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Human Rights, Basic Needs, and Scarcity

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The Responsibility to Protect Human Rights

There is now widespread agreement on the proposition that human rights should be understood so as to include not only freedoms of various kinds (so-called 'negative rights') but also rights that involve access to a range of resources that are essential to a decent human life (so-called 'positive rights', such as rights to food, shelter, and medical aid).¹ The agreement is not universal: some still hold to the older liberal or libertarian view that only freedoms whose existence requires mere restraint on the part of others can count as genuine rights. But the intuitive reason for including positive as well as negative rights in the catalogue of human rights is clear enough. If rights are there to protect vital human interests, what use is it to grant freedom of speech or religion to someone who is starving or dying of malaria? The negative-rights-only view seems to place some less essential interests ahead of others that are more essential.

This larger view of human rights faces a familiar problem, however. In many cases, resource scarcities may make it impossible to secure the alleged human rights of all concerned. Choices have to be made about how to ration a limited supply of food or of medicine, for example. When this happens, different people's rights apparently come into conflict, and it becomes difficult to define the obligations that supposedly correspond to them. Faced with this problem, there are broadly two ways in which we can move: we can try to narrow down the scope of the rights in such a way that the *prima facie* conflict is avoided; or we can leave the scope of the rights unchanged, and then find a way of dealing with the resulting conflicts that still leaves the rights in question looking like genuine rights – i.e. as having the kind of obligation-imposing moral force that we expect rights to have.

Underlying this dilemma is the idea that human rights are claims of justice that, if not having absolute weight *vis-à-vis* other kinds of moral value, at least have something close to this. Rights, in general, are not to be traded off against other values; they can be overridden only in extreme circumstances. But because they have this role in our ethical thinking, we are uncomfortable with the idea that conflicts – and therefore trade-offs – between rights themselves should become pervasive. There is of course no formal inconsistency in saying that rights can be traded off

against other rights, but not against values of other kinds. But then questions such as the following inevitably arise: if you are prepared to limit rights of free movement for the sake of rights to health (say in a case in which quarantine restrictions are imposed to prevent the spread of a communicable disease), why are you not also prepared to limit such rights for the sake of other important values (protecting a unique and irreplaceable ecosystem, for instance)? Even if we cannot avoid rights-conflicts altogether, we would like to have a conception of human rights according to which they are the exception rather than the norm.

Let me now introduce the general conception that I want to use before turning directly to the issue of scarcity. I believe that the best way to understand human rights is to ground them in a theory of basic human needs. As a first approximation, we have rights to whatever is required to meet our basic needs as human beings. The exact relationship between needs and rights is something to be discussed later, but first how are basic human needs to be defined? Needs, in the relevant sense, are those items or conditions that it is necessary for a person to have if she is to avoid being harmed. If this definition is to be of any practical use, we have to know what to count as harm. The easiest cases will be those where harm can be identified in physical or biological terms: a person is harmed when she suffers pain, or is paralysed, or has her life cut short, or contracts a disease that prevents her engaging in the normal range of human activities. These judgements rely on a standard that defines what it means to be a properly functioning human being, but the standard is not controversial (there may be controversy at the margins e.g. over what should be considered a normal human life span, but the central cases are sufficiently clear).

Physical-cum-biological conceptions of harm, although important, are not by themselves sufficient to generate needs that can ground an adequate set of human rights. Human beings are social as well as biological creatures, and they can be harmed by being denied the conditions of social existence. I shall capture this idea by saying that a person is harmed when she is unable to live a minimally decent life in the society to which she belongs.² A minimally decent life, I should stress at once, is something less than a flourishing life.

To live a flourishing life means being able to develop and exercise whichever capacities someone deems to be most important – there are many ways to flourish, and in general they cannot be combined, so a person must choose which form of human excellence she wants to achieve. The conditions for minimal decency, by contrast, are the same for everyone in a given set of social circumstances. Let me give some examples drawn from societies like my own. A person must be able to support herself without begging, that is have access to income sufficient to feed and clothe herself; she must have a secure home to go to; she must have the opportunity to marry and raise a family; she must be able to plan for the future, including her old age, without fearing that she will become destitute; she must be able to move around outside her immediate neighbourhood; she must be able to enter public places without fear of being abused and assaulted; and so forth. These conditions, and other like them, define a baseline that everyone should reach regardless of whether they are able to achieve higher forms of flourishing above it. Someone who only reached the baseline would have a pretty dull life. Nonetheless, unlike those who fell below it, he would not feel degraded, socially excluded, worthless etc.³

It should be evident that the decency conditions I have just itemised depend on social norms that we should expect to vary to some extent from place to place. Having a secure home is a condition of a decent life in societies like ours, but in nomadic societies, for instance, another norm would take its place. So if we allow needs to be defined in terms of standards of decency, it seems that they too will vary from place to place. Here we need to distinguish between two ways in which human needs might vary. In the first case, the underlying need remains unchanged, but the items or conditions needed to satisfy it vary from one place to the next. For instance there is a universal human need for health, but only in certain places will this entail a more concrete need for protection from malaria. Variation of this kind is not, I take it, problematic if we want to ground human rights in needs: we define the human right in terms of the underlying need, and recognize that what is required, concretely, to fulfil the right can be different in different societies.

The more problematic way for needs to vary occurs when the need itself is shaped by the social context

in which a person lives. In the example I gave above, shelter from the elements is a universal human need, while in some societies, but not others, this takes the form of a need for a fixed dwelling place – in societies like our own, a homeless person has unmet needs (and is harmed) even she is adequately sheltered from the elements. But can this socially relative need be used to ground a human right? To deal with this problem, I shall employ a distinction between basic needs and societal needs, where the former are to be understood as the conditions for a decent human life in any society, and the latter as the more expansive set of requirements for a decent life in the particular society to which a person belongs. Using this distinction, shelter from the elements would count as a basic need, whereas shelter in the form of having a fixed dwelling place would be a societal need in most societies in the contemporary world, but not in all. A person suffers harm if either her basic needs or her societal needs go unfulfilled, but it is basic needs that ground her human rights, whereas societal needs correspond to what we may call rights of citizenship – rights held by virtue of membership in a particular society, and held against the other members of that society rather than against humanity at large.

But is it possible to identify the conditions for a decent human life as such without referring surreptitiously to norms of decency that are in fact specific to one society, or a small range of societies, for instance those in the developed west? How might we go about doing this? We might begin by looking at each society in turn, and ask how its members define conditions for a decent life, and thereby define societal needs. Then we would establish what all these definitions have in common: which needs are recognized in every society, no matter what the particular cultural values of its members. We can call this the intersection approach to basic needs: basic needs are defined as the intersection of all sets of societal needs.

The trouble with this approach is that it makes the definition of basic need hostage to what in some cases may be ill-informed beliefs about the conditions for a decent life. This is especially so when what is at stake are the needs of women. Members of some communities, including female members, may believe that women can have a decent life in the absence of certain conditions – access to contraception, or the

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opportunity to take paid work, for instance – whereas it can be shown, empirically, that women who lack these things do not in general have adequate lives, even within the societies where the beliefs prevail.⁴ The intersection approach might not rule out even such barbaric practices as foot-binding or female circumcision if there turn out to be communities whose members believe that these practices do not compromise decency.

So we need to take a more objective approach, one that tries to determine what is actually necessary for people to lead decent lives in different cultural contexts, as opposed to what people in those cultures may believe is necessary. And here we must appeal to the fact that there are activities that humans engage in that are reiterated across contexts – activities such as working, playing, learning, raising families, and so forth – so that although the form the activity takes may vary from community to community, the activity itself can be described as universal. Let us refer to these as core human activities. Then we can say that a person has a decent life tout court when over the course of her life she is able to engage in each of the core activities, given the conditions prevailing in the society she belongs to. She is able to work, play, etc without having to bear unreasonable costs, and also without having to forgo some other core activity – so that a life would not count as decent if, say, the person in question had an opportunity to work, but only if she gave up the opportunity to raise a family. She may of course choose not to engage in one or more of the core activities, but her life is decent so long as she is able to avail herself of the opportunity if she wants.

Basic needs, then, are to be understood by reference to this idea of a decent human life. They are the conditions that must be met for a person to have a decent life given the environmental conditions he faces. The list of such needs will include (but not be exhausted by): food and water, clothing and shelter, physical security, health care, education, work and leisure, freedoms of movement, conscience and expression.⁵ Although we should generally expect societies to recognize these needs, and to incorporate them into their fuller conceptions of societal needs, this may not always be the case. As I have indicated, members of a particular society may fail to see that having X is in fact necessary for all members of that

society to lead a decent life. This could happen because of simple empirical error – a society might not recognize a certain bodily condition as generating a need for medical treatment – or because of cultural bias, as the example of a society that fails to recognize that women have a need for work, even though it was demonstrable that without work many women would remain malnourished, shows. A society might also simply set the decency standard too low as a result of adaptive beliefs: if average life expectancy is only 45 years, for example, people in that community may define need as whatever is necessary for the range of core activities but only up to that age. The idea of basic need is to that extent a critical concept, one that can be used to condemn prevailing social practices as well as to ground human rights and international obligations.

Basic needs appear to have the kind of moral urgency that we look for in a justification of human rights. What seems more problematic, however, is that the demands that may be generated by basic needs have in principle no upper limit. We take people one at a time and ask what is necessary for each of them to live a minimally decent life. We do not ask what implications satisfying the needs of one person may have for the position of others. In some cases the cost of satisfying needs may be very high indeed – indeed it may not be possible to satisfy some needs at all. The most obvious examples are cases of medical needs, where in the case of severely ill or disabled people meeting the conditions laid down above for a decent human life may impose enormous personal and financial costs on others. It seems, therefore, that there can be no direct path from basic needs to human rights. For human rights, precisely because they place others under obligations of justice to fulfil them, have to take account not only of the interest of the right-bearer but also of the interests of those whose behaviour would be constrained by the existence of the right. Theories of human rights characteristically attempt to do this by incorporating a practicality requirement into the existence conditions for a right. In James Griffin's influential account, for example, personhood and practicalities are presented as twin grounds for human rights.⁶ According to Griffin, the existence of a human right 'must depend, to some extent, upon its being an effective, socially manageable claim on others'.⁷ The

practicalities ground is not spelt out in any detail by Griffin, but the underlying thought is that grounding rights in personhood alone might allow the content of human rights to expand indefinitely. By appealing to practicalities we ensure that rights claims do not exceed what it is feasible for a particular society at a particular point in its development.

Can we say more here? I think we can distinguish several ways in which practical considerations having to do with what can reasonably be demanded from others may place limits on the derivation of rights from needs.

1. What is needed cannot be provided by human agency. Consider diseases for which there is at present no known cure, such as several forms of cancer. People who develop these cancers are likely to suffer severe pain and to die prematurely, so they clearly need a form of treatment that does not yet exist to live a minimally decent life; but it makes no sense to say that they have a right to this form of medical aid. Or to put it differently, their general right to medical treatment does not include, at present, a right to the specific treatment that would halt the cancer. Not only does no-one actually have an obligation to supply them with that treatment, but no-one could have such an obligation. Their right to health care may, however, ground a further obligation, namely an obligation on the part of governments to devote some portion of their medical research budgets to efforts to find a cure for cancers. This is an example of a phenomenon I shall return to later, where a need does not ground a right with the same scope, but rather a different right whose fulfilment might be expected to satisfy the need, in whole or in part.

2. What is needed cannot be demanded of other human agents.⁸ Some human needs can only be met through the unforced responses of others: needs for love and respect are the obvious examples. These may be important elements in a minimally decent life, but because love and respect only count as such if they are voluntarily bestowed on their objects, no-one can have an obligation to show love and respect to others,⁹ nor

can there be rights to be loved or respected. It is true, on the other hand, that needs such as these can be appealed to indirectly to ground rights. The right to marry, which is cited in the Universal Declaration (Article 16), can be justified as a human right partly on the ground that the institution of marriage provides a framework within which people can form relationships that are loving and respectful: it is neither a necessary nor a sufficient condition for these needs to be met, but it contributes positively to their fulfilment. Equally the right not to be subjected to cruel, inhuman or degrading treatment (Article 5) is justified in part by observing that such treatment violates the human need for respect. So basic needs play some role in grounding human rights such as these. But there is no simple one-to-one entailment between 'A has a basic need for X' and 'A has a human right to X' in these cases. Human rights are limited by the practical consideration that there are ways of responding to others, involving having certain attitudes towards them, that cannot be compelled and that cannot, therefore, be made obligatory.

3. Obliging others to provide what is needed would violate their own human rights. I am thinking here of cases in which the need is such that to meet it would place demands on others that they have the right to refuse, even though they might choose voluntarily to supply what is needed. Obvious examples are medical needs of certain kinds. A person whose kidneys or liver are failing has a basic need for an organ transplant (assuming they cannot live a decent life otherwise) but those whose organs might be used for this purpose have the right to refuse to donate them. This stems from the human right to bodily integrity: in order to live a decent life, we must have assurance that our bodies will not be used in significant ways without our consent, even for the benefit of others. Another case would be a person who requires round the clock specialist attention in order to survive. It might be possible to provide the relevant care by voluntary means, but if this proved not to be the case – there was no-one willing to devote their whole life to caring for this person – then the general right to personal freedom means that no-one can be obliged to meet such a need. It follows

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that there cannot be human rights that would include the right to be given bodily organs or the right to receive 24 hour specialist attention.

It is a feature of such cases that the need that goes unmet may in fact be a more urgent need than the need that grounds the conflicting right. The person who needs a liver or kidney transplant, I am assuming, will die if he does not get one, which makes his need as urgent as a need can be. People who donate one of their kidneys or a liver lobe quickly recover and can continue with their lives without significant loss of functioning. Compelling them to donate would not constitute a severe violation of their needs, understood as requirements for a minimally decent human life. So if the underlying principle was simply to maximise need-satisfaction, we would conclude that there was a human right to be given essential organs, and no human right to refuse to donate.¹⁰ But this is not the correct way to understand the relationship between needs and rights. Before a need can ground a right, we have to know that the proposed right would not impose obligations on others that would necessarily violate their own human rights. Candidate rights, in other words, have to pass not only a consistency test – A's having a certain right must be consistent with B, C, D etc having the same right – but also a compatibility test – A's having a certain right cannot impose obligations on B, C, D, etc that would require them to sacrifice some other independently justified right of theirs.¹¹

By way of criticism here, it might be said that such a test would rule out all positive rights to resources. For we can always envisage circumstances in which meeting one person's right to resources would mean requiring others to act in ways that violate their own rights. Consider the right to food, for instance. We can easily construct a case – philosophers are adept at doing this – in which A and B are stranded on a desert island, and B's need for food, which he cannot supply himself, can only be met by ceaseless labour on A's part. Requiring A to feed B would infringe A's right to personal freedom which (we can reasonably assume) includes some choice of how to direct his labour and some quantum of leisure time. So does it follow that B has no human right to food, and that because the possibility of such cases occurring, there cannot in general be a human right to food? The answer that I

want to give is that there is indeed a human right to food, and that B in the case described has that right, even though A is not obliged to fulfil it. This is because, in general, the right can be met without imposing rights-violating obligations on others. The human condition is such that enough food can be produced by the able-bodied, without excessive labour, to feed both themselves and those who are unable to produce. There is therefore no across-the-board incompatibility between asserting a human right to food and asserting a human right to freedom. Conflicts may arise in particular cases, such as the imaginary island case, but these do not generalise, in contrast to the position with the (proposed) right to be given bodily organs and the right to bodily integrity. How, then, should we deal with the island case? The correct answer is that B does indeed have a right to food, corresponding to which is an obligation on A to do what he can to supply that need, up to the point at which his own rights come into play. So he must be willing to contribute a reasonable amount of labour to support B, but is not required to work night and day for that purpose. Nor is he required to sacrifice food that is essential to meet his own needs in order to meet those of B.

4. Resource scarcities mean that not all needs of a certain kind can be fulfilled simultaneously. Under this heading I want to consider cases in which it is feasible to fulfil the needs of each person taken separately without imposing obligations on others that are either impossible to fulfil or that violate their own rights, but in which this cannot be done for all taken together. Familiar examples include famines in which only limited supplies of food are available and medical emergencies in which drugs or other resources are scarce relative to the needs of those at risk. The question, then, is whether in such cases we can properly speak of each person having a human right that their needs be satisfied. If we do say this, then it seems that we run immediately into pervasive conflicts between rights. If I cannot provide both A and B with enough food to satisfy their basic needs, then in choosing to respect A's right to food by feeding her, I must be violating B's right to food by refusing to feed him. On the other hand, if we say for that reason that neither A nor B can have rights to food in these circumstances, we appear to

have driven a very big wedge between basic needs and human rights.

How, then, should we think about human rights in such cases of scarcity? Let us explore the available options more carefully. Jeremy Waldron has offered the strongest defence I know of for the position that rights can continue to exist in the face of scarcity.¹² He points out, first, that although in the circumstances we are envisaging it is practically impossible to fulfil all rights simultaneously, it is nevertheless possible to fulfil each right taken separately. Asserting the existence of rights does not, therefore, entail saying that people have obligations to do what cannot be done. It is obviously true that agents in these circumstances have to choose which obligation will take precedence. But, and this is Waldron's second point, the moral conflict that ensues is created by the situation itself, not by the existence of rights. However we decide to describe the situation, we still have to choose between giving our limited quantum of food to A and giving it to B (or in the case Waldron describes between rescuing a drowning A and a drowning B).

I agree with Waldron that we should not attempt to define rights in such a way that conflict between them is impossible. We are quite familiar, in our everyday experience, with cases in which both rights and their corresponding obligations come into conflict: I promise to meet a friend at a certain time, but meanwhile a child falls ill and has to be taken to hospital. The child's right to health takes priority, but when I fulfil this right I do at the same time infringe my friend's right that I turn up at the appointed time (and so I owe her an apology). Conflicts of this kind arise unavoidably given the complexity and unpredictability of everyday life. But notice how different in kind the two rights are. It would make no sense to try to tailor the right to have promises kept in such a way as to avoid all conflicts with the many other rights that might, in principle, come into conflict with it. In contrast, if we say that in general situations of scarcity such as the famine case, each person has a right that their needs be met in full, then we seem to be opening the door directly to unavoidable and systematic conflicts of rights. Do we want to say in such cases that when we distribute our limited

supply of food in the morally best way, we are at the same time infringing a multitude of obligations to all those who get less than they need?¹³

The alternative, therefore, is to ask first what we are required to do, as a matter of justice, in circumstances of resource scarcity, and then to define people's rights in a way that is consistent with the answer we give. Suppose, to take a very simple case, that justice demands an equal distribution of limited food; then each person would have a right to an equal share of the available food, but not more than that, even though this meant that their basic needs were only partially satisfied. In this way we avoid any conflicts of rights and when we do what we are required to do there are no obligations that remain unfulfilled.

Attractive though this second alternative may appear at first glance, it also has some disadvantages. One problem is that in circumstances of scarcity, there can be reasonable disagreement about what justice demands. Consider the following three principles for distributing a limited resource when there is not sufficient available to meet the needs of all those who have a legitimate claim on the resource:

- a) Give priority to those whose needs are greatest – i.e. distribute the resource in such a way as raise the position of the neediest people to the point when they are no longer the neediest and continue in the same way from there.
- b) Distribute resources in whatever way reduces overall need to the greatest possible extent.
- c) Distribute resources in such a way as to equalise, as far as possible, the extent to which people remain in need after the distribution.

None of these principles is self-evidently the right principle to follow whatever the circumstances.¹⁴ Principle a) might require us to direct all of our limited resource to those whose needs were severe but whose condition could only be improved a little by our intervention – for example the very sick, in a medical case. This may not seem fair to those who are less severely in need but who could be helped much more. The practice of triage, where priority is given not to the very worst cases but to a middle group who

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can be restored to something close to full functioning by providing a moderate amount of medical aid, illustrates this point. Not everyone would agree that triage is just, but there is certainly a case to be made in its favour as a reasonable way of responding to some situations of scarcity. Principle b) takes this line of argument further by claiming that what justice requires in the face of scarcity is to use our resources in the most efficient way we can, to relieve as many needs as possible. But this takes no account of what Rawls famously called 'the separateness of persons'; it allows us to discount entirely the claims of those whose needs prove to be harder to satisfy. Principle c) tells us to look directly at the comparative level of deprivation suffered by different people, in line with the more general idea that justice is concerned with comparative rather than absolute outcomes, but this too may produce unacceptable results in certain cases. It may, for instance, instruct us to withhold resources altogether when there is no way of distributing them that will lead to greater equality of outcome than exists under the status quo. But given that this leaves people still in need, it looks like an objectionable case of levelling down.

My purpose here is not to try to establish which principle of justice we should use to govern the distribution of resources under scarcity, but to indicate the problem of appealing to justice to settle what human rights people have under these circumstances. Initially it seemed appealing to say that people each have a right to a just share of resources, and not more than that, as a way of avoiding conflicts of rights. But now we see that discovering what distributive justice requires here may be a complex matter over which people may reasonably disagree. Human rights, by contrast, are supposed to set minimum standards of treatment for human beings that are uncontestable – as I have argued, the requirements of a minimally decent life for human beings in any society can be established objectively, in principle anyway. To limit human rights by reference to controversial principles of distributive justice therefore seems a mistake.

There is a further reason to doubt the second alternative I am considering. The purpose of human rights is not simply to guide the behaviour of those who have to deal directly with people whose human

needs are not being met. They can also be used to set targets for governments, international organisations, etc. From this perspective, it may be important to state that scarcity itself may constitute a human rights violation where it can be prevented by human agency. A government, in other words, infringes human rights not only when it fails to ensure that food is properly distributed in the course of a famine, but also when it fails to take steps to prevent the famine from occurring in the first place, by, for example, stockpiling essential foodstuffs. For this we need a conception of human rights that is not sensitive to the quantity of resources available to a society at any given moment but is based directly on human needs understood as requirements for a minimally decent life.

This point picks up Waldron's observation that it can be misleading to think of human rights as corresponding one-to-one with human obligations, in the way that your right to the thing I have promised you corresponds to my obligation to deliver that thing. Typically, Waldron argues, a human right will bring with it 'successive waves of duty' – the primary duty not to violate the right directly being followed by various duties to ensure that the right is not infringed in indirect ways.¹⁵ Thus corresponding to the right to food is first the duty not to snatch food out of the mouth of the starving person, and then various duties to ensure that the conditions that lead to starvation in the first place do not materialise. Even in cases where because of scarcity we cannot meet our direct obligation to protect A's right, we can still act on background duties that make it more likely that that right will be fulfilled in time.¹⁶

Let me take stock of the argument I have been developing. I have claimed that human rights are best understood and justified through the idea of basic needs common to all human beings. But not all needs can ground rights directly. Some needs may be impossible to fulfil at any given historical moment. Others may be such that it cannot be obligatory to fulfil them – needs for love and respect, for example. In the case of yet others, requiring A to meet B's need would amount to a violation of A's human rights, grounded in his needs. All of this goes to show why Griffin was right to impose a practicalities ground for the existence of a human right alongside what he calls a personhood ground. Human rights must

not only represent morally urgent aspects of human life, they must also meet certain conditions of feasibility. But we should be wary of concluding that scarcity alone – meaning simply the lack of sufficient resources to meet all needs – is a reason for limiting human rights. We could perhaps imagine a case in which scarcity was simply a natural fact – suppose healthy human bodies required a certain quantity of a chemical element and there was as it happened not enough of that element anywhere on Earth to meet everyone’s requirement. But unless the human population continues to grow indefinitely at something like its present rate, such examples are purely imaginary. The scarcity that we actually encounter when we are considering how to define human rights such as those to food, shelter and medical care is contingent scarcity, in the sense that it results from a combination of natural facts and human arrangements (for instance the economic policies pursued by governments). Scarcity may of course be very difficult to surmount, in the short term. But human rights, while being something less than a full-blown social ideal, are meant to set a target for states and international bodies to aim at.

I am therefore somewhat suspicious when under the heading of ‘practicalities’ Griffin wants to include ‘the local conditions of a particular society’, which seems to imply that if the local conditions in society S at time T are not such as to enable a particular candidate human right – to adequate nutrition, say – to be universally or widely fulfilled, then this should not count as a human right (the right would be to whatever level of nutrition could be provided in S at T). I think this sets the bar too low. There may be understandable reasons why food is scarce in S; given those reasons it may be wrong to hold the government of S responsible for its failure to protect the human right to food. If we think of human rights as setting standards whose breach imposes quasi-criminal liability on the agents responsible, this will be a problem. But is this how we should think of human rights, as a general matter? It may fit some cases – rights not to be tortured, imprisoned without trial, etc. – but in many others the purpose of human rights is to set targets and to generate duties of a rather general

kind as described earlier. And we surely do think that not only the government of S but also foreign governments and international bodies have an urgent reason to do something about malnutrition in S, an urgency best captured by using the language of human rights.

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Footnotes

¹ Here I follow my earlier analysis in *Principles of Social Justice* (Cambridge, Mass.: Harvard University Press, 1999), ch. 10.

² Does invoking the idea of a minimally decent life help us in explaining needs here? After all one could turn the equation round and say that a minimally decent life is a life in which a person's essential needs are fulfilled. The reference to a minimally decent life illuminates needs because it draws attention to the fact that the needs in question are not the needs of a person considered as a biological creature in isolation from others, as the needs for food and water are. They are the needs of a person who belongs to a community and who views her life through the lens of that community. If she cannot support herself or appear in public without shame, she will be regarded by others as an outsider, and she will very likely see herself in the same light. These needs are needs only because the person in question has internalised the norms of her community, and will lose self-respect if she fails to meet them. Thinking about what it means to lead a minimally decent life brings out this social-psychological aspect of many human needs.

³ One should not, however, conclude too quickly that women go along with dominant male views about what their needs are. See the powerful argument advanced by Martha Nussbaum in *Women and Human Development* (Cambridge: Cambridge University Press, 2000) that poor women in India have learned to value the capabilities that Nussbaum takes as central to an adequate human life.

⁴ For a rather similar account of basic human rights as grounded in the conditions for a minimally decent life, see J. Nickel, 'Poverty and Rights', *Philosophical Quarterly*, 55 (2005), 385-402.

⁵ J. Griffin, 'First Steps in an Account of Human Rights', *European Journal of Philosophy*, 9 (2001), 306-27; J. Griffin, 'Discrepancies Between the Best Philosophical Account of Human Rights and the International Law of Human Rights', *Proceedings of the Aristotelian Society*, 102 (2001-2), 1-28.

⁶ Griffin, 'First Steps', p. 315.

⁷ I am indebted here to Barbara Schmitz's unpublished paper 'How to Derive Rights from Needs'.

⁸ This is true at least of certain forms of respect. For example, one respects others by taking their opinions seriously, but this is not something that one can be obliged to do, since ought implies can.

⁹ For a powerful exploration of the obligation to give bodily organs to those who cannot live decently without them, and its limits, see C. Fabre, *Whose Body is it Anyway? Justice and the Integrity of the Person* (Oxford: Clarendon Press, 2006), chs. 4-5.

¹⁰ How is this compatibility test to be applied? If we have two candidate rights that are incompatible, X and Y, how do we decide which candidate is to be awarded human rights status and which is to be rejected? I think this question has to be answered by looking globally at the full set of human rights. That is, we begin with the underlying idea of a decent human life and the conditions required to support it, and ask which set of rights will best provide those conditions – a set that includes X or a set that includes Y? This way of applying the test is meant to capture the idea that the value of a right is not just the direct value it may have in itself, but its indirect value in supporting other rights (or disvalue in interfering with them).

¹¹ J. Waldron, 'Rights in Conflict' in J. Waldron, *Liberal Rights* (Cambridge: Cambridge University Press, 1993).

¹² Katherine Eddy has pressed this line of argument against Waldron, pointing out that the consequence of allowing conflicts of rights to escalate is that the special, decisive force of rights-claims and their corresponding duties is in danger of being lost. See K. Eddy, 'Welfare Rights and Conflicts of Rights', *Res Publica*, 12 (2006), esp. pp. 343-4.

¹³ This paragraph draws upon my longer discussion in *Principles of Social Justice*, ch. 10.

¹⁴ Waldron, 'Liberal Rights', sections IV-V.

¹⁵ I therefore disagree with Onora O'Neill's claim that human rights must either require identifiable agents who bear obligations that correspond directly to the rights in question (in which case they are indeed genuine rights) or else they must reduce to mere 'aspirations'. See e.g. O. O'Neill, 'The Dark Side of Human Rights', *International Affairs*, 81 (2005), 427-39.



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