

OXFORD

A painting of a person in a small sailboat on a river. The person is wearing a dark jacket and a cap, and is looking towards the right. The sailboat has a large white sail. The water is calm, and there are trees and buildings in the background. The overall style is impressionistic.

ON HUMAN RIGHTS

James Griffin

65. I have been helped in my assessment of Rawls's *The Law of Peoples* by conversation with John Tasioulas and by his article 'From Utopia to Kazanistan: John Rawls and the Law of Peoples', *Oxford Journal of Legal Studies* 22 (2002).
66. See below sect. 3.3.

CHAPTER 2. FIRST STEPS IN AN ACCOUNT OF HUMAN RIGHTS

1. I present here what I take to be the current state of scholarship. Useful recent histories of the idea of a right are Richard Dagger, 'Rights', in T. Ball, J. Farr, and R. Hanson (eds.), *Political Innovation and Conceptual Change* (Cambridge: Cambridge University Press, 1989); James Brundage, *Medieval Canon Law* (London: Longman, 1995); Brian Tierney, *The Idea of Natural Rights* (Atlanta: Scholars Press, 1997); and A. S. Brett, *Liberty, Right and Nature* (Cambridge: Cambridge University Press, 1997).
2. See above Ch. 1 n. 3.
3. Tierney, *Idea of Natural Rights*, pp. 37–8.
4. See Pope John XXII, papal bull *Ad Conditorem* (1323), quoted in Tierney, *Idea of Natural Rights*, pp. 94 ff.
5. See Tierney, *Idea of Natural Rights*, pp. 120 ff.
6. *Ibid.* pp. 261–2.
7. See the sequence traced by Tierney (*ibid.* pp. 72–3) from *ius* (objective right) to *iuris* (subjective right) that occurred about the year 1200.
8. Giovanni Pico della Mirandola, *On the Dignity of Man*, trans. Charles Glenn Wallis (Indianapolis: Hackett Publishing, 1998), p. 5.
9. See Brett, *Liberty, Right and Nature*, pp. 47–8.
10. For a modern statement of a similar point, see L. W. Sumner, *The Moral Foundation of Rights* (Oxford: Clarendon Press, 1987), ch. 4 sect. 1. 'the criterion for a natural right must itself be a natural property. A natural rights theory therefore must assign (at least some of) its rights to a class of subjects determined by their common and exclusive possession of this natural property [e.g. membership in our species]. ... what, in this context, makes a property a natural property? ... First, the property must be empirical and thus whether or not an individual possessed it must be ascertainable by ordinary empirical means' (p. 102).
11. James Griffin, *Value Judgement: Improving Our Ethical Beliefs* (Oxford: Clarendon Press, 1996), chs. 2–4.
12. Below sects. 6.1 and 6.2.
13. I. Kant, *Groundwork of the Metaphysic of Morals*, trans. H. J. Paton, in his *The Moral Law* (London: Hutchinson, 1961), pp. 95–6 (pp. 482–9 in Kant's

Gesammelte Schriften, ed. Royal Prussian Academy of the Sciences, (Berlin: Georg Reimer, subsequently Walter de Gruyter, 1900–), vol. 4i.)

14. Below Ch. 3, esp. sects. 3.1, 3.5–7.
15. For further discussion of this right, see sect. 9 below.
16. For further discussion of universality as a necessary condition of human rights, see sect. 2.8 below.
17. Sect. 2.8 below.
18. J. L. Mackie, 'Rights, Utility, and Universalization', in R. G. Frey (ed.), *Utility and Rights* (Minneapolis: University of Minnesota Press, 1984), p. 87.
19. R. Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977), pp. xiv–xv; see also pp. 180, 272–4 (where one finds reference to *equal* concern and respect). Dworkin is himself aware of the problem of the vagueness of the notion (pp. 180–1).
20. For an example of someone who wants to include in human rights more of the domain of justice than I want to, and who gives a rationale for including it, see T. M. Scanlon, 'Rights, Goals, and Fairness', in S. Hampshire (ed.), *Public and Private Morality* (Cambridge: Cambridge University Press, 1978). In that article Scanlon's rationale is broadly consequentialist, and what worries me about it is the feasibility of the extraordinarily complex calculation on which it depends. Judgements about human rights have to be simpler, more manageable, than this sort of consequentialism makes them. See my discussion of consequentialism in Griffin, *Value Judgement*, ch. 7 sect. 5, esp. n. 7.
21. On the United Nations' broad definition of 'race', see its International Convention on the Elimination of All Forms of Racial Discrimination (1966), Art. 1.
22. Below sects. 11.4, 11.6.
23. See below Ch. 8.
24. See below sect. 5.5.
25. See below sects. 3.3, 3.4, 10.6, 11.4, 14.4, 15.5.
26. Such worries have led some philosophers to give up on personhood accounts, e.g. Joel Feinberg; see his *Social Philosophy* (Englewood Cliffs, NJ: Prentice-Hall, 1973), ch. 6 sect. 3.
27. John Rawls makes a similar point about his notion of 'moral personality' in *A Theory of Justice* (Oxford: Clarendon Press, 1972), sect. 77.
28. Lately there have been fears that genetics, having shown that the human mind, far from being a *tabula rasa*, is stocked with the physical bases of a large array of capacities, will soon show that some persons have greater capacities than others. Will it not thereby revive the belief of many earlier periods in a natural hierarchy of ability? (Interview with Steven Pinker, *New York Times Magazine*, 15 Sept. 2002). It may, indeed, but 'agency' is a threshold notion; the only equality that human rights need is one that nearly all of us have—viz. being above the threshold. And there is no good reason to fear the existence simply of the threshold itself.

29. See below sect. 9.3.
30. I have had helpful conversation on this subject with Laura Zuckerwise.
31. Below sect. 9.3.
32. Put to me in discussion by Joseph Raz. See also Charles R. Beitz, 'Human Rights and the Law of Peoples', in Deen Chatterjee (ed.), *The Ethics of Assistance: Morality and the Distant Needy* (Cambridge: Cambridge University Press, 2004), esp. sects. 2, 3.
33. e.g. by Beitz, 'Human Rights and the Law of Peoples'.
34. See above sect. 1.5.
35. An argument advanced by Onora O'Neill, *Towards Justice and Virtue* (Cambridge: Cambridge University Press, 1991), pp. 131–4. I discuss the argument below, sect. 5.6.
36. See below sect. 3.3, Ch. 5 *passim*, Ch. 19 *passim*.
37. e.g. John Tasioulas, 'Human Rights, Universality, and the Values of Personhood: Retracing Griffin's Steps', *European Journal of Philosophy* 10 (2002). I have been helped too by conversation with Tasioulas.
38. 'The purpose of torture is to get their responses... We must hurt them so that they respond quickly. Another purpose is to break them and make them lose their will' (Khmer Rouge Interrogator's Manual, 1986, quoted in Gill Newsham (ed.), *The A–Z of Free Expression* (London: Index, 2003), pp. 249–50).
39. For a description of modern interrogation techniques, including the use of drugs, see Mark Bowden, 'The Dark Art of Interrogation', *Atlantic Monthly*, vol. 292 no. 3 (Oct. 2003). *The Times*, 22 Sept. 2005, reports that a team at the University of Pennsylvania has developed a way of reading fMRI (functional magnetic resonance imaging) brain scans that, it is claimed, distinguishes truth-telling from lying with 99 per cent accuracy.
40. See below sect. 5.2.
41. See below sects. 13.3–4.
42. See above sect. 1.2.
43. See above Introduction and sect. 1.1.
44. See below Ch. 11.
45. See below sect. 4.6.
46. See Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), ch. 7, esp. pp. 166, 180–3, 208.
47. *Ibid.*, ch. 7, esp. sects. 7–8.

CHAPTER 3. WHEN HUMAN RIGHTS CONFLICT

1. See above sect. 2.4.
2. See below Ch. 9.

3. Above sect. 2.1.
4. I. Kant, *The Metaphysics of Morals* (hereafter *MM*), in *Kant's Gesammelte Schriften*, ed. Royal Prussian Academy, of Sciences (Berlin: Georg Reimer, subsequently by Walter de Gruyter, 1900–), vol. 6 Part I ('The Doctrine of Rights'), Preface, p. 230.
5. Contemporary defenders of the co-possibility of human rights include Robert Nozick, *Anarchy, State, and Utopia* (Oxford: Blackwell, 1974), p. 166; Hillel Steiner, *An Essay on Rights* (Oxford: Blackwell, 1994), Introduction and ch. 3 sect. c.; Onora O'Neill, 'Children's Rights and Children's Lives', *Ethics* 98 (1988).
6. Abraham Lincoln, *The Collected Works of Abraham Lincoln*, ed. Roy P. Baster (New Brunswick, NJ: Rutgers University Press, 1953–5), vol. 4 p. 430; quoted in H. G. Pitt, *Abraham Lincoln* (Stroud: Sutton Publishing, 1998), ch. 6.
7. Besides the document I discuss in the text, see also European Convention on Human Rights (1950), Art. 11. 2 and Protocol 4, Art. 2. 3; Convention Relating to the Status of Refugees (1951), Art. 9; Convention Relating to the Status of Stateless Persons (1954), Art. 9; European Social Charter (1961), Art. 30 and Appendix to the Social Charter, *re* Art. 30; International Covenant on Economic, Social and Cultural Rights (1966), Art. 8. 1. a; American Convention on Human Rights (1969), Arts. 6. 3. c, 12. 3, 13. 4, 15, 16. 2, 22. 3, 27, 30; Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Art. 1. 3.
8. See also Art. 4. 1 of the International Covenant on Civil and Political Rights (1966), which was meant to spell out and give legal force to the Universal Declaration:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the State Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation ...

Article 4. 2 goes on to spell out what is 'strictly required' by listing rights that may not be suspended: e.g. the rights to life, not to be tortured, against slavery and servitude, to equality before the law, and to freedom of thought, conscience, and religion.

9. In the Second World War the United States detained more than 120,000 Japanese-American citizens without trial. In 1988 Congress officially acknowledged that the 'actions were taken without adequate security reasons' and were largely motivated by 'racial prejudice, wartime hysteria and a failure of political leadership', and ordered that surviving detainees be compensated. Between 1939 and 1945 Britain detained without trial almost 27,000 persons, and 7,000 were deported. In the early stages of the war the threat to Britain of a German invasion was far greater than the threat to the United States of a

- Japanese invasion. See Johan Steyn, 'Guantanamo Bay: The Legal Black Hole', Twenty-Seventh F. A. Mann Lecture, 25 Nov. 2003; A. W. Brian Simpson, *In the Highest Degree Odious* (Oxford: Oxford University Press, 1994).
10. There would be no conflict if the right to life were entirely negative: a right not to have one's life taken without due process, with the only correlative duty one of restraint. But the right to life is, I should say, not so restricted; it includes rights to rescue and to protection, in certain circumstances. I think that rescue and protection should be seen as parts of the original right to life, not as additional rights. The same is true of the right to security of person: a government that stood aside and witnessed constant violent assaults on its citizens would fail in its duty, a duty correlative to the right to security.
 11. Nozick, *Anarchy, State, and Utopia*, p. 166.
 12. See Leslie A. Mulholland, *Kant's System of Rights* (New York: Columbia University Press, 1990), p. 4.
 13. *MM*, p. 237.
 14. *MM*, p. 237.
 15. *MM*, p. 230.
 16. *MM*, pp. 390 ff.
 17. *MM*, p. 237.
 18. *MM*, p. 256.
 19. *MM*, pp. 297, 302.
 20. *MM*, p. 311.
 21. *MM*, p. 337.
 22. *MM*, p. 295–6.
 23. *MM*, p. 278.
 24. Mulholland, *Kant's System of Rights*, p. 199; see also H. S. Reiss, Introduction, in Reiss (ed.), *Kant: Political Writings*, 2nd edn. (Cambridge: Cambridge University Press, 1991), p. xx.
 25. I discuss liberty below Ch. 9.
 26. Above sect. 2. 6.
 27. See *MM*, 'The Doctrine of Right', sect. 3.
 28. Above sect. 2.9.
 29. Above Ch. 1 n. 55.
 30. Above Ch. 2, *passim*.
 31. Above sect. 2.6.
 32. For discussion of the notion *forfeitable* and its distinction from *alienable*, *defeasible*, and *waivable*, see Joel Feinberg, 'Voluntary Euthanasia and the Inalienable Right to Life', sect. III, in his *Rights, Justice, and the Bounds of Liberty* (Princeton: Princeton University Press, 1980).
 33. e.g. obligation to the environment in conflict with welfare rights.

34. There is also the dimension of number of persons involved, which because of the complications it involves I want to set aside.
35. Below sects. 12.5–6.
36. See my *Well-Being* (Oxford: Clarendon Press, 1986), ch. V sect. 6.
37. See the discussion of bridging notions in Ruth Chang, ‘Putting Together Morality and Well-Being’, in P. Bauman and M. Betzler (eds.), *Practical Conflicts: New Philosophical Essays* (Cambridge, Cambridge University Press, 2004); and in her “‘All Things Considered’”, *Philosophical Perspectives* 18, (2004).
38. See my *Value Judgement: Improving Our Ethical Beliefs* (Oxford: Clarendon Press, 1996), chs. V–VII.
39. For further discussion, see *ibid.* ch. V.
40. See Phillip Pettit, ‘Consequentialism’, in P. Singer (ed.), *A Companion to Ethics* (Oxford: Blackwell, 1991), for the distinction between ‘honouring’ and ‘promoting’ values (I have substituted ‘respecting’ for ‘honouring’).
41. See my *Value Judgement*, ch. I.
42. Nozick, *Anarchy, State, and Utopia*, p. 30 n.; also see above sect. 1.4.
43. Judith Jarvis Thomson, *The Realm of Rights* (Cambridge, MA.: Harvard University Press, 1990), p. 30 n. 19.
44. T. M. Scanlon, *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1998), p. 391 n. 21.
45. I think that the good and the right overlap: e.g. one way in which an individual life can sometimes be good for the individual living it is by its being moral. This suggests that what is good will sometimes have to be explained in terms of what is right. See my *Value Judgement*, pp. 68–79. But these complications do not make talk about the priority of the right or the good impossible.
46. See above, n. 40.

CHAPTER 4. WHOSE RIGHTS?

1. Some critics of the personhood account add to the class of those excluded from having human rights persons asleep or anaesthetized or knocked out or in a temporary coma. But although there are questions about the moral status of sleep-walkers, sleep is rightly not taken to deny one one’s status as a person. Nor is short-term unconsciousness. These are transient or morally unimportant passages in what is properly treated as a conscious, intentional life.
2. This needs spelling out. As we have seen (above sect. 2.7), what matters to the possession of human rights is that one has the present capacity for normative agency; what those rights protect is both the capacity for and the exercise of normative agency.

3. John Locke, *Two Treatises of Government*, many editions, *Second Treatise*, ch. 6 sect. 55.
4. I draw this definition from the *OED*.
5. I borrow this example from Jeff McMahan, *The Ethics of Killing: Problems at the Margins of Life* (Oxford: Oxford University Press, 2002), p. 310. McMahan has a fuller discussion of the moral significance of potentiality than I give here; see ch. 4 sect. 6.
6. Preamble. So too does Amnesty International. ‘The notion of special childhood rights derives from the universal recognition that children, by reason of their physical and emotional immaturity, are dependent upon their family and community and, more widely, on adult structures of political and economic power to safeguard their well-being.’ See its magazine *Amnesty*, Jan./Feb. 2001.
7. Arts. 3. 2, 6. 2. Given the Covenant’s definition of a ‘child’, it is clear that all the rights it lists apply to *some* children. ‘For the purposes of the present Convention, a child means every human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier’, United Nations Convention on the Rights of the Child, adopted by the General Assembly 1989).
8. Compare the World Health Organization’s also implausible definition of the right to health: physical and mental health ‘to the highest attainable standard’. Drafters of human rights at the United Nations suffer from occasional mindless extravagance. On the right to health see below sects. 5.2, 11.6.
9. On the relation of justice and human rights, see above sect. 2.6; on the relation of suffering and human rights see above sect. 2.9.
10. It has been argued perhaps most prominently and most powerfully by McMahan, *Ethics of Killing*; see also his article ‘Cloning, Killing, and Identity’, *Journal of Medical Ethics* 25 (1999).
11. So McMahan argues; see his *Ethics of Killing*, ch. 1, where he places the start of a ‘person’ at approximately 28–30 weeks after fertilization.
12. McMahan would, I think, agree with this. He says that, besides identity, the degree of psychological connectedness between a person at one time and another itself also has moral weight that contributes to the degree of moral importance of the life of this person at these different times. I myself doubt that the addition of psychological connectedness gives us a satisfactory explanation of the varying degrees of importance of a late foetus, an infant, a 3-year-old, and an adult.
13. I have already discussed an alternative to it—a more pluralist account—above in sect. 2.9.
14. I borrow these examples from a discussion of needs in my book *Well-Being* (Oxford: Clarendon Press, 1986), p. 41 (and I originally borrowed the first

example from Garrett Thomson). For a fuller development of some of the points in this section see *ibid.* sects. 3.2–6.

15. See, e.g., David Braybrooke, *Meeting Needs* (Princeton: Princeton University Press, 1987), p. 31: a ‘criterion’ of a basic need is its being something ‘essential to living or to functioning normally’. Later he says more fully that the ‘criterion’ for inclusion on the list of basic needs and for the level of satisfaction required ‘is being indispensable to mind or body in performing the tasks assigned to a given person under a combination of basic social roles, namely the roles of parent, householder, worker, and citizen. If what is thus indispensable is not supplied, the person’s functioning in these tasks is deranged’ (p. 48). See also Garrett Thomson, *Needs* (London: Routledge & Kegan Paul, 1987).

‘Basic need’ is a technical term, and so has to be defined. Though the definitions vary, most are close to Braybrooke’s. See, e.g., David Wiggins, ‘Public Rationality, Needs and What Needs are Relative To’, in P. Hall and D. Bannister (eds.), *Transport and Public Policy* (London: Mansall, 1981), p. 209: ‘basicness is a question of the conceivability or difficulty ... of arranging or re-arranging matters so that a person can dispense with x ... without his life or activity being blighted’. For a more finely developed vocabulary, see David Wiggins and Sira Dermen, ‘Needs, Need, and Needing’, *Journal of Medical Ethics* 13 (1987), sects. 8 and 9; besides the ‘basicness’ of needs, they distinguish their ‘gravity’, ‘urgency’, ‘entrenchment’, and ‘substitutability’.

16. Of course, one should not require the need account on its own to have the resources to solve all problems about morality’s becoming ‘implausibly lavish’. Other parts of morality might serve to keep morality from becoming too demanding or too generous: e.g. general motivational constraints on human action which limit obligations. But general constraints do not provide enough help here; they do not, e.g., explain why there comes a point where ailments and malfunctions become too trivial to create a right to a cure.

Braybrooke discusses the problem that endless medical demands create for a basic need account in his *Meeting Needs*, ch. 8 sect. 3. He thinks these medical demands constitute ‘a breakdown in the concept of needs’ (p. 294). ‘In the end, there is no way out of acknowledging that nothing already present in the concept of needs saves the need for medical care from becoming a bottomless pit’ (p. 301). That said, Braybrooke rightly goes on to insist that this and certain other breakdowns do not weaken the case for according a dominant role to basic human needs in social decision.

David Wiggins says that he answers this objection in sect. 17 of his ‘Claims of Needs’, in *Needs, Values, Truth* (Oxford: Blackwell, 1987), p. 38 n. 45. His answer is this: ‘for purposes of a social morality S that is actually lived and succeeds in proposing to agents shared concerns that they can make their own,

there is an *abstract claim right or entitlement to x under conditions C* just where *x is something the denial or removal of which under conditions C gives (and can be seen as giving) the person denied or deprived part or all of a reason, and a reason that is avowable and publicly sustainable within S, to reconsider his adherence to the norms of reciprocity and cooperation sustained by S. ... A social morality cannot of course give any particular person a guaranteed title to wealth, health, happiness, or security from ordinary misfortune. But equally it must not be such as to threaten anyone who is to be bound by it that it will bring upon him or any other individual participants, as if gratuitously, the misfortune of having his vital interests simply sacrificed for the sake of some larger public good'* (pp. 31–3).

Wiggins's answer goes in two different directions, in a way that makes it an uncertain guide to what we should say, e.g., about a society's not mounting a crash programme to find a cure for AIDS. AIDS victims might well see themselves as having literally 'vital' interests 'sacrificed for the sake of some larger public good' (such as keeping a few more paintings in the UK and out of the clutches of the Getty Museum), and they might well think that society's turning its back on them, as many of them see it, gives them simple reason to reconsider their 'adherence to the norms of reciprocity and cooperation sustained by S'. But then they might instead think that even such a vital interest as life gives them no 'guaranteed title to ... health'. Wiggins's emphasis seems to be more on the first line of thought. The three principles that he sees as the basis of rights (p. 34) he later describes as 'scarcely more than the preconditions of man's securing their own survival in their own way, or in the best way relative to their circumstances' (p. 39). And later still he says that '*it is pro tanto unjust* if, among vital interests actually affected by [social interventions], the greater strictly vital need of anyone is sacrificed in the name of the lesser interests of however many others' (p. 43).

17. As is said in, e.g., Joel Feinberg, *Social Philosophy* (Englewood Cliffs, NJ: Prentice-Hall, 1973), p. 111; David Miller, *Social Justice* (Oxford: Clarendon Press, 1976), ch. IV; and Wiggins, 'Claims of Need', p. 10 (the remarks in my text apply also to Wiggins's idea of a life's being 'blighted').
18. There are ways of elaborating accounts to try to meet some of these objections. For instance, one could introduce a measure for the importance or urgency of a need—say, the more the need is already met, the less important or urgent it becomes. For example, the more a society meets the demands of health, the less urgent the remaining demands of health become. T. M. Scanlon once developed this line of thought (see his 'Preference and Urgency', *Journal of Philosophy* 72 (1975)). But though this elaboration of the need account may have some plausibility as a basis of social choice (a society has devoted enough of its resources to health, and the demands of art and education are now important), it lacks plausibility as a basis for human rights. After a certain amount of investment in health,

further investment may no longer be especially important. But important for whom? Presumably, for society. But it would certainly be highly important for those people who will die because the society could, but has decided not to, mount a crash programme to find a cure for AIDS. But human rights are claims that individuals can make against others, including their society. This elaboration of the need account, though it may have its purposes, takes it away from the entitlements that reside in each individual, and so takes it away from relevance to human rights.

19. As David Braybrooke does; see n. 15.
20. Below Ch. 6.
21. Above sect. 2.9.
22. Above sect. 2.2.
23. Above sect. 1.3.
24. For helpful discussions of how they might acquire rights in stages, see David Archard, *Children: Rights and Childhood* (London: Routledge, 1993), chs. 5 and 6, and Carl Wellman, 'The Growth of Children's Rights', in his *An Approach to Rights* (Dordrecht: Kluwer, 1997).

CHAPTER 5. MY RIGHTS: BUT WHOSE DUTIES?

1. The schema is more fully expounded by Onora O'Neill, 'Children's Rights and Children's Lives', *Ethics* 98 (1988), pp. 447–9.
2. For the case, see below sects. 7.4, 8.3, 8.4, 10.8.
3. For a history of this pathological growth, see Hugo Bedau, 'The Right to Life', *Monist* 52 (1968); also see below Ch. 10.
4. See n. 2 above.
5. Above sect. 3.5.
6. For further discussion see my *Value Judgement: Improving Our Ethical Beliefs* (Oxford: Clarendon Press, 1996), ch. VI, sect. 2.
7. See below sect. 10.3.
8. Art. 12. 1. See also the African Charter on Human and People's Rights, Art. 16; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Art. 10. 1.
9. Twenty-second session, 25 April–12 May 2000, as reported in Draft General Comment 14.
10. See below Ch. 10.
11. I am grateful to John Watts, Corpus Christ College, Oxford, for advice on this subject.
12. UNAIDS, Table of Country-Specific HIV/AIDS Estimates and Data, June 2000; J. T. Gathii, 'Construing Intellectual Property Rights and Competition Policy Consistency with Facilitating Access to Affordable AIDS Drugs to

- Low-End Consumers', *Florida Law Review* 53 (2001), p. 734; A. Tabor, 'Recent Developments: AIDS Crisis', *Harvard Journal on Legislation* 38 (2001), p. 525. For a good survey, see Sarah Joseph, 'The "Third Wave" of Corporate Human Rights Accountability: Pharmaceuticals and Human Rights', Conference, Castan Centre for Human Rights Law, Monash University, 10–11 Dec. 2001.
13. *The Guardian*, 18 May 2004.
 14. See Joseph, '“Third Wave” of Corporate Human Rights Accountability', nn. 71, 72.
 15. E.g. Onora O'Neill, *Towards Justice and Virtue* (Cambridge: Cambridge University Press, 1991), ch. 5 sect. 2.
 16. *Ibid.* pp. 131–4.
 17. E.g. Carl Wellman, *Welfare Rights* (Totowa, NJ: Rowman and Allanheld, 1982), p. 181.
 18. On O'Neill's claims, see John Tasioulas, 'The Moral Reality of Human Rights', in Thomas Pogge (ed.), *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?* (Oxford: Oxford University Press, 2007).
 19. Above sect. 2.8.
 20. This paragraph develops a thought in Tasioulas, 'Moral Reality of Human Rights', sects. 4 and 5.
 21. The enforceability requirement is promulgated, e.g., by Raymond Geuss, *History and Illusion in Politics* (Cambridge: Cambridge University Press, 2001): it is 'essential to the existence of set of "rights" that there be some specifiable and more or less effective mechanism for enforcing them' (p. 143). For fuller discussion of both the enforceability requirement and the claimability requirement, see Tasioulas, 'Moral Reality of Human Rights'.

CHAPTER 6. THE METAPHYSICS OF HUMAN RIGHTS

1. I have discussed the taste model (and also the perception model, which I shall come to shortly) before in my *Value Judgement: Improving Our Ethical Beliefs* (Oxford: Clarendon Press, 1996), chs. II–IV, and I give a condensed version of the argument of those three chapters here in sects. 6.1 and 6.2.
2. Richard Brandt, *A Theory of the Good and the Right* (Oxford: Clarendon Press, 1979), p. 10.
3. John Rawls, *A Theory of Justice* (Oxford: Clarendon Press, 1972), pp. 432–3.
4. L. Wittgenstein, *Philosophical Investigations* (Oxford: Blackwell, 1953), *passim*, but esp. sects. 1–38, 136–56, 167–238. For references to 'form of life', see sects. 19, 23, 241.
5. Donald Davidson, 'Psychology as Philosophy', p. 237, and 'Mental Events', p. 222, both in his *Essays on Action and Events* (Oxford: Clarendon Press, 1980);

also his Lindley Lecture, 'Expressing Evaluations', (Lawrence: University of Kansas Press, 1982).

6. Aristotle, *Metaphysics*, 1072^a29 ff.; cf. *Nicomachean Ethics* 1175^a. For a brief discussion see David Wiggins, *Needs, Value, Truth* (Oxford: Blackwell, 1987), p. 106.
7. See Wittgenstein, *Philosophical Investigations*, sects. 243–308.
8. J. L. Mackie, *Ethics* (Harmondsworth: Penguin, 1977), p. 41.
9. For a fuller version of this argument see my *Value Judgement*, ch. V.
10. Above sect. 3.5.
11. See below sect. 11.2.
12. See above sect. 3.5.
13. See above sect. 2.5.

CHAPTER 7. THE RELATIVITY AND ETHNOCENTRICITY OF HUMAN RIGHTS

1. I have already said something about ethical relativism in discussing John Rawls' views about ethnocentrism, above sect. 1.5.
2. See David Hume, 'Of the Standard of Taste', in various collections of his essays.
3. See Richard Brandt, *A Theory of the Good and the Right* (Oxford: Clarendon Press, 1979), p. 10.
4. This is one of Gilbert Harman's examples of relativity to an ethical framework; see his 'Moral Relativism', in Gilbert Harman and Judith Jarvis Thomson, *Moral Relativism and Moral Objectivity* (Oxford: Blackwell, 1996), p. 9.
5. Also Gilbert Harman's example: *ibid.* pp. 8–9.
6. For the citation of incommensurable values as an example of moral relativity, see Maria Baghramian, *Relativism* (London: Routledge, 2004), ch. 9.
7. For fuller treatment, see my 'Mixing Values', *Proceedings of the Aristotelian Society* suppl. vol. 65 (1991); and my 'Incommensurability: What's the Problem?', in Ruth Chang (ed.), *Incommensurability, Incomparability, and Practical Reason* (Cambridge MA: Harvard University Press, 1997).
8. David B. Wong offers this as an example of what he would regard as ethical relativism; see his *Moral Relativity* (Berkeley: University of California Press, 1984), ch. 12, sect. 5.
9. See above sects. 1.1, 2.2.
10. See below sects. 8.2, 8.3.
11. See above sect. 6.4.
12. James Griffin, *Value Judgement: Improving Our Ethical Beliefs* (Oxford: Clarendon Press, 1996), ch. V.
13. See above sect. 6.3.

14. For a good recent assessment see Paul Boghossian, *Fear of Knowledge: Against Relativism and Constructivism* (New York: Oxford University Press, 2006).
15. For Rawls on the need to avoid ethnocentrism, see his *The Law of Peoples* (hereafter *LP*) (Cambridge, MA: Harvard University Press, 1999), sect. 17. 1, ‘Law of Peoples not Ethnocentric’; also p. 68: ‘To argue in these ways [i.e. largely the ways of the Enlightenment] would involve religious or philosophical doctrines that many decent hierarchical peoples might reject as liberal or democratic, or as in some way distinctive of Western political tradition and prejudicial to other cultures.’
16. John Tasioulas adopts this interpretation in his ‘International Law and the Limits of Fairness’, *European Journal of International Law* (2002), sect. 2.
17. Above sect. 1.5.
18. I discuss this more fully in sects. 1.5 and 13.4.
19. Bangkok Declaration (1993), Preamble and Arts. 1, 8.
20. See above sect. 3.2.
21. For reasons given by, e.g., Partha Dasgupta, *An Enquiry into Well-Being and Destitution* (Oxford: Clarendon Press, 1993), ch. 5.
22. Art. 29. 2.
23. See above sect. 2.9.
24. These contrasts are more fully drawn out by Archie J. Bahm, *Comparative Philosophy: Western, Indian and Chinese Philosophies Compared* (Albuquerque: World Books, revised 1995), esp. ch. III.
25. Amartya Sen, *The Argumentative Indian: Writings On Indian History, Culture, and Identity* (Harmondsworth: Allen Lane, The Penguin Press, 2005), esp. chs. 1, 4, 13.
26. www.quotationspage.com, *sub* Mahatma Gandhi.
27. Jack Donnelly thinks so; see his article ‘Traditional Values and Universal Human Rights: Caste in India’, in Claude E. Welch jun. and Virginia A. Leary (eds.), *Asian Perspective on Human Rights* (Boulder, CO: Westview Press, 1990). This question is discussed by Harold Coward, *The Hindu Tradition*, vol. 4 of William H. Brackney (series ed.), *Human Rights and the World’s Major Religions* (Westport, CT: Praeger, 2005).
28. Robert E. Florida thinks so; see his book *The Buddhist Tradition*, vol. 5 of Brackney (series ed.), *Human Rights and the World’s Major Religions*, see pp. 9, 205 ff.
29. Part III of the Constitution is devoted to ‘fundamental rights’, which include guarantees of equality before the law (Art. 14), no discrimination on grounds of religion, race, caste, sex, or place or birth (Art. 15), freedom of speech and expression, assembly, association, movement, and residence (Art. 19), freedom of religion (Arts. 25–8), and rights to life, personal liberty (Art. 21), and due process (Art. 22). What is more, the Indian drafters took Western constitutional practice as a model. See Pratap Kumar Ghosh, *The*

Constitution of India: How It Has Been Framed (Calcutta: World Press, 1966), p. 70: ‘The framers of our [Indian] Constitution shared the American view [viz. Jefferson’s view that a democratic constitution should include a bill of rights] and, therefore, incorporated in our Constitution a list of fundamental rights’; also M. V. Pylee, *India’s Constitution* (Bombay: Asia Publishing House, 1962), p. 3: ‘The makers of the Indian Constitution draw much from the American Constitution though not its brevity ... Thus the Constitution of India is the result of considerable imitation and adaptation ...’.

30. See Florida, *Buddhist Tradition*, p. 209.

31. Nor, I believe, does the case of Islam and the West. In cultural terms Islam is very much closer to the Jewish–Christian West than is India. Islam accepts the Old and New Testaments as among its own holy scriptures, and the prophets, including Jesus, as its prophets, too. In philosophy, Islam was deeply influenced by the writings of Classical Greece and Rome. In mathematics and the natural sciences, Islam was often well ahead of Europe during the Middle Ages. In social thought, Muhammad, by being more detailed than Jesus in his moral teaching and more specific about the desired social order, was in many ways also more explicitly egalitarian. The Koran prescribes a Poor Due, a two-and-a-half per cent tax on the rich to aid the poor. This may look meagre alongside the tithe of Jews and Christians, but the two taxes are quite different: the tithe was devoted more to the maintenance of religious institutions than, as with the Poor Due, to direct help for the poor, and the two-and-a-half per cent was levied not just on one’s income but also on one’s holdings. (See Huston Smith, *The World’s Religions* (San Francisco: Harper, 1991), pp. 246, 250.) And there was often more freedom of religion in Islam than in the West. ‘Let there be no compulsion in religion’, says the Koran (2: 257; see also 5: 48). When the Catholics conquered Andalusia, where the Muslims had for long tolerated Jews and Christians, they expelled, slaughtered, or forced Muslims and Jews to convert. When the Muslims conquered Constantinople, they allowed the Eastern Catholic Church to carry on much as before, and Constantinople (Istanbul) is still today its seat. On Muslim tolerance of other religions, see Bernard Lewis, *The Crisis of Islam* (New York: Random House, 2004), pp. xxix–xxx.

I go through this recital so quickly because the facts are familiar. One would have no more trouble discussing autonomy, liberty, and minimum provision with many modern Muslims than one would with many modern Indians. Not with all Muslims, admittedly; not clearly, e.g., with the Taliban of Afghanistan. Different Muslims draw very different lessons from the Koran. The Koran seems to teach very different lessons, from rare tolerance of non-believers, as above, to bloodthirsty intolerance, as in the famous ‘verse of the sword’: ‘Fight and slay the pagans wherever you find them: seize them, beleaguer them, and lie in wait for them in every stratagem.’ But differences within a cultural group are

not, of course, differences between cultural groups. The term ‘fundamentalism’ acquired its present sense used of conservative Protestant evangelicals in the United States in the 1920s, and its contemporary Eastern and Western versions probably have causes in common: perhaps a desperation resulting from a fear that the modern world is inexorably leaving them behind. (See Malise Ruthven, *Fundamentalism: The Search for Meaning* (Oxford: Oxford University Press, 2004), pp. 10–15.) But there are, no doubt, causes special to Islam: a history of colonial exploitation, poverty, lack of education, the legacy of the Crusades and of the Ottoman penetration into Europe culminating in the second siege of Vienna in the late seventeenth century. And part of the explanation of the tension between the West and Muslim Middle East must be simply that they are next-door neighbours—geographical proximity rather than cultural distance. Think of the Protestants and Catholics in Ulster. The record of democracy in the Islamic world is varied, encompassing as it does North and Middle Africa, Turkey, the Middle East, the Indian sub-continent, South-East Asia, and Indonesia. But much the same political variation can be found in Latin America, where the explanation is unlikely to be cultural difference from Europe. Economic structures must play an important part in explaining the political structures of both Islam and Latin America. All that I want to deny is that cultural differences between Islam and the West are *largely* responsible for their political differences. They play a role, but so does much else.

32. See above sect. 1.5.

33. *LP*, pp. 61–7.

34. *LP*, p. 59.

35. *LP*, p. 62.

36. *LP*, pp. 5, 75–8.

37. *LP*, pp. 64–7.

38. See above sect. 1.5.

39. *LP*, p. 80 n. 23.

40. *LP*, p. 27.

41. See below, Chs. 8, 9, 11.

42. See above sect. 2.6.

43. *LP*, pp. 65–7.

44. *LP*, p. 65.

45. *LP*, p. 88.

CHAPTER 8. AUTONOMY

1. Above sect. 2.7.

2. Isaiah Berlin, ‘Two Concepts of Liberty’, in his *Four Essays on Liberty* (Oxford: Oxford University Press, 1969); for a more recent contribution see Quentin

Skinner, 'A Third Concept of Liberty', *London Review of Books*, 4 April 2002; Skinner is an example of someone intending to speak of yet another 'concept' of liberty when he is actually speaking of another way in which we can lose our liberty (on the central concept of liberty, which I discuss in the next chapter).

3. For histories of this development, see Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law and Church Law 1150–1625* (Atlanta: Scholars Press, 1997); James A. Brundage, *Medieval Canon Law* (London: Longman, 1995); J. B. Schneewind, *The Invention of Autonomy* (Cambridge: Cambridge University Press, 1998).
4. A somewhat similar distinction between autonomy and liberty is drawn by Gerald Dworkin, *The Theory and Practice of Autonomy* (Cambridge: Cambridge University Press, 1988), pp. 13–15, 18.
5. See above sect. 2.2.
6. See above sects. 6.1 and 6.2.
7. See Onora O'Neill, *Autonomy and Trust in Bioethics* (Cambridge: Cambridge University Press, 2002), ch. 1.
8. E.g. Onora O'Neill, 'Kantian Ethics', in P. Singer (ed.), *A Companion to Ethics* (Oxford: Blackwell, 1991), p. 183; see also J. P. Schneewind, 'Autonomy, Obligation, and Virtue: An Overview of Kant's Moral Philosophy', in Paul Guyer (ed.), *The Cambridge Companion to Kant* (Cambridge: Cambridge University Press, 1992), esp. sects 8–9.
9. See above sects. 3.5, 6.1, and 6.2; see also my *Value Judgement: Improving Our Ethical Beliefs* (Oxford: Clarendon Press, 1996), chs. II and IV.
10. See Ian Tattersall, *Becoming Human: Evolution and Human Uniqueness* (New York: Harcourt Brace, 1998); *idem*, *The Monkey in the Mirror* (Oxford: Oxford University Press, 2002), esp. ch. 6.
11. See above sect. 2.3.
12. I should, none the less, like to add as an aside that I doubt that the differences above the threshold are in fact great. The matter turns on what ethical growth is like, and so what we can reasonably expect an ethically mature person to be like. The perfectly virtuous person referred to in much modern virtue ethics is acknowledged to be a mythical figure. But so is the less extravagant figure in virtue ethics, the person who grows so much in practical wisdom as properly to be treated as an exemplar for the rest of us. If one is lucky, one has an acquaintance or two who are sound enough in certain ways for it to be a great help to ask oneself: what would A do in this situation? But A is likely to be less sound in other parts of life. We all have areas of blindness, confusion, and insecurity, which distort moral sensitivity. Perhaps thinking what B would do in another part of life would then help a lot. But one soon runs out of sound acquaintances. In any case, one has to be fairly far along ethically oneself to be able to identify soundness in one's

acquaintances; the idea of ‘following an exemplar’ obscures how very much of the work one must do oneself before following anyone. And on very many big questions in ethics, we are all pretty much on an equal footing. What should the rich nations be doing for the poor? How does one weigh producing good consequences against breaking important moral norms, such as ‘Do no murder’? How does one temper justice with mercy? And so on and on. Even those who do not know the preliminary moves that philosophers make in answering these questions can usually be brought up to speed in a quarter of an hour. There are no experts in ethics, in contrast to the empirical, metaphysical, and linguistic matters of metaethics. In ethics, decades of study and experience count for surprisingly little. There are uneducated people with almost perfect pitch on matters of self-interest and morality, and moral philosophers who are largely tone-deaf. There is not much correlation, either, between IQ and a sense of what matters in life. There are, it is true, people with far cruder taste and judgement than others, a difference often correlated with difference in social class, but if differences in taste and judgement are the result of brutalizing deprivation, as they usually are, the overriding moral interest is not in giving them weight but in removing the deprivation. Mental defectives present difficult borderline problems here, and there is, of course, the question of when a child becomes an agent. But neither of these matters bears on the question of the rough equality of those above the threshold. Of course, the equality is only rough. But this remaining empirical inequality does not justify a corresponding ethical inequality. We should not want to award rights in proportion to each agent’s deliberative and executive capacities—either on the small interpersonal scale or the large social scale. Think of a family. We neither could feasibly, nor morally would want to, assign differential rights to normal adult members of our family in response to every difference in capacity they exhibited. Nor could we, or would we want to, do so on a social scale.

13. The fullest and best-known case for the instrumental value of autonomy is John Stuart Mill, *On Liberty* (1859, many editions).

CHAPTER 9. LIBERTY

1. See Thomas Hobbes, *Leviathan* (Oxford: Oxford University Press, 1966), pp. 86 (ch. XIV para. 2), 139 (ch. XXI paras. 1 and 2); John Locke, *An Essay Concerning Human Understanding*, ed. P. H. Nidditch (Oxford: Clarendon Press, 1975), II. i. 56; Jeremy Bentham, *Of Laws in General* (London: Athlone Press, 1970), esp. p. 254 (although Bentham generally equated liberty with absence of constraint, he recognized that the term is used in various ways; e.g. many so-called political liberties are, he thought, securities against interference, and that the term is a particularly rich source of confusion); J. S. Mill, *On*

- Liberty* (1859, many editions), ch. I para. 9 ('In the part [of his conduct] which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, ... the individual is sovereign'); Isaiah Berlin, *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), pp. xxxviii–xl.
2. I am indebted to my colleagues Howard McGary and Holly Smith for discussion on this subject.
 3. See Joel Feinberg, 'The Nature and Value of Rights', in his *Rights, Justice, and the Bounds of Liberty* (Princeton: Princeton University Press, 1980), pp. 154–5.
 4. My distinction here between a negative and a positive side to liberty is not the same as Isaiah Berlin's often discussed distinction between negative and positive liberty. By the negative side to liberty I mean the duties it generates not to interfere; by the positive side I mean the duties it may also generate to do something that benefits others. By negative liberty Berlin means the same as I do, but by positive liberty he means self-realization—doing what realizes one's own good.
 5. Above sect. 5.5.
 6. e.g. John Gray, writing in the *New Statesman*, 20 Sept. 1996: 'I think myself that the last word on individual liberty and social control was uttered by John Stuart Mill, when he declared that only harm to others justified restraint of freedom'; Brian Barry, *Culture and Equality* (Cambridge: Polity Press, 2001), who explains that when, as a schoolboy, he expressed an interest in reading philosophy at university, his teacher told him to try Ayer's *Language, Truth and Logic* and Mill's *On Liberty*: 'I liked them both tremendously, but took to *On Liberty* more, and inside a week had turned in an essay arguing that Mill had got it about right—a view that ... I still retain' (p. ix).
 7. Mill, *On Liberty*, ch. 1 para. 9. We often call it Mill's principle because his is probably the best, and best-known, articulation of it. But the principle long antedates Mill. See, e.g., John Locke, *A Letter Concerning Toleration*, in *Works of John Locke*, vi (London: Thomas Davison, 1823): [The state may not prohibit, e.g., killing a calf as a religious sacrifice] 'for no injury is thereby done to anyone, no prejudice to another man's goods' (p. 341); Thomas Jefferson, in William Peden (ed.), *Notes on the State of Virginia* (Chapel Hill, NC: University of North Carolina Press, 1955): 'The legitimate powers of government extend to such acts only as are injurious to others' (p. 159); Declaration of the Rights of Man and of the Citizen, Art. IV: 'Political Liberty consists in the power of doing whatever does not injure another ...'; Art. V: 'The law ought to prohibit only actions hurtful to society ...'; see also Arts. VI–XI. In his *Rights of Man* Thomas Paine gave wide circulation to these, and other, articles of the French Declaration with approval; see *Rights of Man*, ed. Henry Collins (Baltimore: Penguin Books, 1969), p. 133.

8. Mill, *On Liberty*, ch.1 para. 1.
9. This is the first of John Rawls's two principles of justice in his *A Theory of Justice* (Oxford: Clarendon Press, 1972), p. 250: 'Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.'
10. James Fitzjames Stephen, *Liberty, Equality, Fraternity* (Indianapolis: Liberty Fund, 1993).
11. *Ibid.* pp. 34–5.
12. *Ibid.* p. 35, see also pp. 47, 92, 96.
13. Leon Radzinowicz, *Sir James Fitzjames Stephen, 1829–1894, and His Contribution to the development of Criminal Law* (London: Bernard Quaritch, 1957), p. 16.
14. Stephen, *Liberty, Equality, Fraternity*, pp. 47–8.
15. *Ibid.* p. 8.
16. Isaiah Berlin, 'My Intellectual Path', in his *The First and the Last* (New York: New York Review Books, 1999), p. 75.
17. *Ibid.* p. 76.

CHAPTER 10. WELFARE

1. See sect. 2.2.
2. Locke thinks that 'natural reason ... tells us that men, being once born, have a right to their preservation, and consequently to meat and drink, and such other things as nature affords for their subsistence'; see *Second Treatise of Government*, ch. 5 sect. 25. It is probably a human right that Paine has in mind when in *The Rights of Man* (originally published in 1792), he proposes annual payments to the children and the aged in poor families. This, he thinks, will be an adequate support for the poor in general: 'If these two classes are provided for, the remedy will so far reach to the full extent of the case, that what remains will be incidental' (p. 293). 'This support', he goes on, 'is not the nature of a charity, but of a right' (p. 296). Page references are to Thomas Paine, *The Rights of Man, Common Sense, and Other Political Writings*, ed. Mark Philp (Oxford: Oxford University Press, 1995). In *Agrarian Justice* (1797) Paine proposes a National Fund 'for ameliorating the condition of men'. 'It is not charity', he insists, 'but a right—not bounty but justice that I am pleading for' (*ibid.* p. 425). Paine adopts the medieval Church's conception of property. 'I have already established the principle, namely that the earth ... was ... the *common property of the human race* ... and that the system of landed property ... has absorbed the property of all those whom it dispossessed, without providing, as ought to have been done, an indemnification for that loss' (*ibid.* p. 420). Paine's National Fund is not, therefore, strictly a welfare scheme, because the payments are to be 'made to

every person, rich or poor'. Whether Paine regarded the right involved, based as it is on rectificatory justice, as a *human* right depends upon whether he thought that rectificatory justice can be a ground for a human right. He may have; I do not.

Cobbett claimed for the poor 'the right to have a living out of the land of our birth in exchange for our labour duly and honestly performed; the right, in case we fall into distress, to have our wants sufficiently relieved out of the produce of the land, whether that distress arose from sickness, from decrepitude, from old age, or from inability to find employment'. Quoted by E. P. Thompson, *The Making of the English Working Class* (London: Gollancz, 1963), p. 761.

3. T. H. Green, 'Liberal Legislation and Freedom of Contract', in *The Works of T. H. Green*, ed. R. L. Nettleship (London: Hutchinson, 1889); L. T. Hobhouse, *Liberalism* (New York: Henry Holt, 1911).
4. 'Third-generation' rights are the rights of the late twentieth century, rights not of individuals but of collectivities—say, of national or ethnic or linguistic groups. They are rights to national self-determination, the survival of one's culture, and so on. But my interest now is solely second-generation rights.

There is nothing surprising in the fact that welfare rights are, as far as popular acceptance goes, second-generation rights, that liberty rights were widely accepted before them. That in itself does not show that welfare rights are less central or authoritative. The natural rights doctrine was developed, especially in the seventeenth and eighteenth centuries, by middle-class European and American men. Their chief concern was resistance to absolute monarchs, freedom to pursue their (largely commercial or agricultural) interests. They were in general economically secure; their relative wealth constituted an important part of the framework for their political thought. The desperately needy had, at this time, scarcely found their voice; their poverty rendered them largely silent. The historical lateness in the general acceptance of welfare rights shows nothing about their importance, certainly not that they are dubious 'accretions' to the 'core' liberty rights. In our time, China is the main promoter of welfare rights against what they see as the one-sided advocacy of liberty rights by the United States. They argue that welfare rights have to be satisfied before liberty rights are of much value, but it would be a confusion to think, as the Chinese government seems also to think, that welfare rights must be satisfied first in time; the work of various economists (e.g. Partha Dasgupta, *An Enquiry into Well-Being and Destitution* (Oxford: Clarendon Press, 1993), ch. 5) has shown that in general the countries that most successfully avoid welfare disasters are the ones that have political liberties. Welfare rights are indeed prior to liberty rights in the sense that they are the necessary condition for liberty rights' being of value to us; but this does not show that they are prior in the sense that they must be realized first.

5. See above sects. 2.8, 5.1.
6. For examples of support for this view see Maurice Cranston, 'Human Rights: Real and Supposed', in D. D. Raphael (ed.), *Political Theory and the Rights of Man* (London: Macmillan, 1967); Rodney Peffer, 'A Defense of Rights to Well-Being', *Philosophy and Public Affairs* 8 (1978); Carl Wellman, *Welfare Rights* (Totowa, NJ: Rowman and Allanheld, 1982), p. 181.
7. Above sect. 5.1.
8. Above sect. 3.3, ch. 5 *passim*.
9. This case is made by Alan Gewirth, *The Community of Rights* (Chicago: University of Chicago Press, 1996), p. 123. Gewirth, none the less, favours the view that welfare rights are human rights.
10. Robert Nozick, *Anarchy, State, and Utopia* (Oxford: Blackwell, 1974), pp. 169–72.
11. See e.g. Jeremy Waldron, *Liberal Rights* (Cambridge: Cambridge University Press, 1993), pp. 18 ff.
12. For a defence of the narrower conception of liberty, see above ch. 7.
13. Anyone interested in the justification of a human right to welfare would be helped by looking at the writing in political theory about the case for the welfare state. The focus there is more on welfare as a necessary condition for effective citizenship in a modern liberal democracy, whereas our focus is on necessary conditions for normative agency generally, but there is overlap. See e.g. Robert Goodin, *Reasons for Welfare: The Political Theory of the Welfare State* (Princeton: Princeton University Press, 1988); Desmond S. King and Jeremy Waldron, 'Citizenship, Social Citizenship and the Defense of Welfare Provision', *British Journal of Political Science* 18 (1988).
14. E.g. Henry Shue, *Basic Rights: Subsistence, Affluence, and United States Foreign Policy*, 2nd edn. (Princeton: Princeton University Press, 1996), p. 31; Gewirth, *Community of Rights*, p. 115.
15. The indivisibility of liberty rights and welfare rights has often been claimed, e.g., by David Archard, 'Welfare Rights as Human Rights', in T. Campbell and S. Miller (eds.), *Human Rights and the Moral Responsibilities of Corporate and Public Sector Organisations* (Dordrecht: Kluwer, 2004); Mary Robinson, 'Realizing Human Rights', Romanes Lecture for 1997 (Oxford: Clarendon Press, 1998).
16. See above sects. 5.3–4.
17. *New York Times*, 27 Aug. 1996.
18. Ability also explains why we think that there may sometimes be international obligations to help. In 1996 the British Defence Secretary, Michael Portillo, told the House of Commons that Britain had a moral obligation to intervene in Bosnia to save refugees from starving, because Britain was 'one of the few nations on earth who have the military capability to help' (*Daily Telegraph*, 15 Nov. 1996).

19. Isaiah Berlin, Introduction, in *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), p. liii. See also John Rawls's distinction between the *extent* of liberty and its *worth* (*A Theory of Justice* (Oxford: Clarendon Press, 1972), p. 204) and his later comments on the distinction (in 'The Basic Liberties and their Priority', in S. McMurrin (ed.), *Liberty, Equality, and Law: Selected Tanner Lectures on Moral Philosophy* (Cambridge: Cambridge University Press, 1987)).
20. See above sect. 7.4.
21. Universal Declaration of Human Rights (1948), Art. 25. 1.
22. E.g. Shue, *Basic Rights*, p. 23; Carl Wellman, 'The Right to an Adequate Standard of Living', in *Festschrift Till Stig Strömholm* (Uppsala: Justus Forlag, 1997), pp. 836–8.
23. See Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford: Oxford University Press, 1981).
24. See Dasgupta, *Enquiry into Well-Being and Destitution*, ch. 5 sect. 3.
25. e.g. Carl Wellman and Alan Gewirth.
26. Immanuel Kant and Hillel Steiner.
27. See above sect. 2.6.
28. Fully stated, the right announced in Article 23.3 is 'to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity'. The mention of 'human dignity' may be taken to set a limit to the justice involved: perhaps we should read the clause as saying 'just remuneration, i.e. remuneration needed to ensure human dignity', an interpretation in the spirit of the personhood account. But what is needed to ensure human dignity is not justice—i.e. fair pay—but enough material resources (e.g. pay) to satisfy the necessary conditions for normative agency.

CHAPTER 11. HUMAN RIGHTS: DISCREPANCIES BETWEEN PHILOSOPHY AND INTERNATIONAL LAW

1. See also the *American Declaration of the Rights and Duties of Man* (1948): 'The American States have on repeated occasions recognized that the essential rights of man ... are based upon attributes of his human personality.' Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988), Preamble: 'Considering the close relationship that exists between economic, social and cultural rights, and civil and political rights, in that the different categories of rights constitute one indivisible whole based on the recognition of the dignity of the human person'; Final Act of the Helsinki Conference (1975), Principle VII: 'The participating States ... will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and

freedoms all of which derive from the inherent dignity of the human person.

2. Henry J. Steiner and Philip Alston, *International Human Rights in Context* (Oxford: Clarendon Press, 1996), p. 127, make this observation about the two United Nations documents, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, but it applies generally.
3. See Ian Brownlie, *Principles of Public International Law*, 5th edn. (Oxford: Clarendon Press, 1998), pp. 582–3: ‘Originating in the Algiers Declaration of 1978 a doctrine of the Rights of Peoples has appeared in the literature. A fairly typical prospectus of these rights would include the right to food, the right to a decent environment, the right to development, and the right to peace.’
4. American Declaration of the Rights and Duties of Man, Art. V; International Covenant on Civil and Political Rights, Art. 17. 1.
5. Above sect. 2.6.
6. This is repeated in the International Covenant on Civil and Political Rights, Art. 12. 1, and the African Charter, Art. 12. 1.
7. See the American Declaration of the Rights and Duties of Man, Arts. XXIV–XXVI; the European Convention, Arts. 6–7; the International Covenant on Civil and Political Rights, Arts. 14–16; the American Convention, Arts. 3, 8–10; the African Charter, Arts. 6–7.
8. See, e.g., Michael Akehurst, *A Modern Introduction to International Law*, 6th edn. (London: Allen & Unwin, 1987), p. 76, who in writing about the growth of the human rights doctrine observes that ‘it was only after the United Nations Charter was signed in 1945 that any attempt was made to provide comprehensive protection for all individuals against all forms of injustice’.
9. Above sect. 2.6.
10. For the history of, e.g., the introduction of the Bill of Rights in the USA, see L. W. Levy, *Origins of the Bill of Rights* (New Haven: Yale University Press, 1999), esp. ch. 1.
11. Is there another line that the drafters of these international documents might take? An interesting phrase crops up in many of the documents. They speak of promoting observance of ‘human rights *and fundamental freedoms*’. See, e.g., the Universal Declaration, Preamble, Art. 2; International Covenant on Civil and Political Rights, Preamble, Arts. 2. 3. a, 5. 1; International Covenant on Economic, Social and Cultural Rights, Preamble, Art. 5. 1; European Convention, Preamble (which links the two: ‘fundamental freedoms’ depend upon the observance of ‘human rights’ and so suggests that they are coextensive); American Convention, Art. 1; African Charter, Preamble, Arts. 1–2. Are ‘fundamental freedoms’ different from ‘human rights’?

There is, so far as I know, no explanation of the distinction between the two. Of course, some fundamental freedoms, such as liberty, are human rights if anything is. But if some ‘fundamental freedoms’ fall outside the class of ‘human rights’, then the drafters may not be using ‘human rights’ as broadly as I think they are. But the most plausible interpretation of what the drafters mean by ‘fundamental freedoms’, it seems to me, is that they are a sub-class of ‘human rights’. This makes the phrase ‘and fundamental freedoms’ otiose, but I am inclined to accept that consequence. (An example of a human right that is not also a fundamental freedom would be a right to welfare.)

12. See the Preamble, para. 1, of the Universal Declaration.
13. See Oscar Schachter, ‘Human Dignity as a Normative Concept’, *American Journal of International Law* 77 (1983). ‘We do not find an explicit definition of the expression “dignity of the human person” in international instruments or (as far as I know) in national law. Its intrinsic meaning has been left to intuitive understanding, conditioned in large measure by cultural factors’ (p. 848).
14. In tracing the emergence of a right to a healthy environment, I follow closely Carl Wellman’s discussion in his paper ‘Solidarity, the Individual and Human Rights’, *Human Rights Quarterly* 22 (2000), sect. 3.
15. See *The New York Times*, 15 Dec. 2004.
16. See Akehurst, *Modern Introduction to International Law*, ch. 3; Brownlie, *Principles of Public International Law*, ch. I, sect. 2; Steiner and Alston, *International Human Rights in Context*, p. 27.
17. This is the view of Akehurst, *Modern Introduction to International Law*, p. 42.
18. For a recent example, see Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2004), esp. chs. 1, 5–7. ‘This book is an attempt to develop moral foundations for international law. The existing international legal system ... can and ought to be evaluated from the standpoint of moral principles’ (p. 1). ‘I am plainly rejecting the dominant view in international relations, namely, that state policy should or at least may exclusively pursue national interest’ (p. 8). ‘... political entities are legitimate only if they achieve a reasonable approximation of minimal standards of justice, ... understood as the protection of human rights’ (p. 5).
19. For a recent example, see Jack L. Goldsmith and Eric Posner, *The Limits of International Law* (New York: Oxford University Press, 2005), esp. chs. 4 and 7.
20. See *ibid.* On the autonomy of international law: ‘... international legality does not impose any moral obligations’ (p. 197). ‘The reason that it can exert no moral force comparable to the moral force of domestic law is that it has no democratic pedigree or epistemic authority; it reflects what states have been doing in the recent past and does not necessarily reflect the moral judgements

or interests or needs of individuals' (p. 199). 'A third category, between politics and morality, is separated out and made the subject of a special discipline, that of international law' (p. 201). On the source of the bindingness of international law: 'The more plausible view [is this:] ... efficacious international law is built up out of rational self-interest ... On this view, international law can be binding and robust, but only when it is rational for states to comply with it' (p. 202).

21. See e.g. Maurice Cranston, 'Human Rights: Real and Supposed', in D. D. Raphael (ed.), *Political Theory and the Rights of Man* (London: Macmillan, 1967); for a more conceptual doubt about welfare rights, see Carl Wellman, *Welfare Rights* (Totowa, NJ: Rowman and Allanheld, 1982), esp. p. 181.
22. See above ch. 10.
23. Above sect. 10.1.
24. See the American Declaration of the Rights and Duties of Man, Art. XIV; the International Covenant on Economic, Social and Cultural Rights, Art. 6. 1; European Social Charter, I. 1 and II. 1; the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Art. 6. 1.
25. See, e.g., the European Social Charter, II. 1.
26. See above sect. 2.8.
27. Above sect. 5.2.
28. Art. 12. 1. See also the African Charter on Human and People's Rights, Art. 16; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Art. 10. 1.
29. See the Universal Declaration, Art. 23. 2; the International Covenant on Economic, Social and Cultural Rights, Art. 7. a. i; the European Social Charter, II. 4. 3; the African Charter, Art. 15.
30. See the International Covenant on Economic, Social and Cultural Rights, Art. 7; the European Social Charter, II. 2.
31. See the International Covenant on Economic, Social and Cultural Rights, Art. 7c; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Art. 7c.
32. Ludwig Wittgenstein, *Philosophical Investigations* (Oxford: Blackwell, 1953), sects. 64 ff.

CHAPTER 12. A RIGHT TO LIFE, A RIGHT TO DEATH

1. The right to life was 'so far above dispute that authors [in the North American colonies] were content merely to mention it in passing' (Clinton Rossiter, *Seed Time of the Republic* (Boston: Harcourt, 1953), p. 377).
2. I do not know of anywhere in, e.g., the debate about the ratification of the US Constitution where the negative nature of the right to life is explicitly