

THE BASIS AND CONTENT OF HUMAN RIGHTS*

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Despite the great practical importance of the idea of human rights, some of the most basic questions about them have not yet received adequate answers. We may assume, as true by definition, that human rights are rights which all persons have simply insofar as they are human. But are there any such rights? How, if at all, do we know that there are? What is their scope or content, and how are they related to one another? Are any of them absolute, or may each of them be overridden in certain circumstances?

I.

These questions are primarily substantive or criterial rather than logical or conceptual. Recent moral philosophers, following on the work of legal thinkers,¹ have done much to clarify the concept of a right, but they have devoted considerably less attention to substantive arguments which try to prove or justify that persons have rights other than those grounded in positive law. Such arguments would indicate the criteria for there being human rights, including their scope or content, and would undertake to show why these criteria are correct or justified.

The conceptual and the substantive questions are, of course, related, but still they are distinct. If, for example, we know that for one person A to have a right to something X is for A to be entitled to X and also for some other person or persons to have a correlative duty to provide X for A as his due or to assist A's having X or at least to refrain from interfering with A's having X, still this does not tell us whether or why A is entitled to X and hence whether or why the other person or persons have such a correlative duty to A. Appeal to positive recognition is obviously insufficient for answering these substantive questions. The answer is not given, for example, by pointing out that many governments have signed the United Nations Universal Declaration of Human Rights of 1948 as well as later covenants. For if the existence or having of human rights de-

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¹ See W.N. HOHFELD, *FUNDAMENTAL LEGAL CONCEPTIONS AS APPLIED IN JUDICIAL REASONING, AND OTHER ESSAYS* (1919); J. SALMOND, *JURISPRUDENCE* 229-67 (10th ed. 1947).

pending on such recognition, it would follow that there were no human rights prior to or independent of these positive enactments.

The questions, "Are there any human rights?" or "Do persons have any human rights?" may indeed be interpreted as asking whether the rights receive positive recognition and legal enforcement. But in the sense in which it is held that humans have rights (so that such rights exist) even if they are not enforced, the existence in question is normative: it refers to what entitlements legal enactments and social regulations ought to recognize, not or not only to what they in fact recognize. Thus the criterion for answering the question must be not legal or conventional but moral. For human rights to exist is for there to be valid moral criteria or principles which justify that all humans, qua humans, have the rights and hence also the correlative duties. Human rights are rights or entitlements that every human person morally ought to have; thus they are universal moral rights. There may, of course, be other moral rights as well, but only those which morally ought to be universally distributed among all humans are human rights.

This answer, however, seems to get us into more rather than less difficulty. In order to ascertain whether there are legal rights we need only look to the statute books; these, for present purposes, may be held to supply the criteria for the existence of such rights. But if for a moral or human right to exist is for it to satisfy valid moral criteria which justify or ground the right, where do we look for such criteria? What is the moral analogue of the statute books? If there were a single set of universally accepted moral criteria, our task might be somewhat easier, although even in this case we should still have to take account of the distinction indicated above between positive social recognition and moral validity.

In fact, however, the field of moral criteria is full of controversy: consider the competing substantive views epitomized by such thinkers as Kant, Kierkegaard, Nietzsche, Mill, and Marx, who hold, respectively, that the criteria for having rights consist in or are determined by reason, religion, power, utility, and economic class or history. The disagreements among these thinkers do not represent merely different "second-order" analyses of a commonly accepted body of "first-order" moral judgements, in the way philosophers may differ about the analysis of knowledge while recognizing (except for some borderline cases) a commonly accepted body of knowledge. In contrast to these, the divergences among the above moral philosophers are disagreements of basic substantive first-order moral principle about what rights persons have, about how

persons ought to regard and act toward one another, about what interests of which persons are worth pursuing and supporting, and the like. And there is also considerable evidence that many contemporaries, both philosophers and non-philosophers, would share (although perhaps less systematically) one or another of such divergent moral principles.

Nor does the difficulty end there. For in many fields of empirical science and of practice where the "authorities" or ordinary persons disagree, we have some common conception at least of the context or subject-matter to which one must look as a kind of independent variable for testing their divergent assertions. Examples of these subject-matters are natural or experimental phenomena in the case of natural science, physical health in the case of medicine, rates of inflation or unemployment in the case of economics. But it seems that the very context or subject-matter to which one should look to resolve the disagreements of moral principle is itself involved in such disagreements. Obviously we should already be taking sides on this issue of moral principle if we were to urge that religion or economic history or social utility or aesthetic sensibility be appealed to as the independent variable for this purpose. Although Thomas Jefferson, following a long tradition, wrote that "all men . . . are endowed by their Creator with certain inalienable rights," it does not seem true to say that persons are born having rights in the sense in which they are born having legs. At least their having legs is empirically confirmable, but this is not the case with their having rights. And while it is indeed possible to confirm empirically, although in a more complex way, that most persons are born having certain *legal* rights, this, as we have seen, is not sufficient to establish that they have *moral* or *human* rights.

These general difficulties about moral criteria are reinforced when we look at recent attempts of moral philosophers to answer the substantive questions of what are the specific criteria for having moral rights and how it can be known that humans have such rights. For even where the philosophers agree at least in part on the scope or content of the rights, they disagree as to how the existence of these rights can be established or justified. We may distinguish five different recent answers. The intuitionist answer that humans' possession of certain inalienable rights is self-evident, most famously expressed in the Declaration of Independence, is reiterated in Nozick's peremptory assertion that "Individuals have rights, and there are things no person or group may do to them (without violating

their rights).”² Like other intuitionist positions, this one is impotent in the face of conflicting intuitions. The institutionalist answer that rights arise from transactions grounded in formal or informal rules of institutions, such as promising,³ incurs the difficulty that there may be morally wrong institutions, so that an independent moral justification must still be given for the institutional or transactional rules which are held to ground the rights. A third answer is that persons have rights because they have interests.⁴ This, however, indicates at most a necessary condition for having rights, since there would be an enormous and indeed unmanageable proliferation of rights if the having any interest X were sufficient to generate a right to X. Even if “interests” are restricted to basic or primary interests or needs, there still remain both the logical question of how a normative conclusion about rights can be derived from factual premises about empirically ascertainable characteristics such as the having of interests, and also the substantive question of why moral rights are generated by characteristics that all humans have in common rather than by more restrictive, inegalitarian characteristics that pertain only to some persons, or to persons in varying degrees, such as expert knowledge or rationality or will to power or productive ability.

The fourth answer, that persons have moral rights because they have intrinsic worth or dignity or are ends in themselves or children of God,⁵ may be held simply to reduplicate the doctrine to be justified. Such characterizations are directly or ultimately normative, and if one is doubtful about whether persons have moral rights one will be equally doubtful about the characterizations that were invoked to justify it. The fifth answer is Rawls’s doctrine that if persons were to choose the constitutional structure of their society from behind a veil of ignorance of all their particular qualities, they would provide that each person must have certain basic rights.⁶ Insofar, however, as this doctrine is viewed as giving a justificatory answer to the question of whether humans have equal moral rights, it may be convicted of circularity. For the argument attains its

² R. NOZICK, *ANARCHY, STATE AND UTOPIA* ix (1947).

³ Hart, *Are There Any Natural Rights?*, 64 *PHIL. REV.* 175 (1955).

⁴ McCloskey, *Rights*, 15 *PHIL. Q.* 115, 126 (1965). Elsewhere, McCloskey holds that persons have a prima facie right to the satisfaction of needs: McCloskey, *Human Needs, Rights and Political Values*, 13 *AM. PHIL. Q.* 1, 9-10 (1976).

⁵ See J. MARITAIN, *THE RIGHTS OF MAN AND NATURAL LAW* (1943).

⁶ J. RAWLS, *A THEORY OF JUSTICE* chs. 2-3 (1971).

egalitarian conclusion only by putting into its premises the egalitarianism of persons' universal equal ignorance of all their particular qualities. This ignorance has no independent rational justification, since humans are not in fact ignorant of all their particular qualities. Hence, apart from an initial egalitarian moral outlook, why should any actual rational informed persons accept the principle about equal moral rights that stems from such ignorance?

It may be objected that all the above difficulties about moral or human rights arise because I have taken too "cognitive" or "ontological" a view of them. Thus it may be held that moral rights are not something known or existent; the correct analysis of a rights-judgment is not "descriptive" but rather "prescriptive" or of some other noncognitivist sort. Rights-judgments are claims or demands made on other persons; they do not state that certain knowable facts exist; rather, they advocate, urge, or exhort that certain facts be brought into existence. Hence, questions of justification or validity are logically irrelevant to such judgments.

Now the prescriptivist interpretation of rights-judgments is partly true, but this does not remove the point of the justificatory questions I have asked. For one thing, as we have seen, different persons may make conflicting right-claims, so that the question still remains which of these claims is correct. Moreover, ascriptions of correctness or justification are intrinsic to rights-judgments: these consist not only in certain claims or demands but also in the implicit view, on the part of the persons who make them, that the claims have sound reasons in their support. If this were not so, discussion or debate about rights would consist only in vocal ejaculations or attempts at propagandistic manipulation; it would not have even potentially the aspects of rational argument or reflective appraisal which it in fact can and does display. In addition, the logical connections that hold among rights-judgments would be obscured or even left unexplained if the ejaculatory or manipulative interpretation were the sole or the main correct analysis of such judgments.

II.

Let us now begin to develop answers to the above questions about human rights. First, since these rights derive from a valid moral criterion or principle, we must consider what I have referred to as the context or subject-matter of morality. We saw that although in many other fields their subject-matters serve as independent variables for testing the correctness of conflicting judgments made within

them, it was difficult to find such a non-question-begging subject-matter for morality. Nevertheless, it does exist and can be found. To see what it is, we must consider the general concept of a morality. I have so far been using the words "moral" and "morality" without defining them. Amid the various divergent moralities with their conflicting substantive and distributive criteria, a certain core meaning may be elicited. According to this, a morality is a set of categorically obligatory requirements for action that are addressed at least in part to every actual or prospective agent, and that are intended to further the interests, especially the most important interests, of persons or recipients other than or in addition to the agent or the speaker.

As we have seen, moralities differ with regard to what interests of which persons they view as important and deserving of support. But amid these differences, all moralities have it in common that they are concerned with actions. For all moral judgments, including right-claims, consist directly or indirectly in precepts about how persons ought to act toward one another. The specific contents of these judgments, of course, vary widely and often conflict with one another. But despite these variations and conflicts, they have in common the context of the human actions which they variously prescribe or prohibit and hence view as right or wrong. It is thus this context which constitutes the general subject-matter of all morality.

How does the consideration of human action serve to ground or justify the ascription and content of human rights? To answer this question, let us return to the connection indicated above between rights and claims. Rights may be had even when they are not claimed, and claims are also not in general sufficient to establish or justify that their objects are rights. As against such an assertoric approach to the connection between claims and rights, I shall follow a dialectically necessary approach. Even if persons' having rights cannot be logically inferred in general from the fact that they make certain claims, it is possible and indeed logically necessary to infer, from the fact that certain objects are the proximate necessary conditions of human action, that all rational agents logically must hold or claim, at least implicitly, that they have rights to such objects. Although what is thus directly inferred is a statement not about persons' rights but about their implicitly claiming to have them, this provides a sufficient criterion for the existence of human rights, because the claim logically must be made or accepted by every rational human agent on his own behalf, so that it holds universally

within the context of action, which is the context within which all moral rights ultimately have application. The argument is dialectically necessary in that it proceeds from what all agents logically must claim or accept, on pain of contradiction. To see how this is so, we must briefly consider certain central aspects of action. Since I have presented the argument in some detail elsewhere,⁷ I shall here confine myself to outlining the main points.

As we have seen, all moral precepts, regardless of their varying specific contents, are concerned directly or indirectly with how persons ought to act. This is also true of most if not all other practical precepts. Insofar as actions are the possible objects of any such precepts, they are performed by purposive agents. Now every agent regards his purposes as good according to whatever criteria (not necessarily moral ones) are involved in his acting to fulfill them. This is shown, for example, by the endeavor or at least intention with which each agent approaches the achieving of his purposes. Hence, a fortiori, he also, as rational, regards as necessary goods the proximate general necessary conditions of his acting to achieve his purposes. For without these conditions he either would not be able to act for any purposes or goods at all or at least would not be able to act with any chance of succeeding in his purposes. These necessary conditions of his action and successful action are freedom and well-being, where freedom consists in controlling one's behavior by one's unforced choice while having knowledge of relevant circumstances, and well-being consists in having the other substantive general abilities and conditions required for agency. The components of such well-being fall into a hierarchy of three kinds of goods: basic, nonsubtractive, and additive. These will be analyzed more fully below.

In saying that every rational agent regards his freedom and well-being as necessary goods, I am primarily making not a phenomenological descriptive point about the conscious thought-processes of agents, but rather a dialectically necessary point about what is logically involved in the structure of action. Since agents act for purposes they regard as worth pursuing—for otherwise they would not control their behavior by their unforced choice with a view to achieving their purposes—they must, insofar as they are rational, also regard the necessary conditions of such pursuit as necessary goods. Just as the basic goods are generically the same for all agents,

⁷ See A. GEWIRTH, *REASON AND MORALITY* ch. 2 (1978).

so too are the nonsubtractive and additive goods. I shall call freedom and well-being the *generic features* of action, since they characterize all action or at least all successful action in the respect in which action has been delimited above.

It is from the consideration of freedom and well-being as the necessary goods of action that the ascription and contents of human rights follow. The main point is that with certain qualifications to be indicated below, there is a logical connection between necessary goods and rights. Just as we saw before that from "X is an interest of some person A" it cannot be logically inferred that "A has a right to X," so too this cannot be logically inferred from "X is a good of A" or from "X seems good to A." In all these cases the antecedent is too contingent and variable to ground an ascription of rights. The reason for this is that rights involve *normative necessity*. One way to see this is through the correlativity of rights and strict "oughts" or duties. The judgment "A has a right to X" both entails and is entailed by, "All other persons ought at least to refrain from interfering with A's having (or doing) X," where this "ought" includes the idea of something due or owed to A. Under certain circumstances, including those where the subject or right-holder A is unable to have X by his own efforts, the rights-judgment also entails and is entailed by, "Other persons ought to assist A to have X," where again the "ought" includes the idea of something due or owed to A. Now these strict "oughts" involve normative necessity; they state what, as of right, other persons *must* do. Such necessity is also involved in the frequently noted use of "due" and "entitlement" as synonyms or at least as components of the substantive use of "right." A person's rights are what belong to him as his due, what he is entitled to, hence what he can rightly demand of others. In all these expressions the idea of normative necessity is central.

This necessity is an essential component in the ascription of rights, but it is not sufficient to ground this ascription logically. Let us recur to freedom and well-being as the necessary goods of action. From "X is a necessary good for A" does it logically follow that "A has a right to X"? To understand this question correctly, we must keep in mind that "necessary good" is here used in a rational and invariant sense. It does not refer to the possibly idiosyncratic and unfounded desires of different protagonists, as when someone asserts, "I must have a Florida vacation (or a ten-speed bicycle); it is a necessary good for me." Rather, "necessary good" is here confined to the truly grounded requirements of agency; hence, it correctly

characterizes the indispensable conditions that all agents must accept as needed for their actions.

Now it might be argued that when "necessary good" is understood in this universal and rational way, from "X is a necessary good for A" it does follow that "A has a right to X." For since the idea of a right involves normative necessity, "A has a right to X" is entailed by "It is normatively necessary that A have X," and this seems equivalent to, "X is a necessary good for A." There are three interrelated considerations, however, which show that "X is a necessary good for A" is not sufficient to provide the logical ground for "A has a right to X" as a matter of logical necessity. First, as we have seen, "A has a right to X" entails that other persons, B, C, and so forth, have correlative duties toward A. But how can these duties of other persons be logically derived from "X is a necessary good for A," which refers only to A, not to other persons?

Second, it must be kept in mind that rights involve not only "oughts" or normative necessity but also the idea of entitlement, of something due to the rightholder. There is logical correlativity between "A has a right to X," on the one hand, and "Other persons ought to refrain from interfering with A's having X and ought also, under certain circumstances, to assist A to have X," on the other, only when these "oughts" are viewed as indicating what A is entitled to or ought to have as his due. But in "X is a necessary good for A" this idea of A's entitlement to X, of its being due or owed to him, is not found. Hence, it cannot serve to generate logically the conclusion, "A has a right to X."

A third consideration which shows this is that, as we saw above, a rights-judgment is prescriptive: it advocates or endorses that the subject or right-holder A have the X which is the object of the right. But such advocacy need not be present in "X is a necessary good for A." For this statement, as such, does not necessarily carry with it any advocacy or endorsement on A's behalf by the person who makes the statement, even while he recognizes its truth. Hence, again, "X is a necessary good for A" is not sufficient to logically generate or entail "A has a right to X."

What these considerations indicate is that for the concept of necessary goods logically to generate the concept of rights, both concepts must figure in judgments made by the agent or right-holder himself in accordance with the dialectically necessary method. It will be recalled that this method begins from statements or judgments that are necessarily made or accepted by protagonists or

agents, and the method then traces what these statements or judgments logically imply. Thus, in the present context of action, the method requires that the judgments about necessary goods and rights be viewed as being made by the agent himself from within his own internal, conative standpoint in purposive agency.

When this internal, conative view is taken, the logical gaps indicated above between judgments about necessary goods and ascriptions of rights are closed. The agent is now envisaged as saying, "My freedom and well-being are necessary goods." From this there does logically follow his further judgment, "I have rights to freedom and well-being." For the assertion about necessary goods is now not a mere factual means-end statement; on the contrary, because it is made by the agent himself from within his own conative standpoint in purposive agency, it carries his advocacy or endorsement. In effect, he is saying, "I must have freedom and well-being in order to pursue by my actions any of the purposes I want and intend to pursue." Thus his statement is prescriptive.

By the same token, his statement carries the idea of something that is his due, to which he is entitled. It must be kept in mind that these concepts do not have only moral or legal criteria; they may be used with many different kinds of criteria, including intellectual, aesthetic, and prudential ones. In the present context the agent's criterion is prudential: the entitlement he claims to freedom and well-being is grounded in his own needs as an agent who wants to pursue his purposes. He is saying that he has rights to freedom and well-being because these goods are due to him from within his own standpoint as a prospective purposive agent, since he needs these goods in order to act either at all or with the general possibility of success.

This consideration also shows how, from the agent's judgment "My freedom and well-being are necessary goods," there also logically follows a claim on his part against other persons. For he is saying that because he must have freedom and well-being in order to act, he must have whatever further conditions are required for his fulfilling these needs; and these further conditions include especially that other persons at least refrain from interfering with his having freedom and well-being. Thus the agent's assertion of his necessary needs of agency entails a claim on his part to the non-interference of other persons and also, in certain circumstances, to their help.

There may be further objections against the derivation of the

agent's right-claims from his judgment about necessary goods; I have dealt with these elsewhere.⁸ What I have tried to show is that every agent must claim or accept, at least implicitly, that he has rights to freedom and well-being, because of the logical connection between rights and necessary goods as involving normative necessity, prescriptiveness, and entitlements when these are viewed from the internal, conative standpoint of the agent himself who makes or accepts the respective judgments. The argument may be summed up by saying that if any agent denies that he has rights to freedom and well-being, he can be shown to contradict himself. For, as we have seen, he must accept (1) "My freedom and well-being are necessary goods." Hence, the agent must also accept (2) "I, as an actual or prospective agent, must have freedom and well-being," and hence also (3) "All other persons must at least refrain from removing or interfering with my freedom and well-being." For if other persons remove or interfere with these, then he will not have what he has said he must have in order to be an agent. Now suppose the agent denies (4) "I have rights to freedom and well-being." Then he must also deny (5) "All other persons ought at least to refrain from removing or interfering with my freedom and well-being." By denying (5) he must accept (6) "It is not the case that all other persons ought at least to refrain from removing or interfering with my freedom and well-being," and hence he must also accept (7) "Other persons may (are permitted to) remove or interfere with my freedom and well-being." But (7) contradicts (3). Since, as we have seen, every agent must accept (3), he cannot consistently accept (7). Since (7) is entailed by the denial of (4), "I have rights to freedom and well-being," it follows that any agent who denies that he has rights to freedom and well-being contradicts himself.

III.

Thus far I have shown that rights and right-claims are necessarily connected with action, in that every agent, on pain of self-contradiction, must hold or accept that he has rights to the necessary conditions of action. I shall henceforth call these *generic rights*, since freedom and well-being are the generic features of action. As so far presented, however, they are only prudential rights but not yet moral ones, since their criterion, as we have seen, is the agent's pursuit of his own purposes. In order to establish that they are also

⁸ A. GEWIRTH, *supra* note 7, at 82-103.

moral and human rights, we must show that each agent must admit that all other humans also have these rights. For in this way the agent will be committed to take favorable account of the purposes or interests of other persons besides himself. Let us see why he must take this further step.

This involves the question of the ground or sufficient reason or sufficient condition on the basis of which any agent must hold that he has the generic rights. Now this ground is not subject to his optional or variable decisions. There is one, and only one, ground that every agent logically must accept as the sufficient justifying condition for his having the generic rights, namely, that he is a prospective agent who has purposes he wants to fulfill. Suppose some agent A were to hold that he has these rights only for some more restrictive necessary and sufficient reason R. This would entail that in lacking R he would lack the generic rights. But if A were to accept this conclusion, that he may not have the generic rights, he would contradict himself. For we saw above that it is necessarily true of every agent that he must hold or accept at least implicitly that he has rights to freedom and well-being. Hence, A would be in the position of both affirming and denying that he has the generic rights: affirming it because he is an agent, denying it because he lacks R. To avoid this contradiction, every agent must hold that being a prospective purposive agent is a sufficient reason or condition for having the generic rights.

Because of this sufficient reason, every agent, on pain of self-contradiction, must also accept the generalization that all prospective purposive agents have the generic rights. This generalization is an application of the logical principle of universalizability: if some predicate P belongs to some subject S because S has the quality Q (where the "because" is that of sufficient reason or condition), then it logically follows that every subject that has Q has P. If any agent A were to deny or refuse to accept this generalization in the case of any other prospective purposive agent, A would contradict himself. For he would be in the position of saying that being a prospective purposive agent both is and is not a sufficient justifying condition for having the generic rights. Hence, on pain of self-contradiction, every agent must accept the generalization that all prospective purposive agents have the generic rights.

Thus we have now arrived at the basis of human rights. For the generic rights to freedom and well-being are moral rights, since they require of every agent that he take favorable account of the most

important interests of all other prospective agents, namely, the interests grounded in their needs for the necessary conditions of agency. And these generic rights are also human rights, since every human being is an actual, prospective, or potential agent. I shall discuss the distribution of these rights among humans more fully below. But first I must also establish that the generic rights are human rights in the further respect indicated above, namely, that they are grounded in or justified by a valid moral criterion or principle.

The above argument for the generic rights as moral rights has already provided the full basis for deriving a supreme moral principle. We have seen that every agent, on pain of self-contradiction, must accept the generalization that all prospective purposive agents have the generic rights to freedom and well-being. From this generalization, because of the correlativity of rights and strict "oughts," it logically follows that every person ought to refrain from interfering with the freedom and well-being of all other persons insofar as they are prospective purposive agents. It also follows that under certain circumstances every person ought to assist other persons to have freedom and well-being, when they cannot have these by their own efforts and he can give them such assistance without comparable cost to himself, although more usually such assistance must operate through appropriate institutions. Since to refrain and to assist in these ways is to act in such a way that one's actions are in accord with the generic rights of one's recipients, every agent is logically committed, on pain of self-contradiction, to accept the following precept: *Act in accord with the generic rights of your recipients as well as of yourself.* I shall call this the *Principle of Generic Consistency (PGC)*, since it combines the formal consideration of consistency with the material consideration of the generic features and rights of agency. To act in accord with someone's right to freedom is, in part, to refrain from coercing him; to act in accord with someone's right to well-being is, in part, to refrain from harming him by adversely affecting his basic, nonsubtractive, or additive goods. In addition, to act in accord with these rights may also require positive assistance. These rights, as thus upheld, are now moral ones because they are concerned to further the interests or goods of persons other than or in addition to the agent. The *PGC*'s central moral requirement is the *equality of generic rights*, since it requires of every agent that he accord to his recipients the same rights to freedom and well-being that he necessarily claims for himself.

The above argument has provided the outline of a rational justification of the Principle of Generic Consistency as the supreme principle of morality, both for the formal reason that if any agent denies or violates the principle he contradicts himself and for the material reason that its content, the generic features of action, necessarily imposes itself on every agent. For it is necessarily true of every agent that he at least implicitly attributes to himself the generic rights and that he acts in accord with his own generic rights; hence, he cannot rationally evade the extension of these rights to his recipients. This material necessity stands in contrast to principles centered in the purposes, inclinations, or ideals for which some agent may contingently act and whose requirements he may hence evade by shifting his desires or opinions. The *PGC* is the supreme principle of morality because its interpersonal requirements, derived from the generic features of action, cannot rationally be evaded by any agent. (It must be kept in mind that action is the universal context of morality). The main point may be put succinctly as follows: What for any agent are necessarily goods of action, namely, freedom and well-being, are equally necessary goods for his recipients, and he logically must admit that they have as much right to these goods as he does, since the ground or reason for which he rationally claims them for himself also pertains to his recipients.

We have now seen that every agent must hold, on pain of self-contradiction, that all other persons as well as himself have moral rights grounded in the *PGC* as the principle of morality. It follows from the argument to the *PGC* that the primary criterion for having moral rights is that all persons have certain needs relative to their being actual or prospective agents, namely, needs for freedom and well-being as the necessary conditions of action. Simply by virtue of being actual or prospective agents who have certain needs of agency, persons have moral rights to freedom and well-being. Since all humans are such agents having such needs, the generic moral rights to freedom and well-being are human rights.

This argument for human rights has avoided the problem of how rights can be logically derived from facts. For, in proceeding by the dialectically necessary method, it has remained throughout within the facts of agents' necessary judgments about goods and rights. The argument has established not that persons have rights *tout court* but rather that all agents logically must claim or at least accept that they have certain rights. This relativity to agents and their claims does not, however, remove the absoluteness of rights or

the categoricalness of the *PGC*. For since agency is the proximate general context of all morality and indeed of all practice, whatever is necessarily justified within the context of agency is also necessary for morality, and what logically must be accepted by every agent is necessarily justified within the context of agency. Thus the argument has established that since every agent logically must accept that he has rights to freedom and well-being, the having of these rights is morally necessary. Hence, the requirement indicated above is fulfilled: the rights to freedom and well-being exist as human rights because there is a valid moral criterion, the *PGC*, which justifies that all humans have these rights.

Questions may be raised about the extent to which the generic rights as I have defined them are indeed human rights. To be human rights they must be had by every human being simply as such. The generic rights, however, are rights to the necessary conditions of agency. But may not some humans lack these rights because they are incapable of agency in one degree or another? Examples of such humans include children, mentally deficient persons, paraplegics, persons with brain damage, fetuses, and so forth. From these examples it might seem to follow that the generic rights to the necessary conditions of action are not truly human rights in the sense in which such rights were initially defined.

This question rests in part on a variant of the dictum that "ought" implies "can," for it assumes that for some person A to have a right to something X, A must be capable of having or doing X. Now this assumption is correct, but only if the capability in question is correctly interpreted. All normal adult humans are fully capable of action as this has been interpreted here, as voluntary and purposive behavior, for all such persons have the proximate ability to control their behavior by their unforced choice with a view to attaining their goals while having knowledge of relevant circumstances. This description applies even to paraplegics despite the lesser range of the control of which they are proximately capable, for they can think, choose (although within narrower limits), and plan.

In the other cases mentioned, the capabilities for action are less, and hence their rights too are proportionately less. Children are potential agents in that, with normal maturation, they will develop the full abilities of agency. In their case, as well as in that of mentally deficient persons and persons with brain damage, their possession of the generic rights must be proportional to the degree to which

they have the abilities of agency, and this must be with a view to taking on the fullest degree of the generic rights of which they are capable so long as this does not result in harm to themselves or others. All other adult humans have the generic rights in full. In the case of the human fetus, this possession of generic rights raises problems of the justification of abortion because of possible conflicts with the rights of the mother; I have considered this elsewhere.⁹

The equation of the generic rights with human rights thus does not derogate from the universality of the latter. It enables us to understand the varying degrees to which the rights are had by certain humans, as well as the connection of human rights with action and practice. The derivation of these rights from the argument for the *PGC* also enables us to understand the traditional view that human rights are grounded in reason so that they have a normative necessity or categorical obligatoriness that goes beyond the variable contents of social customs or positive laws.

IV.

There remain two broad questions about human rights as so far delineated. First, the rights to freedom and well-being are very general. What more specific contents do they have, and how are these contents related to one another? Second, human rights are often thought of in terms of political effectuation and legal enforcement. How does this relation operate in the case of the generic rights? Should all of them be legally enforced or only some, and how is this to be determined?

To answer the first question we must analyze the components of well-being and of freedom. It was noted above that well-being, viewed as the abilities and conditions required for agency, comprises three kinds of goods: basic, nonsubtractive, and additive. Basic goods are the essential preconditions of action, such as life, physical integrity, and mental equilibrium. Thus a person's basic rights — his rights to basic goods — are violated when he is killed, starved, physically incapacitated, terrorized, or subjected to mentally deranging drugs. The basic rights are also violated in such cases as where a person is drowning or starving and another person who, at no comparable cost to himself, could rescue him or give him food knowingly fails to do so.

Nonsubtractive goods are the abilities and conditions required for

⁹ *Id.* at 142-44.

maintaining undiminished one's level of purpose-fulfillment and one's capabilities for particular actions. A person's nonsubtractive rights are violated when he is adversely affected in his abilities to plan for the future, to have knowledge of facts relevant to his projected actions, to utilize his resources to fulfill his wants, and so forth. Ways of undergoing such adversities include being lied to, cheated, stolen from, or defamed, suffering broken promises, or being subjected to dangerous, degrading, or excessively debilitating conditions of physical labor or housing or other strategic situations of life when resources are available for improvement.

Additive goods are the abilities and conditions required for increasing one's level of purpose-fulfillment and one's capabilities for particular actions. A person's additive rights are violated when his self-esteem is attacked, when he is denied education to the limits of his capacities, or when he is discriminated against on grounds of race, religion, or nationality. This right is also violated when a person's development of the self-regarding virtues of courage, temperance, and prudence is hindered by actions which promote a climate of fear and oppression, or which encourage the spread of physically or mentally harmful practices such as excessive use of drugs, or which contribute to misinformation, ignorance, and superstition, especially as these bear on persons' ability to act effectively in pursuit of their purposes. When a person's right to basic well-being is violated, I shall say that he undergoes basic harm; when his rights to nonsubtractive or additive well-being are violated, I shall say that he undergoes specific harm.

Besides these three components of the right to well-being, the human rights also include the right to freedom. This consists in a person's controlling his actions and his participation in transactions by his own unforced choice or consent and with knowledge of relevant circumstances, so that his behavior is neither compelled nor prevented by the actions of other persons. Hence a person's right to freedom is violated if he is subjected to violence, coercion, deception, or any other procedures which attack or remove his informed control of his behavior by his own unforced choice. This right includes having a sphere of personal autonomy and privacy whereby one is let alone by others unless and until he unforcedly consents to undergo their action.

In general, whenever a person violates any of these rights to well-being or freedom, his action is morally wrong and he contradicts himself. For he is then in the position of saying or holding that a

right he necessarily claims for himself insofar as he is a prospective purposive agent is not had by some other person even though the latter too is a prospective purposive agent. Hence, all such morally wrong actions are rationally unjustifiable.

It must also be noted, however, that these rights to freedom and well-being may conflict with one another. For example, the right to freedom of one person A may conflict with the right to well-being of another person B when A uses his freedom to kill, rob, or insult B. Here the duty of other persons to refrain from interfering with A's control of his behavior by his unforced choice may conflict with their duty to prevent B from suffering basic or specific harm when they can do so at no comparable cost to themselves. In addition, different persons' rights to well-being may conflict with one another, as when C must lie to D in order to prevent E from being murdered, or when F must break his promise to G in order to save H from drowning. Moreover, a person's right to freedom may conflict with his own right to well-being, as when he commits suicide or ingests harmful drugs. Here the duty of other persons not to interfere with his control of his behavior by his unforced choice may conflict with their duty to prevent his losing basic goods when they can do so at no comparable cost to themselves.

These conflicts show that most human rights are only *prima facie*, not absolute, in that under certain circumstances they may justifiably be overridden. Nothing is gained by saying that what is justifiably overridden is not the right but only its exercise. For since a person's having some right has a justificatory basis, when this basis is removed he no longer has the right. In such a case it is his right itself and not only its exercise that is justifiably removed or overridden.

Another argument for the absoluteness of human rights is that their alleged *prima facie* character stems from their being incompletely described. Thus it is held that the right to life or the right not to be killed, for example, must be specified more fully as the right not to be killed unless one has committed a murder, or as the right of innocent persons not to be killed. Such devices, however, either include in the description of the right the very overriding conditions which are in question, or else they restrict the distribution of the right so that it is not a right of all humans.

But although many human rights may be overridden, this still leaves the Principle of Generic Consistency as an absolute or categorically obligatory moral principle. For the *PGC* sets the criteria

for the justifiable overriding of one moral right by another and hence for the resolution of conflicts among rights. The basis of these criteria is that the *PGC* is both a formal and a material principle concerned with transactional consistency regarding the possession and use of the necessary conditions of action. The criteria stem from the *PGC*'s central requirement that there must be mutual respect for freedom and well-being among all prospective purposive agents. Departures from this mutual respect are justified only where they are required either to prevent or rectify antecedent departures, or to avoid greater departures, or to comply with social rules that themselves reflect such respect in the ways indicated in the procedural and instrumental applications of the *PGC*. Thus the criteria for resolving conflicts of rights or duties fall under three headings of progressively lesser importance.

The first criterion for resolving the conflicts of rights is the prevention or removal of transactional inconsistency. If one person or group violates or is about to violate the generic rights of another and thereby incurs transactional inconsistency, action to prevent or remove the inconsistency may be justified. Whether the action should always be undertaken depends on such circumstances as the feasibility and importance for subsequent action of removing the inconsistency: this may be very slight in the case of some lies and very great in the case of basic harms. Thus, although the *PGC* in general prohibits coercion and basic harm, it authorizes and even requires these as punishment and for prevention and correction of antecedent basic harm.

This criterion of the prevention of transactional inconsistency also sets a limitation on the right to freedom. This right is overridden when a person intends to use his freedom in order to infringe the freedom or well-being of other persons. Such overriding stems from the *PGC*'s general requirement that each person must act in accord with the generic rights of his recipients, since this requirement sets limits on each person's freedom of action. The prohibition against coercion or harm is itself overridden, however, by two considerations, each of which also stems from the *PGC*. First, one person A may coerce or harm another person B in order to prevent B from coercing or harming either A himself or some other person C. Thus if B physically assaults A or C, A may physically assault B in order to resist or prevent the assault. Second, coercion or harm may be justified if it is inflicted in accordance with social rules or institutions that are themselves justified by the *PGC*. I shall discuss this

latter justification below.

A second criterion for resolving conflicts of rights is the degree of their necessity for action. Since every person has rights to the necessary conditions of action, one right takes precedence over another if the good that is the object of the former right is more necessary for the possibility of action, and if that right cannot be protected without violating the latter right. For example, A's right not to be lied to is overridden by B's right not to be murdered or enslaved, where B or C has to lie to A in order to prevent him from committing these crimes against B. A person's right to freedom is also overridden in such ways. It will have been noted that whereas the first criterion for resolving conflicts among rights deals mainly with rights to goods of the same degree of importance, the second criterion deals with goods of different degrees, but within the same general context of preventing transactional inconsistency.

This criterion of degrees of necessity for action also applies to such limiting cases as where a person intends to use his freedom in order to attack his own well-being. As we have seen, there are levels of well-being, such that basic well-being is more necessary for action than nonsubtractive well-being, while the latter in turn is usually more necessary for action than additive well-being. Hence, in general, force may be used at least temporarily to prevent a person from killing or maiming himself, especially so long as there is doubt whether he fulfills the emotional and cognitive conditions of freedom or voluntariness. But such interference with someone's freedom is not justified to prevent him from diminishing his nonsubtractive or additive well-being, because his freedom is itself more necessary for his actions than are these levels of his well-being. The remaining complexities of this issue cannot be dealt with here.¹⁰

V.

The conflicts among rights require further criteria besides the two given so far. To deal with these, we must move from the individual, transactional applications of the *PGC* so far considered to its institutional applications. The latter applications will also bring us to the second general question presented above, concerning the legal enforcement and political effectuation of human rights.

Although this legal, institutional context is perhaps the most familiar area of discussion of human rights, it must be emphasized that these rights also figure centrally in individual interpersonal transactions. A person's human rights to freedom and well-being are

¹⁰ See *id.* at 259-67.

violated just as surely, although perhaps less powerfully and irrevocably, if he is kidnapped and held for ransom as if he is subjected to unjust imprisonment; and torture by a private person is just as much an infringement of one's human rights as torture by an agent of the state. So too, although in lesser degrees, a person's human rights are violated when he is lied to, discriminated against, or made to work for starvation wages when better conditions could be made available. Moreover, a large part, although not the whole, of the human rights that should be legally enforced consist in the legal protection of individuals from suffering violations of their most important human rights to just treatment on the part of individuals or groups other than those representing the state.

To deal with the legal context of the protection of human rights, we must turn to another kind of application of the *PGC* besides the one so far considered. The *PGC* has two different kinds of applications: direct and indirect. In the direct applications, the *PGC*'s requirements are imposed on the actions of individual agents; the actions are morally right and the agents fulfill their moral duties when they act in accord with the generic rights of their recipients as well as of themselves. In the indirect applications, on the other hand, the *PGC*'s requirements are imposed in the first instance on social rules and institutions. These are morally right, and persons acting in accordance with them fulfill their moral duties, when the rules and institutions express or serve to protect or foster the equal freedom and well-being of the persons subject to them. Thus by the indirect applications recipients may even be coerced or harmed, yet this does not violate their human rights to freedom and well-being, because the rules or institutions that require such coercion or harm are themselves justified by the *PGC*. For example, when the umpire in a baseball game calls three strikes, the batter is out and must leave the batter's box even if he does not consent to this. This calling him out operates to coerce the batter so that he is forced to leave the batter's box. Nevertheless, the umpire's action is morally justified and the batter's right to freedom is not violated insofar as he has freely accepted the rules of the game. Or again, a judge who sentences a criminal to prison operates to coerce and harm him, yet this is morally justified and the criminal's rights to freedom and well-being are not violated insofar as the rules of the criminal law serve to protect and restore the mutuality of occurrent non-harm prescribed by the *PGC*.

As these examples may suggest, the indirect, institutional applications of the *PGC* are of two kinds. The *procedural* applications derive from the *PGC*'s freedom component: they provide that social rules and institutions are morally right insofar as the persons subject to them have freely consented to accept them or have certain consensual procedures freely available to them. The *instrumental* applications derive from the *PGC*'s well-being component: they provide that social rules and institutions are morally right insofar as they operate to protect and support the well-being of all persons.

Each of these applications, in turn, is of two sorts. The procedural applications may be either *optional* or *necessary*. They are optional according as persons consent to form or to participate in voluntary associations. The procedural applications are necessary according as the consent they require operates as a general decision-procedure using the civil liberties to provide the authoritative basis, through elections and other consensual methods, of specific laws or governmental officials.

The *PGC*'s instrumental applications may be either *static* or *dynamic*. The static applications, embodied in the minimal state with its criminal law, serve to protect persons from occurrent violations of their rights to basic and other important goods and to punish such violations. The dynamic applications, embodied in the supportive state, serve to provide longer-range protections of basic and other rights where these cannot be obtained by persons through their own efforts.

In the remainder of this paper I want to indicate how these distinctions of the *PGC*'s indirect applications help to clarify the question of the legal enforcement of human rights. As we have noted, the institutions of law and government are instrumentally justified by the *PGC* as means for enforcing its most important requirements. Not all the human rights upheld by the *PGC* should receive legal enforcement. The specific harms done by violations of a person's nonsubtractive rights, such as when he is lied to or when a promise made to him is broken, are ordinarily less important in their impact on their recipient's well-being than are the harms done by violations of basic rights, and hence do not justify the state's coercive legal resources to combat or correct them.

The human rights that should receive legal enforcement are those comprised in the last three of the indirect applications of the *PGC* distinguished above. Each of these applications reflects a certain justification of social rules which set requirements for persons and

for the state. First, there is what I have called the static-instrumental justification of social rules, consisting in the criminal law. This serves to protect basic and other important rights from occurrent attack by other persons, including the rights to life, physical integrity, and reputation. But the *PGC* also sets standards or limits as to how this protection is to operate: only persons who have violated these rights of others are to be punished, there must be equality of all persons before the law, trials must be fair, *habeas corpus* must be guaranteed, punishment must not be cruel, vindictive, or inhuman.

Second, there is the dynamic-instrumental justification of social rules. This recognizes that persons are dispositionally unequal in their actual ability to attain and protect their generic rights, especially their rights to basic well-being, and it provides for social rules that serve to remove or mitigate this inequality. In this way the supportive state serves to protect social and economic rights. Thus, where the static phase (the criminal law) tries to restore an occurrent antecedent status quo of mutual non-harm, the dynamic phase tries to move toward a new situation in which a previously nonexistent dispositional equality is attained or more closely approximated. Social rules supporting the various components of well-being, but especially basic well-being, are justified in this dynamic way.

These supportive rules must have several kinds of contents. First, they must provide for supplying basic goods, such as food and housing, to those persons who cannot obtain them by their own efforts. Second, they must try to rectify inequalities of additive well-being by improving the capabilities for productive work of persons who are deficient in this respect. Education is a prime means of such improvement, but also important is whatever strengthens family life and enables parents to give constructive, intelligent, loving nurture to their children. The wider diffusion of such means is a prime component of increasing equality of opportunity. Third, the rules must provide for various public goods that, while helping all the members of the society, serve to increase the opportunities for productive employment. Fourth, the rules must regulate certain important conditions of well-being by removing dangerous or degrading conditions of work and housing.

A third area of legal enforcement of human rights is found in what I have called the necessary-procedural justification of social rules. This justification is an application of the *PGC*'s freedom component to the constitutional structure of the state. It provides that laws and

state officials must be designated by procedures that use the *method of consent*. This method consists in the availability and use of the civil liberties in the political process. The objects of these liberties include the actions of speaking, publishing, and associating with others, so that, as a matter of constitutional requirement, each person is able, if he chooses, to discuss, criticize, and vote for or against the government and to work actively with other persons or groups of various sizes to further his political objectives, including the redress of his socially based grievances. In this way each person has the right to participate actively in the political process. Thus the constitution with its method of consent must both embody and protect the political and civil rights and liberties.

The civil liberties also extend to contexts of individual and social activity other than the political process. The *PGC's* protection of the right to freedom requires that each person be left free to engage in any action or transaction according to his unforced choice so long as he does not coerce or harm other persons. This requirement sets an important limit on the legitimate powers of the state: it must not interfere with the freedom of the individual except to prevent his coercing or harming others in ways that adversely affect their basic or other important well-being. The criteria of this importance are found in what affects persons' having the abilities and conditions required for purposive action. Thus an immense array of kinds of action must be exempted from governmental control, while at the same time the freedom to perform these actions must be protected by the state.

These freedoms are hence called "civil liberties" for three interconnected reasons, bearing on three different relations the freedoms must have to the state. First, they are passive and negative in that they must not be restricted or interfered with by the state. Second, they are passive and positive in that they must be protected by the state as rights of persons. Third, they are active in that the actions that are their objects function in the political process to help determine who shall govern in the state. In all relations, the *PGC* requires that the civil liberties pertain equally to each prospective purposive agent (except criminals): each person has an equal right to use his freedom non-coercively and non-harmfully (according to the criteria of harm specified above), to participate freely and actively in the political process, and to be protected by the state in that participation and in his other actions using his freedom in the way just indicated. Insofar as there are diverse states, this equal right per-

tains to each citizen, and each person has a right to be a citizen of a state having the civil liberties.

We have now seen that the *PGC*'s indirect applications require that three kinds of rights receive legal enforcement and protection: the personal-security rights protected by the criminal law, the social and economic rights protected by the supportive state, and the political and civil rights and liberties protected by the constitution with its method of consent.

The second of these kinds comprises important phases of the right to well-being, while the third encompasses a large part of the right to freedom. I wish to conclude by considering two opposite extreme views about how the social and economic rights figure in the legal enforcement and protection of human rights.

One view is that these rights, including the right to be given food and the other goods needed for alleviating severe economic handicaps and insecurities, cannot be "human" rights because they do not meet two tests: universality and practicability.¹¹ According to the test of universality, for a moral right to be a human one it must be a right of all persons against all persons: all persons must have the strict duty of acting in accord with the right, and all persons must have the strict right to be treated in the appropriate way. Thus all persons must be both the agents and the recipients of the modes of action required by the right. The rights to life and to freedom of movement pass this test: everyone has the duty to refrain from killing other persons and from interfering with their movements, and everyone has the right to have his life and his freedom of movement respected by other persons. But in the case of the right to be relieved from starvation or severe economic deprivation, it is objected that only some persons have the right: those who are threatened by starvation or deprivation; and only some persons have the duty: those who are able to prevent or relieve this starvation by giving aid.

The answer to this objection need not concede that this right, like other economic and social rights, is universal only in a "weaker" sense in that while all persons have the right to be rescued from starvation or deprivation, only some persons have the correlative

¹¹ See M. CRANSTON, WHAT ARE HUMAN RIGHTS? 66-71 (1973). See his contribution in Cranston, *Human Rights: A Reply to Professor Raphael*, in *POLITICAL THEORY AND THE RIGHTS OF MAN* 96-100 (D. Raphael ed. 1967). For the weaker sense of the universality of rights referred to below see Raphael, *Human Rights, Old and New*, in *id.* at 65-67; Raphael, *The Rights of Man and the Rights of the Citizen*, in *id.* at 112.

duty. Within the limits of practicability, all persons have the right and all have the duty. For all persons come under the protection and the requirements of the *PGC* insofar as they are prospective purposive agents. Hence, all the generic rights upheld by the *PGC* have the universality required for being human rights.

It is, indeed, logically impossible that each person be at the same time both the rescuer and the rescued, both the affluent provider and the deprived pauper. Nevertheless, the fact that some prospective purposive agent may not at some time need to be rescued from deprivation or be able to rescue others from deprivation does not remove the facts that he has the right to be rescued when he has the need and that he has the duty to rescue when he has the ability and when other relevant conditions are met. As we have seen, this duty stems, in the way indicated earlier, from the claim he necessarily makes or accepts that he has the generic rights by virtue of being a prospective purposive agent. The universality of a right is not a matter of everyone's actually having the related need, nor is it a matter of everyone's actually fulfilling the correlative duty, let alone of his doing so at all times. Nor is it even a matter of everyone's always being able to fulfill the duty. It is rather a matter of everyone's always having, as a matter of principle, the right to be treated in the appropriate way when he has the need, and the duty to act in accord with the right when the circumstances arise that require such action and when he then has the ability to do so, this ability including consideration of cost to himself.

When it is said that the right to be relieved from economic deprivation and the correlative duty pertain to all persons insofar as they are prospective purposive agents, this does not violate the condition that for human rights to be had one must only be human, as against fulfilling some more restrictive description. As was indicated earlier, all normal humans are prospective purposive agents; the point of introducing this description is only to call attention to the aspect of being human that most directly generates the rights to freedom and well-being. In this regard the right in question differs from rights that pertain to persons not simply by virtue of being prospective purposive agents but only in some more restrictive capacity, such as being teachers as against students, umpires as against batters, or judges as against defendants. The universality of human rights derives from their direct connection with the necessary conditions of action, as against the more restrictive objects with which non-generic rights are connected. And since both the affluent and

the economically deprived are prospective purposive agents, the latter's right to be helped by the former is a human right.

These considerations also apply to the contention that the social and economic rights are not human rights because they do not pass the test of practicability, in that many nations lack the economic means to fulfill these rights. Now it is indeed the case that whereas the political and civil rights may require non-action or non-interference rather than positive action on the part of governments, the economic rights require the positive use of economic resources for their effective implementation. This does not, however, militate against governments' taking steps to provide support, to the extent of their available resources, to persons who cannot attain basic economic goods by their own efforts. There is a considerable distance between the position that the same high levels of economic well-being are not attainable in all countries and the position that a more equitable distribution of goods and of means of producing goods is not feasible for countries at the lower end of the scale.

This point is also relevant to a view that stands at the opposite extreme from the one just considered: that for most persons in many parts of the world the social and economic rights are the only human rights which should be legally implemented. According to this view the political and civil rights, by contrast, are of little importance for persons in the "Third World" with its predominant illiteracy, traditionalism, poverty, non-individualist ethos, and lack of regard for the rule of law. This position is epitomized in the dictum, "Food first, freedom later," where the "freedom" in question consists especially in the political and civil liberties. The contention is that until the economic rights to subsistence, housing, and employment are effectively implemented, persons who lack these have little interest or opportunity or need for the political and civil rights, and that fulfillment of the former rights is a necessary prerequisite for fulfilling the latter.

A distinction may be drawn between such personal-security rights as *habeas corpus* and non-infliction of torture or cruel punishment, and the political rights of the method of consent with its civil liberties of speech, press, and association. Nevertheless, the latter provide important safeguards for the former. Both these kinds of rights, in turn, are far from being antithetical to or needless for the economic and social rights. Indeed, the order of priority may be the reverse of that upheld in the view under consideration. The effective distribution of the civil liberties, far from being a passive effect of

the proper distribution of food, housing, and health care, can strongly facilitate the latter distribution. When governments are not subject to the political process of the method for consent, there is to that extent less assurance that the authorities will be responsive to the material needs of all their citizens. As is shown by sad experience in many of the underdeveloped countries, the lack of effective political participation by the masses of the poor permits a drastic unconcern with their needs for food even when it is locally available.¹²

What I have tried to show in this paper is that all the human rights have a rational foundation in the necessary conditions or needs of human action, so that no human agent can deny or violate them except on pain of self-contradiction. Thus the demands the human rights make on persons are justified by the *PGC* as the supreme principle of morality. It is also through the moral requirements set by this principle that the political and legal order receives its central justification as providing for the protection of human rights. In addition to this instrumental function, possession of the civil liberties together with the effective capacity for participating in the method of consent is required for the dignity and rational autonomy of every prospective purposive agent. Thus the rationally grounded requirements of human action provide the basis and content of all human rights, both those that apply in individual transactions and those that must be protected by social rules and institutions.

¹² See Poleman, *World Food: A Perspective*, 188 *SCIENCE* 510, 515 (1975); Crosson, *Institutional Obstacles to Expansion of World Food Production*, in *id.* at 519, 522-23; Walters, *Difficult Issues Underlying Food Problems*, in *id.* at 524, 530; 2 G. MYRDAL, *ASIAN DRAMA: AN INQUIRY IN THE POVERTY OF NATIONS* 895-900 (1968); S. REUTLINGER & M. SELOWSKY, *MALNUTRITION AND POVERTY* (World Bank Staff Occasional Papers No. 23, 1976). I have discussed this issue more fully in *Starvation and Human Rights*, in *ETHICS AND PROBLEMS OF THE 21ST CENTURY* 139-59 (K. Goodpaster & K. Sayre eds. 1979).