4, no. 1 (2000) and 'First Steps in an Account of Human Rights,' *European Journal of Philosophy* 9, no. 3 (2001).

¹⁰ Kamm, 'Rights.'

¹¹ Nagel, 'Personal Rights and Public Space.'

¹² See Kamm, 'Rights,' 493: 'Inviolability is a status – a description of what it is not permissible to do to a person, and it does not depend on what happens to a person. Even if one is violated impermissibly, one does not lose one's inviolability.'

¹³ Griffin, 'First Steps in an Account of Human Rights,' 319.

¹⁴ *Ibid.*: 315.

¹⁵ *Ibid.* For earlier versions of Griffin's account where two further grounds – equality and privacy – feature see James Griffin, 'Towards a Substantive Theory of Rights,' in *Utility and Rights*, ed. R. G. Frey (Oxford: Basil Blackwell, 1984) and 'Rights,' in *Well-being* (Oxford: OUP, 1988).

¹⁶ Griffin, 'First Steps in an Account of Human Rights,' 317.

¹⁷ For an account of the relationship between a decent society, a dignified existence, and non-humiliating social institutions see Avishai Margalit, *The Decent Society* (Cambridge, Mass.: Harvard University Press, 1996) 229.

¹⁸ See Amartya Sen's discussion of Adam Smith's view in Amartya Sen, *Development as Freedom* (Oxford: OUP, 1999) 72-74. Note that Sen's focus is on explaining the importance of what would otherwise be considered trivial goods as necessary to participate in the life of the community; it seems nonetheless true that the reason we need them to participate in the life of the community is the 'shame' or 'humiliation' in not having them.

¹⁹ 'Poverty is not defined relative to income distribution, but to the *social* concept of the minimal conditions of existence.' [my emphasis] Margalit, *The Decent Society* 229.

²⁰ Griffin, 'First Steps in an Account of Human Rights,' 315.

²¹ This last objection was first put forward by Joseph Raz, then again by John Tasioulas. Griffin responds to it in a long footnote (n. 19) in *Ibid.*

²² See John Tasioulas, 'Human Rights, Universality and the Values of Personhood,' 86-88 and 'The Moral Reality of Human Rights,' in T. Pogge (ed.), *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor* (OUP: forthcoming, 2007).

²³ *Ibid.*

²⁴ *Ibid.*: 93.

²⁵ *Ibid.*: 94.

²⁶ *Ibid.*: 96.

²⁷ *Ibid.*: 97.

²⁸ *Ibid.*: 96.

²⁹ See the discussion in Michael Ignatieff, *The Needs of Strangers* (New York: Picador Press, 2001) 37-8.

³⁰ I leave open the possibility that when my *state* lies to me it violates my human rights. As I argue below, human rights protect persons from threats to their human dignity, and the state's involvement in perpetuating certain wrongs can make them dignity-threatening where they otherwise wouldn't be if perpetuated by my neighbour, say, or my student. This argument is further developed

in Part 5.

³¹ Pogge, *World Poverty and Human Rights* 67.

³² *Ibid.*: 64.

³³ I say the 'state' is responsible for upholding human rights, on the understanding that 'state' is shorthand for all members of the 'coercive institutional order': government officials, institutions, administrative bodies, and the people acting as a collective.

³⁴ Pogge, *World Poverty and Human Rights* 70.

³⁵ 'On my institutional understanding, [a human right to basic necessities] involves no duty on everyone to help supply such necessities to those who otherwise be without them. It rather involves a duty on citizens to ensure that any coercive social order they collectively impose upon each of themselves is one under which, insofar as reasonably possible, each has secure access to those necessities.' Pogge, *World Poverty and Human Rights* 67.

³⁶ Pogge, *World Poverty and Human Rights* 67.

³⁷ Thomas Pogge, 'Relational Conceptions of Justices: Responsibilities for Health Outcomes,' in *Health, Ethics and Equity*, eds. Fabienne Peter and Amartya Sen Sudhir Anand (Oxford: Clarendon Press, 2003), 19.

³⁸ *Ibid.*

³⁹ See 'The Moral Reality of Human Rights', in T. Pogge (ed.), *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor* (OUP: forthcoming, 2007).

⁴⁰ I am grateful to an anonymous referee, Kieran Oberman and Henry Shue for suggesting a number of them to me.

⁴¹ Pogge, *World Poverty and Human Rights*, 42.

⁴² As shorthand, I refer to this aspect of a person's human dignity as her 'self-worth' rather than her 'sense of her own worth-as-a-person'.

⁴³ This example is used (to illustrate a different point) in G A Cohen, 'Casting the First Stone: Who Can, and Who Can't, Blame the Terrorists?' (paper presented at All Souls College, Oxford, 2003).

⁴⁴ There may be exceptions to the universal scope of the duty on grounds of incapacity or punishment. See Dworkin, *Taking Rights Seriously* 94.

⁴⁵ This would seem to be the constraint on rights implied by Ronald Dworkin's famous characterisation of rights as trumps against the background political justification; thus X has a right to Y if the 'prospect of utilitarian gains' cannot serve as a grounds for infringing X's right. In his 'Reply to Critics', however, he implies that rights can be outweighed by considerations other than other rights, and that the measure of a right's 'importance' is how serious or urgent the collective justification must be: 'No alleged right is a right (on my account) unless it overrides at least a marginal case of a general collective justification...one right is more important than another if some especially dramatic or urgent collective justification, above that threshold, will defeat the latter but not the former.' (TRS, 366) See Dworkin, *Taking Rights Seriously* 190-3, 'Rights as Trumps.' For a comparable articulation of the priority human rights have over the 'ordinary goals and duties of the state' see David Copp, 'The Right to an Adequate Standard of Living: Justice, Autonomy and the Basic Needs,' *Social Philosophy and Policy* (1992).



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