

Personhood versus Human Needs as Grounds for Human Rights¹

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In this essay, I want to compare the *personhood* grounding for human rights that James Griffin presents in his book *On Human Rights* with the *human needs* grounding that I have defended elsewhere.² It is very tempting to assume that this issue of the best grounding makes little practical difference when we have to draw up a substantive roster of human rights, and so the debate between the two positions is academic in the pejorative sense. Griffin himself thinks that the two accounts are near neighbours. ‘I must not exaggerate the difference between the need account and my personhood account.....There will clearly be great overlap between the lists [of human rights] that emerge from these two accounts.’ (p.90). Yet he goes on to claim that the overlap is not complete, and that where the lists diverge the personhood account is superior since it specifies more precisely the kind of need that can ground human rights. ‘[It] is more focused and exclusive in the role that it specifies: what is needed to function as a normative agent.’ (p.90). I agree with Griffin that the grounding we offer for human rights will affect the list of human rights that we finally endorse, but I shall argue for the superiority of the need account and the set of human rights that it generates.

Before we begin to examine in detail the structure of the personhood account, and especially its key concept of ‘normative agency’, it may be helpful to sketch how my general approach to human rights compares with Griffin’s. I believe that there are three ways in which my approach resembles Griffin’s, and two ways in which the approaches diverge. I should begin by acknowledging the deep influence that Griffin’s work has had on my own thinking about human rights, to the extent that when I first encountered it I was inclined to think that any differences between us were merely ones of verbal presentation (see Miller 2002: 181). Further reflection,

¹ I should like to thank Roger Crisp for his very helpful comments on an earlier draft of this chapter.

² Griffin 2008; subsequent chapter and page references are to this work. Miller 2007, ch. 7; Miller forthcoming.

however, has led me to conclude that our disagreements may run deeper than that. But before coming to those, let me state what I see as the main points of convergence.

We both agree that human rights must be given a philosophical foundation. That means that if someone were to ask why something that is claimed to be a human right (freedom of speech, say) really is a human right, we must be able to give an answer that justifies that claim normatively. It is not enough merely to point to the fact that the right appears in a number of official declarations and covenants. That might be sufficient if our aim was to show that the alleged right was a positive right in international law, but to show that it has the special significance that we attach to human rights, more is needed. Putting it in its broadest terms, we need to show the value to human beings of the right's being recognized, and to do that we need to appeal to some feature they possess that makes having and enjoying the right essential to them.³ What precisely that feature is remains in dispute between us, but the need to find some feature is not. In that respect, we both stand opposed to what I have elsewhere called the practice-based approach, that establishes the *bona fides* of any given human right by showing that it can be included in the ongoing *practice* of human rights – meaning the various international declarations and covenants and their conversion into international law through the decisions of relevant courts, the corresponding practice of governments, and the claims made by human rights organizations.⁴

Next, and as a corollary of the first point, neither of us treats the detailed lists of human rights contained in documents such as the *Universal Declaration of Human Rights* or the *International Covenant on Civil and Political Rights* as definitive for purposes of working out which rights really *are* human rights, rather than, say, merely

³ This is common ground between Griffin and I, though not all philosophers of human rights would agree. Deontological conceptions of rights pay primary attention to the issue of compossibility – a candidate right only qualifies as a human (or ‘natural’) right if it can be exercised without infringing the equal right of everyone else. Since my aim is to illuminate the differences between Griffin’s approach and my own, I shall not spend time defending positions on which we agree against rival views.

⁴ For the fullest defence of this approach, see Beitz 2009. A different version of the practice-based approach is presented in Raz 2010. My reasons for not taking this approach are set out in Miller 2007: 168-72.

desirable goals that one would like to see modern states pursue. Griffin speaks in chapter 11 of ‘discrepancies’ between the best philosophical account of human rights and human rights as presented in international law. The enterprise of constructing a theory of human rights is to some extent revisionary: it may exclude some rights that are found in the official documents and introduce others that are not listed there. Of course, if the revisions were very extensive, this might suggest that something has gone wrong with the theory, since the documents have to be taken seriously as recording the considered convictions of their drafters about which rights deserved to be given human rights status. Yet at the same time, these documents must also be seen as political in nature, reflecting the pressures exerted by representatives of the signatory states, and therefore not necessarily always reliable as guides to the demands that human beings can legitimately make against their states. The same applies to a degree to customary international law, insofar as this has been influenced by state practice. So we should not be embarrassed if the account of human rights we defend on philosophical grounds generates a set of rights that does not exactly match the list that an international lawyer would cite.

Our final point of agreement is that human rights have to be distinguished from other values, and especially from justice in a wider sense. Breaches of human rights are also very often serious injustices, but there are other forms of injustice that cannot be understood in this way (Griffin refers to several cases of unfair behaviour that are not human rights violations, such as free-riding on the bus; we might add potentially more serious breaches of principles of justice, such as cheating on one’s tax return). There is a temptation today to advance the whole agenda of social justice under the heading of human rights, whereas Griffin and I would both agree that maldistribution of society’s resources, though an injustice, does not violate human rights unless it pushes some people below the threshold where they have insufficient resources to lead properly human lives (how this last phrase should be understood is the main issue that divides us, as we will shortly see).

I come now to two respects in which our approaches diverge, which I think may bear upon the dispute between personhood and needs as grounds for human rights without fully determining its outcome. The first is that whereas Griffin sees human rights as playing a central role within our *ethical reasoning*, I see their main use as occurring in

the course of *political argument*.⁵ We appeal to human rights when we are deliberating about a state's constitutional arrangements, or criticizing the policy it is now pursuing. This is not to say that we never reproach individuals for behaving in ways that violate the human rights of others, or consider rights-related moral obligations that we might have (say towards the global poor), but these uses within ethical discourse are, I suggest, subsidiary ones. The idea of human rights has evolved as a way of evaluating the behaviour of states, first towards their own citizens, and then towards others beyond their borders, and this helps to shape their content.⁶ So although when we are deciding what should count as a human right, we are thinking primarily of the value to the right-holder of that right's being fulfilled, we must also consider, as a second relevant factor, what states might or might not do to threaten that right. At this point, the primarily philosophical approach to human rights I am endorsing can learn something from the rival political, or practice-based, approach. Beitz, for example, argues that we must understand human rights not only in terms of the 'urgent individual interests' of the right-holders, but also of the 'standard threats' that they protect individuals against in the circumstances of modern societies governed by states; some of these will be threats that states can and should protect us from, while others will be threats that states themselves impose.⁷ If one begins one's reasoning about human rights from within the field of ethics, this second dimension may well be lost from sight.

Our second point of methodological disagreement concerns whether human rights need to be justified cross-culturally. Should it worry us if the justification we provide appeals to values that are prominent only in certain cultures, which in practice will mean the different varieties of liberalism that flourish in Western societies? According to Griffin, we should not be worried: we should 'put the case for human

⁵ Griffin does not deny that some human rights should be made into legal rights. Nevertheless, as he puts it, 'my proposal that we see human rights as protections of personhood is primarily a proposal in ethics, but secondarily with implications for law' (Griffin 2010: 353).

⁶ By extension, we also use the idea to condemn the behaviour of corporations, military leaders, warlords, and so forth.

⁷ Beitz 2009: esp. sect. 17.

rights as best we can construct it from resources of the Western tradition, and hope that non-Westerners will look into the case and be attracted by what they find' (p. 137). He argues that the cultural differences between Western and non-Western societies have in any case been exaggerated, and moreover that such differences as may once have existed are being reduced by forces such as global communication. He also suggests that the widespread acceptance of the concept of human rights in political debate everywhere supports this convergence thesis. In contrast, I believe that we need to treat this (apparent) acceptance with some caution. It may be that lip service is being paid to human rights by people whose real view is that they are a Trojan horse whose purpose is to smuggle liberal values into societies whose political ethos is of a different kind, being based, for example, on religious foundations. To avoid this suspicion, it would be better if we could ground human rights on features whose significance is universally recognized, by liberals and non-liberals alike.

Let me now turn, therefore, to examine Griffin's personhood account of human rights more closely. Personhood, he tells us, as a ground of human rights, must be combined with a second ground that he calls 'practicalities' (pp. 37-9). However 'practicalities' are not a ground in the same sense as personhood. Their role is not to explain why it is valuable to recognize a particular right as a human right, but to prevent the scope of human rights from expanding too far and to make their content more determinate. To do this we need to ask what it is feasible for a society to provide for its individual members. I agree with Griffin that a factor somewhat akin to his notion of practicalities has to be introduced into our theory of human rights, although as I shall suggest later I believe that there is a better way of achieving this end. For now, however, I want to set practicalities aside and focus more narrowly on personhood.

According to Griffin, personhood has three components: autonomy, minimum provision, and liberty (p. 33). These are conditions that must be fulfilled if someone is to qualify as a 'normative agent'. She must first choose for herself what her path through life will be, or as Griffin also says be a 'self-decider' (p. 46). Then she must have access to sufficient resources to make that choice a real one. And thirdly, for the same reason, her path must not be blocked by the intervention of other agents – the range of options that lie open to her must be sufficiently large. What human rights do,

if they are respected, is to ensure that these three conditions are fulfilled for everyone in the relevant domain

Much criticism of Griffin has focussed on the potential indeterminacy of the latter two conditions. What level of resources is required for someone to function as a 'normative agent'? How many options must be open to them if they are going to count as genuinely autonomous? These are important questions, but before tackling them in detail it is worth pausing to examine the underlying picture of human agency that Griffin presents. It is recognizably a liberal picture, by virtue especially of the central role given to the idea of autonomy: 'what we attach value to, in this account of human rights, is specifically our capacity to choose and to pursue our conception of a worthwhile life' (p. 45). Griffin goes on to say that this is not the same as having a fully worked out 'plan of life', nor should 'a worthwhile life' be identified with Socrates' notion of 'an examined life' (p. 46). Nevertheless the emphasis is unmistakably placed on the importance of each individual working out for himself what he personally values, and how therefore he should live. This picture is undeniably attractive to many people living in liberal societies. But it is by no means uncontested. For it appears to deny that human beings can live perfectly good lives according to some inherited pattern that they have not chosen for themselves, but simply taken for granted.. Of course no human being has ever lived *exactly* according to a blueprint laid down in advance; there are always specific choices to be made. But for most of history, people have lived in circumstances under which answers to most of the big questions that preoccupy us were taken for granted: which religion to practice, which social group to associate with, what occupation to take up, and so forth. Even though we, as children of John Stuart Mill and the whole Romantic tradition that he transmitted to us, may regard these past lives as cramped and unfulfilling, it is a further step to claim that they were not properly human. It is worth noting here that the idea of autonomy, as an ethical/political value, which plays such a large role in contemporary debate (and as we have just seen is central to Griffin's account of human rights) only acquired its present sense in the second half of the twentieth century, escaping its origins in the philosophy of Kant. This was not a case of finding a new label for a value whose significance had long been recognized in

public discourse.⁸ Its emergence rather signalled a transformation of values whereby the idea of ‘a good life’ was replaced by the idea of ‘a self-chosen life’.

It is this close internal link between the (post-Kantian) idea of autonomy and the conditions of life in latter-day liberal societies that in my view disqualifies autonomy as a ground of human rights. It is a sectarian value that can reasonably be rejected by those who adhere to rival traditions of ethics and social philosophy. The effect of admitting it will be to bias the substantive set of human rights that emerges in a particular direction. Rights whose purpose is to protect choice – say in matters of religion – will be over-extended, to the detriment of other considerations. There is no objection to compiling a list of ‘liberal rights’ and recommending that they be given fundamental status – say via constitutional entrenchment – in societies where liberal values prevail, but this is not the purpose of human rights doctrine. Here we can press into service the distinction that both Griffin and I accept between human rights and other values with which they may be conflated, and insist that human rights should not be captured by a liberal programme whose aim is to promote the conditions under which people can autonomously choose their personal conceptions of the good life.

One reason for preferring human needs as the ground of human rights is precisely to avoid this charge of sectarian bias that can justifiably be levelled at the personhood account. Before considering Griffin’s objections to it, let me say briefly why needs seem a promising place in which to start our thinking about human rights. Human rights are meant to be important: they impose weighty obligations on governments and other institutions; the charge that they are being violated is a serious one, and grave consequences may follow for the violator if others believe that they have an obligation to intervene. So they should be grounded on considerations that are equally weighty, and needs appear to fit that bill. By identifying something as a human need, we are already distinguishing between human interests that are urgent and other that are less so. Moreover needs occur as an unchosen element in human life: one has a need for food, say, but one does not choose to have it. So they are immune to the criticism that might be levelled against other claims that a person

⁸ It can plausibly be argued that Mill’s concept of ‘individuality’ foreshadowed the late-twentieth-century notion of individual autonomy: see Mill 1989, ch. 3. But this concept was never widely used at the time Mill wrote.

might advance, namely that if the person were to choose differently – adopt a different plan of life, say – the claim would no longer arise. Since human rights are also supposed to be choice-independent, this counts in favour of needs as the grounds for asserting them.

Griffin, however, is sceptical. He begins by making a move that is often made by those who want to deflate the significance of need claims. He says ‘statements of need are always of the form: x needs a in order to φ ’ (p. 88). The effect of this move is to focus attention away from the idea of need itself and on to the goal or end represented by φ . But the move is controversial. Most philosophers writing on need draw a distinction between needs that are merely instrumental to some further end, and needs that are ‘categorical’ or ‘fundamental’ or ‘course-of-life’ or ‘intrinsic’.⁹ In the case of such non-instrumental needs, the statement form proposed by Griffin is misleading, because it suggests that the sense of the need claim is indeterminate until the goal or end is filled in. In the case of human needs this is not so. If we were to spell out a human need claim using Griffin’s formula, it would read ‘ x needs a in order to live a human life’. Clearly, nothing is added here by specifying the φ variable; it is already understood when one speaks of a human need.

This is not to say that the idea of a human need is unproblematic. It does require some clarification. Griffin’s own suggestion is that ‘a basic human needis what human beings need in order to avoid ailment, harm, or malfunction – or, to put it positively, what they need to function normally’ (p. 88). He goes on to argue, however, that if the emphasis is placed on ‘ailment’ or ‘malfunction’, then need will be understood in terms of an idea of mental and physical health, which is in one respect too narrow, because it cannot to be used to generate important human rights such as freedom of religion, and in another respect too demanding, because it would suggest that our human rights extend to remedies even for minor bodily ailments like the common cold. The same problem infects ‘harm’: of all the ways in which human

⁹ See Wiggins 1987: 6-11 (who prefers ‘categorical’); Thomson 1987: ch. 1 (who prefers ‘fundamental’); Braybrooke 1987: ch. 2 (who prefers ‘course-of-life’); Miller 1999: ch. 10 (who prefers ‘intrinsic’); ? S. Reader? In an earlier discussion, Griffin professed himself to be uncertain as to whether there was ‘a separate non-instrumental sense of “need”’, but argued that for purposes of moral theory this was not important: see Griffin 1986: 327.

beings can be harmed, only some seem relevant as justifying arguments for human rights.

I agree with Griffin that a purely biological-cum-psychological understanding of ‘human need’ is not adequate as a basis for human rights. I propose instead that we should start with the idea of the human form of life, as a common element that runs through the many specific forms of life that human beings have evolved in different times and places. That is to say, although human societies organize themselves in various contrasting ways, there are certain key elements that are reiterated throughout, best understood in terms of the range of activities that human beings engage in. There is no society in which human beings do not, for example, participate in productive labour, raise families, play games, sing and dance, engage in religious rituals, and so forth – or to be more precise, no society in which they do not engage in these activities unless prevented from doing so by coercion, by material deprivation or some such cause. That allows us to speak of a human form of life: if we were to encounter a group of beings who appeared to have no interest at all in engaging in one of these activities, we would simply be perplexed.¹⁰ It is against this background that we can understand the idea of human needs, as conditions that must be fulfilled if people are to be able to live a human life at a minimally decent level. Where their needs are met, they will have the opportunity to engage in each of these core activities without having to forgo any of the others. We cannot specify such a level precisely. For instance if we think about the *length* of a decent life, we cannot say whether that should be set at 70 years or at 75, though we know for certain that a person who as a result of malnourishment dies at 40 has *not* had a minimally decent life, whereas someone who by virtue of advanced medical technology remains fit until 100 has enjoyed more than decency requires.

A human needs approach will generate a list of rights that can be roughly divided into the following four categories. First, there will be rights whose purpose is to provide the material means to living a minimally decent life, such as rights to food and shelter.

¹⁰ Individual human beings may decide to forgo one of these activities, either because they lack the personal capacity to engage in it, or because they believe that they must do so in order to participate fully in another, as in the case of a religious person who takes a vow of chastity. Accordingly I say that human needs are fulfilled when the *opportunity* to engage in each practice exists.

Second, there will be rights to specific forms of freedom, such as freedom of religion and occupation, that allow people to engage in the practices that make up such a life in the manner that suits their own particular dispositions and capacities. Third, there will be rights that enable people to participate in social relations and activities, such as the right to associate and the right to marry and raise a family. Fourth, there will be rights whose purpose is to protect people's enjoyment of rights in the first three categories by safeguarding them from various threats, such as the right to equality before the law, to a fair trial, and to political participation. This last category of rights is less immediately related to human needs, but they can be justified as essential protections if such needs are going to be met consistently and securely.¹¹

It is important to understand, when evaluating this approach, how the human needs justification for human rights is supposed to work. It is not normally the case that one moves from a specific need to a corresponding right. Rather each candidate list of human rights is assessed by how effectively it will protect the conditions for a minimally decent life. This has two specific implications. One is that a right may be important not only for fulfilling a need directly, but also because it helps support other rights. Thus a right such as freedom of movement is important because the ability to move around in physical space is indeed a basic human need, but also because in order to fulfil rights such as the right to work, to practise religion or meet potential marriage partners, one must be able to go to places where these opportunities are available. Second, when defining the scope of a particular right, we must consider which obligations that right (as specified in one of several different ways) would place upon other people, and how far this would interfere with *their* rights. Thus the

¹¹ One criticism that might be levelled against this approach is that it cannot explain some of the rights that intuitively we think are human rights, in particular the right against torture – since being tortured on one occasion need not prevent the victim from living a minimally decent life overall. About this three things are worth saying. First, the grounds that one gives for the human right not to be tortured do not have to explain the full wrongness of torturing, such as the cruelty or contempt shown by the torturer. Second, if one thinks clearly about what torture involves, and does not confuse it with the mere infliction of severe pain, it is apparent that being tortured is likely to cause permanent damage, physical and/or mental, that will indeed prevent the victim from leading a minimally decent life thereafter (see, for example, Sussman 2005 on the peculiarly destructive quality of torture). Third, a minimally decent life must include knowing that one is protected against unwanted kinds of bodily invasion; an effective right against torture provides this assurance in one domain, as also does the right not to have body parts removed without one's consent in another.

right to free expression cannot be understood in such a way as to impose obligations on others to listen to what you might have to say; their right to freedom of movement includes the right to walk out of the hall in which you are delivering your interminable speech. Or for a weightier example, consider how a very extensive right to medical care might impose obligations on others to provide that care which would prevent *them* from leading minimally decent lives. The aim, then, is to come up with a list of rights that everyone can exercise without entrenching upon the equal claims of others, the whole list being justified as the most effective means of ensuring that basic needs are met.

This is how, within a basic needs approach, the problem of rights becoming over-expanded can be dealt with. How does Griffin deal with the same problem? He certainly recognizes its relevance. He writes; '[Human rights] are rights not to anything that promotes human *good* or *flourishing*, but merely to what is needed for human *status*. They are protections of that somewhat austere state, a characteristically human life, not of a good or happy or perfected or flourishing human life.' (p. 34). But the concept of personhood as he defines it pushes him in a more expansive direction. Recall that one of its components is 'liberty', meaning the availability of an adequate range of options to choose between. As he begins to explore what liberty means, in chapter 9, it turns out to require society to supply its members with a rich enough array of options that 'any plausible conception of a worthwhile life' can be pursued. Griffin acknowledges that because of personal incapacities, a given individual may not succeed in realizing the conception of the good life she has chosen; he also concedes that 'liberty may not require broadening options restricted entirely by nature' (p. 168). Therefore, he concludes 'liberty is not a right to a worthwhile life itself, but merely a right to pursue it with no more impediments than those imposed by mother nature, including, prominently, human nature' (p. 168). But the 'merely' here conceals the fact what is being required is actually very demanding indeed: not only the removal of all socially created obstacles to whatever conception of a worthwhile life a particular person may choose, but also the *creation* of social practices that allow for one or more of these conceptions to be pursued. Griffin gives the example of same-sex marriage and raising of children. He says of it 'no matter how many options there are already, this one, because of its centrality to characteristic human conceptions of a worthwhile life, must be added' (p. 163). Recall that the

issue here is not whether same-sex marriage should or should not be permitted. The issue is whether it should be counted as a human right. On Griffin's view it is a human right, because personhood requires the liberty to pursue all 'plausible' conceptions of a worthwhile life (when not prevented from doing so by 'mother nature') and since same-sex marriage and child-rearing qualifies as such a conception, a human right must be put in place (presumably by extending the existing right to marry and have a family) to enable it. We seem at this point to have moved considerably beyond 'that somewhat austere state, a characteristically human life'.

Now Griffin, as I noted earlier, does try to limit the expansive tendencies of the personhood account by introducing 'practicalities' as a constraint. What does this involve? He says first that human rights must be sufficiently determinate that they can constitute 'an effective, socially manageable claim on others', which I take it means that their content must be precise enough that they can serve as guides to law and social policy. But he also implies that they are subject to feasibility constraints. 'Practicalities will be empirical information about, as I say, human nature and human societies, prominently about the limits of human understanding and human motivation.' (p. 38). His meaning here is again not completely clear, but a plausible interpretation is that a human right should not require others to behave in a way that oversteps 'the limits of human understanding and human motivation' as best we can judge them. Examples might be that there could not be a human right to forms of medical treatment that have not yet been discovered (oversteps human understanding), or a human right to be loved (oversteps human motivation, since one cannot love at will). Yet there are dangers lurking here. The limits of human understanding are being rolled back over time, so one would have to accept that the practicalities constraint on human rights is likely to weaken as human knowledge advances. More worrying perhaps, *some* limits to human motivation should not set bounds to human rights no matter how well established they are empirically. Should the fact that people are unwilling to make significant financial contributions to meet the needs of distant others necessarily mean that there is no human right to subsistence that imposes global obligations? This seems to get things back to front. Assuming there is a human right to subsistence, it follows that people *should* be

willing to make financial sacrifices if this is what it takes to secure the right.¹²

Although this is not their main purpose, human rights do also constrain the motivations that people are required to have.

The human needs approach does better here, because the bounds that it sets to the expansion of human rights are essentially normative ones. As I suggested earlier, a candidate for human rights status will be disqualified if the effect of recognizing it would be to impose obligations on others that prevent them from leading minimally decent lives. Need is here set against need. Your need for medical care is set against my need for a form of life that involves more than just caring for you. I do not mean to suggest that contingent facts about human beings are completely irrelevant; after all it is simply a contingent fact about the human form of life that it involves clashes between people's needs such as the one I have just described. The point rather is that these clashes are to be resolved by normative reflection on the relative importance of meeting different needs, when considering what it means to lead a decent human life. The problem with recognizing a hugely demanding right to medical assistance is not merely that people are unlikely to be willing to give up most of their waking hours to supply such assistance – a claim about motivation – but that if we reflect on what we would count as a minimally decent life, we see that it must include opportunities for rest, leisure, care of children, participation in community activities, all of which set limits to the obligations to serve others that can properly be imposed on any one person.

I argued above that one reason for preferring the needs approach to Griffin's personhood approach is that it was not in the same way vulnerable to the challenge that it appeals to values that are prominent in liberal societies (autonomy, liberty) but are less highly regarded in others. Human needs, I implied, were universally recognized, or at least universally recognizable, since we are all participants in the human form of life and therefore understand what is required to live such a life at a decent level. This is not to deny the possibility of wilful or inadvertent error – as, say,

¹² I want to remain agnostic on the question of whether asking people in rich countries to donate through charity to the global poor is an effective way of meeting the latter's human right to subsistence. The point is simply that if this were the only effective means, the fact that rich people were *unwilling* to donate should not entail that there is no such human right.

when the members of a particular society fail to recognize the importance of a nutrient to their diet, or a form of medical treatment. But even here it will be possible to demonstrate the existence of a need through commonly accepted forms of reasoning. It might nevertheless still be the case that there will be cultural variation when it comes to assessing the relative importance of meeting different needs. A culture that makes religious observance central to its understanding of a decent human life will weight the needs associated with that practice, such as for religious education, more highly than needs of other kinds. Since lists of human rights are generated, on the needs approach, by comparing sets of rights to see which set will do the best job of ensuring that needs are met overall, it seems that each culture must generate its own list of human rights to reflect those weightings. Whereas the personhood approach is vulnerable to the charge of sectarianism because of the particular values it invokes to ground human rights, it seems that the needs approach is vulnerable to the equally serious charge of indeterminacy.

At this point we need to reflect on what we should expect from a general theory of human rights. It must be sufficiently determinate that it can help us decide what should go into international human rights documents and what should not. Is there a human right to democracy, or simply a right to political participation that can take different forms in different societies? Should the human right to freedom of movement be understood in such a way that it includes the right to cross state borders without hindrance? These are the kinds of questions that we want our theory to be able to answer. On the other hand, we do not expect it to be able to specify how any particular right should be interpreted when it is being incorporated into a state's constitution or into domestic law. We can show that there is a right to freedom of religion, for example, but our general theory cannot tell us whether this right entails that there can be no religious establishment. There is room, therefore, for a second stage at which the general theory is interpreted in the light of the specific account of human needs, and their relative weightings, that prevails in a particular society. So our account of human rights will not be fully determinate at this level. But should that worry us? Our main purpose in constructing a doctrine of human rights, and spelling it out in declarations and covenants, is to set standards that states can be expected to adhere to and that will lead to action by the international community when they are not. We include a right to freedom of religion as a tool to condemn

states that oppress religious dissidents by criminalising them or denying them jobs. But whether a country's constitution requires a strict separation of church and state, or on the other hand recognizes one particular religion as having official status, is not an issue that international human rights doctrine needs to address. The right itself is flexible enough that it can be implemented through either of these arrangements, and we should expect political communities on each side of this argument to claim that their interpretation is superior, without supposing that this gives them a licence to interfere with the other's practice.

Griffin's final worry about the needs approach appears to relate to this question of indeterminacy. Commenting on a version of that approach developed by Braybrooke, he says that 'if the need account spells out the notion of "normal functioning" by appeal to the especially basic roles in a characteristic human life – say, parent, householder, worker, and citizen – then the convergence of the two lists [of human rights] will be still greater'. Nevertheless 'the personhood account is more focused and exclusive in the role that it specifies: what is needed to function as a normative agent' (p.90). The thought here seems to be that by focussing attention simply on what is required by normative agency, we will get a tighter specification of human rights, and presumably (though Griffin doesn't say this explicitly) avoid possible conflicts between what might be needed to function properly as a parent and as a worker, say. Although the account of human needs I have presented here is not quite the same as Braybrooke's – I refer to the activities that human beings characteristically engage in, rather than the specific roles that they perform – there is sufficient similarity that Griffin's criticism might appear to apply to it as well.

But is the criticism valid? One may doubt whether the personhood account, and the idea of normative agency to which it appeals, does yield a determinate account of 'need' and thereby of human rights. It has a tendency to flip-flop between a narrow understanding of a normative agent as a being capable of making choices and giving reasons for those choices, but with nothing implied about the range of options over which she can realistically choose, and a much broader understanding in which

having access to a rich array of options is indeed included as one of its conditions.¹³ If we are uncertain whether to include a right to education, for example, among the list of human rights, it is not clear what illumination we can get by thinking in abstract terms about what it means to be a normative agent. We have to ask questions of the form ‘why is it important to be educated?’ ‘what can an educated person do that an uneducated person cannot?’ ‘what part do those extra capacities that education confers play in human life as a whole?’ We have to think, in other words, about the human form of life as we experience it, and ask which parts of it we regard as essential and which parts we regard as optional. The need approach encourages us to think in this more down-to-earth way.

It also encourages us to think, *from the outset*, about possible conflicts of priorities that arise within the idea of a human life. I assume here that when we finally formulate our canonical list of human rights, we want the rights it includes to be defined in such a way that we should expect conflicts between them to be rare. In other words, we want it to be the case that the demands made by each separate human right can be met without prejudice to the others. Rights-conflicts cannot be avoided entirely, but our hope must be that they can be confined to rare cases in which an emergency of some kind means that rights of one sort have to be suspended to preserve weightier rights of another sort (quarantining people in an epidemic, for example). I have underlined above that as we move from considering needs to considering the rights that they support, we have to make judgements about the relative importance of meeting different needs. In this way conflicts between need and need that arise in the routine circumstances of human life can be resolved before rights are fully specified.

Griffin may be less concerned than I am about conflicts of rights. In Chapter 3 he discusses and rejects the view that human rights must be strictly compossible. His conclusion is that ‘human rights are resistant to trade-offs, but not completely so’ (p. 76). When it is a question of conflicts between rights, he argues that we have to assess the weight of different rights, and we do so ‘by appeal to their effects on one’s personhood’ (p. 81). As I have just indicated, I agree with Griffin that sometimes

¹³ Several of Griffin’s critics have made this point already. See, for example, Raz 2010, Tasioulas 2010, Buchanan 2010.

one cannot avoid weighing rights against one another, but this should only need to be done in quite unusual circumstances (whereas Griffin appears to regard such conflicts as endemic). This difference may reflect our underlying disagreement about the role that human rights should play in practical reasoning. If one sees them as part of ethics – as guides to be used by individuals in their moral reasoning – then negotiating conflicts between rights by means of weighing will seem uncontroversial; after all much ethical reasoning takes the form of weighing up conflicting considerations when deciding what to do. On a primarily political understanding of human rights, in contrast, alarm bells are supposed to ring whenever a human right is infringed: so it is important that this should happen rarely, and only in circumstances where it is readily apparent that the normal course of human life has been disrupted. If human rights are to be taken seriously in this way, we need to make sure when defining them that we will not immediately have to begin sacrificing one to make room for another. They should be defined austere, and a need approach, I have suggested, will allow us to do just that.

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