

Agency and Human Rights

Forthcoming in the *Journal of Applied Philosophy*

S. MATTHEW LIAO

Faculty of Philosophy, Oxford University, Littlegate House, 16/17 St. Ebbes St., Oxford OX1 1PT, UK; e-mail: matthew.liao@philosophy.ox.ac.uk; www.smatthewliao.com

25 September 2009

Agency and Human Rights

Abstract

What grounds human rights? How do we determine that something is a human right? James Griffin has persuasively argued that the notion of agency should determine the content of human rights. However, Griffin's agency account faces the question of why agency should be the sole ground for human rights. For example, can Griffin's notion of agency by itself adequately explain such human rights as that against torture? Or, has Griffin offered a plausible explanation as to why one should not broaden the ground for human rights to include other elements of a good life such as freedom from great pain, understanding, deep personal relations, and so on? These concerns have been raised regarding Griffin's agency account, but in his new book, *On Human Rights*, Griffin has offered new arguments in support of his view that agency is the sole ground for human rights. In this paper, I examine these new arguments, and I argue that Griffin's arguments are ultimately unsuccessful.

Word Count: 6191

Agency and Human Rights

I. Griffin's Agency Account of Human Rights

What grounds human rights? How do we determine that something is a human right? In his new book, *On Human Rights*, and in a series of recent articles, James Griffin has argued that the notion of agency should determine the content of human rights.¹ Griffin writes,

What seems to me the best account of human rights is this. It is centred on the notion of agency. We human beings have the capacity to form pictures of what a good life would be and to try to realize these pictures. We value our status as agents especially highly, often more highly even than our happiness. Human rights can then be seen as protections of our agency - what one might call our personhood.²

By agency, Griffin means our autonomously choosing a conception of a worthwhile life (autonomy), our being at liberty to pursue this conception (liberty), and our having minimum material provision and education. As Griffin writes,

To be an agent, in the fullest sense of which we are capable, one must (first) choose one's own course through life – that is, not be dominated or controlled by someone or something else (autonomy). And one's choice must also be real; one must (second) have at least a certain minimum education and information and the

chance to learn what others think. But having chosen one's course one must then (third) be able to follow it; that is one must have at least the minimum material provision of resources and capabilities that it takes. And none of that is any good if someone then blocks one; so (fourth) others must also not stop one from pursuing what one sees as a good life (liberty).³

Griffin argues that this agency account of human rights enables us to derive rights such as the right to life and to minimum welfare (because human beings cannot be agents if they are not alive and if they cannot sustain themselves), the right to some basic education (because human beings must be informed in order to be able to determine their life choices), the right to freedom of expression, freedom to worship, freedom to form personal relationships (since these rights promote liberty), the right not to be tortured (because torturing undermines one's capacity to decide and stick to one's decision), and so on.⁴

There is much to be said in favor of Griffin's agency account of human rights. For one thing, agency is clearly of great importance to human beings. Without some of it, human beings would not be able to bring about any actions at all, let alone actions necessary for a moral and purposeful life. Given this, it seems highly appropriate to protect it with human rights, which offer strong protections for its possessors.⁵ Also, the agency account does appear to be able to help us determine which human rights are real. Indeed, Griffin's derivation of rights such as the right to life and the right to freedom of expression from the notion of agency seem plausible.⁶

That said, Griffin's account of human rights also faces a number of questions.⁷ In this paper, I am particularly interested in an issue that has been raised against Griffin's agency account, namely, whether agency should be the sole ground for human rights.⁸

To understand this concern, it is useful to begin by pointing out that Griffin has what might be called a *wide* notion of agency, as he holds that agency is valuable only in the context of a good, flourishing life. In contrast, a truly narrow notion of agency would regard agency as being valuable in and of itself regardless of how it might contribute to a good, flourishing life. As he says, autonomy and liberty, the two core values that make up his notion of agency, are "elements of a good life . . . features that characteristically enhance the quality of life," but they do not exhaust all the elements of a good life – other elements include freedom from great pain, accomplishing something in the course of one's life, understanding certain moral and metaphysical matters, deep personal relations, and so on.⁹ Indeed, owing to the fact that Griffin has a wide notion of agency, in response to the challenge that positive rights interfere with one's liberty, Griffin is able to argue that liberty is not merely "doing what one wants to do" but involves "actions that matter to one's pursuit of a valuable life." He is also able to argue that there can be positive rights such as a right to minimum welfare, because typically the duties that welfare rights impose on others need not interfere with a person's pursuit of a valuable life. As Griffin points out, on a truly narrow notion of agency, human rights would protect only "our autonomous choice of a course of life and our not being stopped from pursuing it; nothing else is contained in the essence of agency," and such an account

would see itself as “justifying liberty rights, but giving no support at all to welfare rights.”¹⁰

However, given that Griffin holds that agency is valuable only in the context of a good, flourishing life and given that he accepts that in addition to agency, there are other elements of a good life such as freedom from great pain, understanding, deep personal relations, and so on, which can be used indirectly to shape agency, this raises the question of whether agency should be considered the sole ground for human rights. For example, consider the paradigmatic human right not to be tortured. The fact that torture undermines one’s agency by undermining one’s capacity to decide and to stick to the decision is certainly an important factor in deciding that torture violates a human right.¹¹ But it seems that another important factor in deciding that torture violates a human right is that it causes great pain. If so, can Griffin’s notion of agency by itself adequately explain such human right as the right against torture?¹² To put matters differently, since Griffin already has a wide notion of agency in which agency is one element, among many, in a good life, and since Griffin already allows other elements of a good life to influence and contribute indirectly to the determination of the content of human rights, why does he not allow these other elements to contribute directly to this task as well? Has Griffin offered a plausible explanation as to why one should not broaden the ground for human rights to include these other elements?

This question has been put to Griffin’s account, but in his new book, *On Human Rights*, Griffin offers new arguments in support of this theory.¹³ In this paper, I shall examine whether these new arguments provide a successful defense of Griffin’s key

claim: that the notion of agency alone is sufficient for determining the content of human rights. I argue that Griffin does not show that notion of agency can by itself adequately explain the human right against torture, and that, ultimately, Griffin still fails to offer a plausible explanation as to why one should not broaden the ground for human rights to include other elements of a good life.

II. The Human Right against Torture: A Test Case for the Agency Account

According to Griffin,

Torture has characteristic aims. It is used to make someone recant a belief, reveal a secret, ‘confess’ a crime whether guilty or not, abandon a cause, or do someone else’s bidding. All of these characteristic purposes involve *undermining someone else’s will, getting them to do what they do not want to do or are even resolved not to do* (my italics).¹⁴

Griffin offers two new arguments to support his claim that the human right against torture can be adequately explained by the notion of agency alone.

First, Griffin accepts that when asked what is wrong with torture, the obvious response is that it causes great pain. However, he argues that causing pain cannot be why torture violates a human right, because there are many cases of one person’s gratuitously inflicting great pain on another that are not a matter of human right violation. For example, consider what might be called

The Callous Partner Case: There is an unsuccessful marriage in which the first partner treats the second partner callously, and the suffering endured by the second partner over the years is arguably worse than a short period of physical torture.¹⁵

Griffin argues that in this case, the first partner, simply by gratuitously inflicting great pain on the second partner, does not thereby violate the second partner's human right. Or, consider what might be called

The Jealous Sibling Case: An older sibling beats a younger sibling about the head from time to time out of resentment of being displaced by the younger.¹⁶

Griffin argues that even if painful for the younger sibling, this case would hardly be a case of human right violation.

Secondly, Griffin argues that undermining someone else's agency without causing great pain is sufficient for there to be a human right violation in other cases. For example, consider what might be called

The Truth Drug Case: Instead of torture, one uses truth drugs to extract secrets.¹⁷

Griffin argues that while the Truth Drug Case does not involve inflicting pain, it does involve undermining an individual's agency, which he believes amounts to a human right violation. As he says,

We could not call [the Truth Drug Case] 'torture' because it is essential to 'torture' that the infliction of great pain be the means. But what concerns us here is whether the painless chemical destruction of another person's will raises any issues of human rights. And it does. It does because painless domination is still a gross undermining of personhood.¹⁸

Since causing great pain is not sufficient for the existence of a human right against torture, and since undermining agency in, for example, the Truth Drug Case is sufficient for the existence of a human right violation, according to Griffin, this shows that the notion of agency, and not, e.g., causing great pain, is what explains the existence of a human right against torture.

Let me start with Griffin's second argument. The Truth Drug Case may show that undermining agency sometimes violates a human right, but it does not seem to show that undermining agency always violates a human right. Consider another example: Suppose that I entice you with the possibility of great pleasure in order to get you to do something you do not want to do or are even resolved not to do. For instance, I offer you lots of money so that you would eat large worms. In such a case, I may have undermined your

agency – in particular, your ability to decide and to stick to your decision – but this would hardly constitute a case of human right violation. If so, while causing great pain may not always be a sufficient condition for the violation of a human right in all cases, neither is undermining an individual's agency.

However, suppose I am wrong and enticing you with the possibility of great pleasure in order to undermine your agency is a case of a human right violation. Still, this does not seem to be the same kind of human right violation as torture is, which involves inflicting great pain. In other words, the agency account faces the question of explaining how undermining agency through extreme pain might be significantly different from undermining agency through great pleasure.

Griffin's first argument at best shows that causing great pain is not a sufficient condition for the violation of a human right. It does not undermine the idea that causing great pain is necessary for explaining why torture violates a human right. One significant difference between torture and the Callous Partner Case is that in the latter, the second partner typically can leave the marriage, whereas in the case of torture, the individual being tortured typically cannot leave the torture chamber. That the second partner can leave the marriage may explain why in this case, there is not a human right violation, despite the psychological torment the second partner has to endure. Suppose instead the second partner could not leave the marriage (as for example in some cases of forced, arranged marriages), and the second partner was still being subjected to a long period of psychological torment by the first partner. In such a case, one might begin to wonder whether it did not involve a human right violation.

Similarly, a significant difference between torture and the Jealous Sibling Case is that the younger sibling typically can fight back (even if not very successfully) or can get the parents to intervene, and so on, whereas in the case of torture, the individual being tortured typically cannot fight back. Indeed, suppose instead the older sibling tied up the younger sibling in order to inflict great pain on the younger, and suppose there was no one else to intervene on behalf of the younger. One might also wonder whether this would not involve a human right violation.

Moreover, the kind of torture that Griffin has in mind, where one causes great pain in order to undermine the victim's capacity to decide and to get the victim to give up information, is what might be called Instrumental Torture. Another kind of torture, call it Intrinsic Torture, involves causing extreme pain just for the sake of causing extreme pain. Since Intrinsic Torture does not aim at undermining the victim's capacity to decide and stick to a decision, it involves less agency-related violations. Even so, it would still be a human right violation. If this is right, it seems that causing extreme pain would play an even more significant and necessary role in explaining why there is still a human right violation in Intrinsic Torture.¹⁹

To be clear, I am not suggesting that causing great pain is generally a necessary condition for the violation of a human right. That claim would obviously be false, since I could imprison you without causing you great pain, but I could be violating your human right to freedom. However, the Callous Partner Case and the Jealous Sibling Case do not seem to undermine the idea that at least in the case of torture, causing great pain is a necessary part of the explanation of why torture violates a human right. If all this is right,

Griffin has not yet shown that the notion of agency can by itself explain the human right against torture.

III. The Redundancy Objection

Griffin has resisted allowing the other elements of a good life to ground human rights because he worries that permitting these elements directly to determine the content of human rights would lead to the case that all the necessary elements of a good life would determine the content of human rights, which Griffin believes, would cause the language of rights to become redundant, diluting the discourse of rights. As Griffin writes,

If we had rights to all that is needed for a good or happy life, then the language of rights would become redundant. We already have a perfectly adequate way of speaking about individual well-being and any obligations there might be to promote it.²⁰

Call this the Redundancy Objection.

Griffin is certainly correct that there is no human right to everything necessary for a good life. Suppose that sailing is my passion in life, and, hence, having a yacht is a necessary condition for me to have a good life. It would not follow that I have a human right to a yacht. However, those who are proposing to expand the ground for human rights need not make such an implausible claim.

For example, John Tasioulas has proposed that one might employ Joseph Raz's influential definition of a right, and have an account of human rights according to which human rights arise just in case there are universal human interests sufficiently important to justify imposing correlative duties on others.²¹ Call this the Universal Interests Approach. According to Tasioulas, this approach could allow human interests other than autonomy, liberty and minimum provision to ground human rights. At the same time, it could impose the constraint that only those universal human interests that are sufficiently important to justify the imposition of duties on others are valid grounds for human rights. If so, on the Universal Interests Approach, it could be argued that my interest in having a yacht would not justify imposing a correlative duty on others to provide me with a yacht, and therefore I do not have a human right to be given a yacht. If this is right, it would appear that the Universal Interests Approach would have resources to block the Redundancy Objection.

Or, consider another approach, what I call the Primary Essential Conditions Approach, which I favor, and which may in fact complement the Universal Interests Approach.²² On the Primary Essential Conditions Approach, human beings have human rights to what might be called the *primary* essential conditions for a good life. Akin to (but not exactly the same as) Rawls's primary goods, the primary essential conditions for a good life are what human beings need whatever else they might need in order to pursue a good life.²³ For example, human beings need certain basic goods such as food, water, and air in order to sustain themselves corporeally. And they need to have certain minimum conditions of health including freedom from extreme pain. In order to be able

to pursue the good life, they also need certain basic capacities such as the capacity to think, to be motivated by facts, to know, to choose an act freely (liberty), to appreciate the worth of something, to develop interpersonal relationships, and to have control of the direction of one's life (autonomy).²⁴ Finally, in order to exercise these capacities, they need to have some opportunities for social interaction, acquiring further knowledge, evaluating and appreciating things, and determining the direction of their lives.²⁵

As I understand it, the Primary Essential Conditions Approach would include all the essential agency considerations in Griffin's agency account of human rights. In addition, it would allow primary essential, but non-agency, considerations such as freedom from great pain, accomplishing something in the course of one's life, and so on, also to determine the content of human rights. This approach would also exclude as being a valid human right claim my need to have a yacht, because such a need is not what human beings need whatever else they might need. If so, it would appear that the Primary Essential Conditions Approach also has the resources to block the Redundancy Objection.²⁶

Griffin has offered replies to these kinds of approaches. According to him, one assumption that these approaches share is that the interests or the primary essential conditions at issue must be important, major or urgent. Griffin argues though that not all important, major or urgent interests can ground human rights:

Things can be of great importance to our lives—indeed greater than a lot of issues of human rights—without themselves thereby becoming grounds for human rights.²⁷

To support this idea, Griffin points out that while distributive justice may be very important, there is not a human right to distributive justice.²⁸ In his example, if you free-ride on a bus, you act unfairly, but you do not violate someone's human rights.

In addition, Griffin argues that human rights need not always be very important, and that some acts can be worse than certain human rights violations without there being a human right against these acts.²⁹ For example, Griffin argues that in the Callous Partner Case, the first partner's inflicting the cold and callous treatment on the second partner can be worse than certain human right's infringement, e.g., a minor infringement of one's human right to privacy. However, according to Griffin, the first partner is not thereby violating the second partner's human right.³⁰

Thirdly, against the Universal Interests Approach, Griffin argues that in the Callous Partner Case, the suffering endured by the second partner as a result of the callous treatment of the first partner is sufficient to justify imposing a duty on the first partner to stop. But the second partner still does not have a *human* right that this be done.³¹ Griffin accepts that if and when the cruelty on the part of the first partner begins to undermine the second partner's ability to function as an agent, then there may be a case for claiming that the second partner has a human right against this kind of treatment. However, Griffin argues that in such a case, the human right would stem from agency

considerations and not from considerations about the other primary essential elements of a good life such as freedom from pain.

In response to Griffin, it is useful to point out that he himself relies on the notion of importance to explain why agency should ground human rights. As he says,

I single out functioning human agents via notions such as their autonomy and liberty, and I choose those features precisely because they are especially important interests. It is only because they are especially important interests that rights can be derived from them; rights are strong protections, and so require something especially valuable to attract protection.³²

Given this, it seems that Griffin has to admit that the notion of importance is relevant, at least to some extent, for determining what counts as a human right.

In addition, it could be argued that Griffin has yet to show that something can be very important without there being a human right to it, because his example of free-riding seems to be a trivial case of distributive injustice, and, as such, may not amount to something very important.³³ But even if one were to accept the free-riding example and Griffin's conclusion that there is not a human right to distributive justice, the way in which the primary essential conditions for a good life are important is arguably different from the way in which distributive justice is important. In particular, someone's free-riding on a bus may be unjust, but one could still have a good life despite having to

endure such free-riding. But if one did not have the primary essential conditions for a good life, then one could not have a good life. If so, the Primary Essential Conditions Approach could still rule out distributive justice as being a ground for human rights.

Moreover, Griffin's claim that in the Callous Partner Case, the first partner's inflicting the cold and callous treatment on the second partner can be worse than certain human right's infringement, e.g., a minor infringement of one's human right to privacy is questionable. In particular, it is not clear that a minor infringement of a right to privacy does amount to a human right violation, as Griffin suggests that it does. For example, suppose that my sibling had read my diary without my consent. It is not clear that my sibling would have thereby violated a human right of mine.

Furthermore, Griffin's argument against the Universal Interests Approach is also problematic. Even if one were to follow Griffin and accept that the second partner's interest does justify holding the first partner to be under a duty not to treat the second partner in a callous manner, arguably, a defender of the Universal Interests Approach could respond that this interest is not a *universal* human interest. That is, it could be argued that the second partner's interest in not being treated in a callous manner is not an interest that human beings have whatever other interests they may have. If so, the Universal Interests Approach could explain why the second partner does not have a human right against the first partner.³⁴

Lest Griffin wish to criticize the notion of 'primary essential conditions,' and argue that one cannot draw a meaningful distinction between these conditions and all the

necessary elements of a good life, I shall now argue that Griffin's agency account too requires something like a notion of 'primary essential conditions,' if it is to be plausible.

Recall that Griffin's main concern against broadening the ground for human rights is that he believes that there is no human right to everything necessary for a good life. For example, I do not have a human right to a yacht, even if having a yacht is a necessary condition for me to have a good life. But a similar worry could be applied to Griffin's own agency account, namely, there is no human right to every *agency* consideration that is necessary for a good life. Continuing with the yacht example, developing the agentic capacity to sail a yacht may be necessary for me to have the necessary agentic capacity for a good life, but I do not have a human right that someone help me acquire this capacity. To prevent the agency account from having such an implication, it seems that Griffin would need something like the notion of 'primary essential conditions,' which would restrict agency considerations to only those that human beings need whatever else they might need.

In other words, we can distinguish between *agency interests* and *non-agency interests*, where the former kinds of interests are derived from considerations such as autonomy and liberty, and the latter kinds of interests are derived from other elements of a good life such as freedom from pain, understanding, and so on. In addition, we can distinguish between *primary interests* and *secondary interests*, where primary interests are interests that human beings need whatever else they might need in order to have a good life (that is, they are the primary essential conditions for a good life), and secondary interests are interests that human beings need in order to have a good life. These two sets

of distinctions give us four kinds of interests: primary agency interests, primary non-agency interests, secondary agency interests, and secondary non-agency interests.

	<i>Agency interests</i>	<i>Non-agency interests</i>
<i>Primary interests</i>	primary agency interests	primary non-agency interests
<i>Secondary interests</i>	secondary agency interests	secondary non-agency interests

On this typology, Griffin's claim is that only primary agency interests should ground human rights, whereas on the Primary Essential Conditions Approach, primary non-agency interests could also ground human rights. Also, one should see that Griffin's Redundancy Objection need not apply to the Primary Essential Conditions Approach because the Primary Essential Conditions Approach can exclude secondary non-agency interests as grounds for human rights. More pertinently, the point I am making here is that if Griffin were to criticize the notion of primary essential conditions, then he would be unable to block secondary agency interests from grounding human rights. Accepting that secondary agency interests could ground human rights would run counter to Griffin's aim to restrict the content of human rights.³⁵

IV. Conclusion

Griffin's agency account of human rights provides a plausible way of giving substantive content to human rights, but it faces the question of whether agency should be the sole ground for human rights. In this paper, I argued that despite his recent efforts in *On Human Rights*, Griffin has not shown that the human right against torture can be

adequately explained by the notion of agency alone, because he fails to show that the experience of great pain is unimportant for explaining why torture violates a human right. Also, I argued that both the Universal Interests Approach and the Primary Essential Conditions Approach have the resources to block Griffin's Redundancy Objection, and that Griffin's arguments against these approaches are not convincing. If I am right, Griffin's new arguments do not rule out the possibility of a wider account of human rights, which would draw on the notion of agency as well as other elements of a good life.³⁶

NOTES

¹ Griffin, J. (2008) *On Human Rights* (Oxford, Oxford University Press); Griffin, J. (2000) 'Welfare rights', *The Journal of Ethics*, 4, pp. 27-43; Griffin, J. (2001) 'First steps in an account of human rights', *European Journal of Philosophy*, 9, 3, pp. 306-27; Griffin, J. (2001) 'Discrepancies between the best philosophical account of human rights and the international law of human rights', *Proceedings of the Aristotelian Society*, CI, pp. 1-28.

² Griffin, 'Discrepancies', p. 4.

³ Griffin, 'First steps', p. 311.

⁴ For a fuller list, see Griffin, 'Discrepancies', op. cit.

⁵ Griffin, 'First steps', p. 313.

⁶ See Griffin, *On Human Rights*, Chs. 12 and 13.

⁷ For an excellent discussion of some of the problems that Griffin's account might face, see Tasioulas, J. (2002) 'Human rights, universality and the values of personhood: Retracing Griffin's steps', *European Journal of Philosophy*, 10, 1, pp. 79-100.

⁸ Lest this lead to confusion, let me note that Griffin does mention a second ground for human rights, what he calls practicalities, which, as he explains, help to make the content of a particular human right

“determinate enough to be an effective guide to behaviour . . .” (*On Human Rights*, pp. 37-39). For my purpose, we can leave this aside, because I am interested in standalone grounds for human rights, that is, those grounds that are not parasitic on other grounds for human rights. For example, since the role of practicalities is to make human rights that are grounded in some other way, e.g., agency, more determinate, practicalities are parasitic on other grounds for human rights, and are therefore not standalone grounds for human rights. In fact, the requirement of practicalities seems to be a reasonable requirement for any standalone ground for human rights, since any standalone ground for human rights should be determinate enough to be an effective guide to behavior. Hence, when I claim that Griffin believes that ‘agency is the sole ground for human rights,’ I am taking him to be holding the view that agency is the sole standalone ground for human rights, which I believe he does. Also, when I investigate whether there could be other grounds for human rights, I am interested in whether there could be other standalone grounds for human rights. To save words though, I shall leave out the word ‘standalone’ throughout the rest of the paper.

⁹ Griffin, *On Human Rights*, p. 36.

¹⁰ Griffin, ‘Welfare rights’, p. 29.

¹¹ Griffin, *On Human Rights*, pp. 52-53.

¹² As another example, while education is important for autonomy, it seems that the value of understanding is also sufficiently important to human life that it could provide its own independent contribution to the existence of a human right to education. If so, it could also be asked whether Griffin’s notion of agency should be the sole explanation for such human right as the right to education.

¹³ See, e.g., Tasioulas, ‘Human rights, universality and the values of personhood’, *op. cit.*, who has made such an objection.

¹⁴ Griffin, *On Human Rights*, p. 52.

¹⁵ Griffin, *On Human Rights*, p. 52.

¹⁶ Griffin, *On Human Rights*, p. 52.

¹⁷ Griffin, *On Human Rights*, p. 53.

¹⁸ Griffin, *On Human Rights*, p. 53.

¹⁹ For an insightful account of why torture is wrong that combines an agency perspective with the fact that torture causes extreme pain, see Sussman, D. (2005) 'What's wrong with torture?', *Philosophy and Public Affairs*, 33, 1, pp. 1-33.

²⁰ Griffin, *On Human Rights*, p. 34; Griffin, 'First Steps', p. 312.

²¹ Tasioulas, 'Human rights, universality and the values of personhood', p. 96; Tasioulas, J. (2006) 'The moral reality of human rights' in T. Pogge (ed.) *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor* (Oxford, Oxford University Press). Note that Raz himself does not endorse this approach; instead, he defends something like a Rawlsian account of human rights. See Raz, J. (forthcoming) 'Human rights without foundations' in S. Besson and J. Tasioulas (eds.) *Philosophy of International Law* (Oxford, Oxford University Press); Rawls, J. (1999) *The Law of Peoples*, 2nd ed. (Cambridge, Mass., Harvard University Press).

²² Liao, S. Matthew (2006) 'The right of children to be loved', *Journal of Political Philosophy*, 14, pp. 420-440.

²³ For other similar lists, see, e. g., Raz's Basic-Capacities Principle [(1994) *Ethics in the Public Domain: Essays in the Morality of Law and Politics* (Oxford, Clarendon Press), pp. 16-17]; or Rawls's list of primary goods, which are goods that all individuals are presumed to want, whatever else they may want [(1971) *A Theory of Justice* (Oxford, Oxford University Press)]. See also Gewirth, A. (2006) *The Community of Rights* (Chicago, University of Chicago); Nickel, J. (2006) *Making Sense of Human Rights* (Oxford, Blackwell); Sen, A. (2004) 'Elements of a theory of human rights', *Philosophy and Public Affairs*, 32, 4, pp. 315-56.

²⁴ See Sen, A. (1985) 'Rights and capabilities' in T. Honderich (ed.) *Morality and Objectivity: A Tribute to J. L. Mackie* (London, Routledge & Kegan Paul), pp. 130-148; Sen, A. (1992) *Inequality Reexamined* (Cambridge, Mass., Harvard University Press).

²⁵ See Raz for an argument regarding the importance of having an adequate range of valuable options for well-being [(1986) *Morality of Freedom* (Oxford, Clarendon Press), pp. 373-377].

²⁶ Let me briefly explain why the Primary Essential Conditions Approach may complement the Universal Interests Approach. Raz's definition of a right is a formal, rather than a substantive, criterion for a right. As such, by itself, it cannot tell us what rights we have substantively. In any case, what is doing the work on the Universal Interests Approach is the notion of a universal human interest, which marks out the interests that human beings have whatever other interests they may have. But exactly what are these universal interests? To identify them, it seems that the Universal Interests Approach may need to appeal to something like the primary essential conditions for a good life. If it did, the Universal Interests Approach would be the same in substance as the Primary Essential Conditions Approach, and the two approaches would complement one another.

²⁷ Griffin, *On Human Rights*, p. 54.

²⁸ Griffin, *On Human Rights*, p. 41.

²⁹ Griffin, *On Human Rights*, p. 54.

³⁰ Griffin, *On Human Rights*, p. 54.

³¹ Griffin, *On Human Rights*, p. 55.

³² Griffin, *On Human Rights*, p. 35.

³³ I would like to thank Nick Ferreira for this point.

³⁴ In personal communication, John Tasioulas suggests that he would take a different tack by noting that it is not so obvious that being callous to one's partner cannot be a human rights violation. According to Tasioulas, it might seem odd to describe it as such, but that need not undermine its truth.

³⁵ There may be a different way of specifying the kind of non-agency interests that could ground rights, which does not rely on the notion of primary essential conditions, but which relies instead on our ability to make pairwise comparisons. Call this the Pairwise Comparisons Approach. First, we can again distinguish between agency interests and non-agency interests. Secondly, since there is no human right to every agency consideration that is necessary for a good life, we can further specify that only certain kinds of agency interests are appropriate grounds for human rights. Thirdly, whatever these kinds of agency interests may be, we could then suggest that non-agency interests that are as urgent as these kinds of agency

interests are also appropriate grounds for human rights. I do not have a specific metric for comparing the relative urgency of various interests. But as an illustration, consider again the paradigmatic human right against torture. The kinds of agency interests at issue such as being able to stick to one's decision and not being coerced to go against one's will seem important enough at least partly to ground a human right against torture. Since the non-agency interest in not being subjected to the kind of extreme pain typically involved in torture seems as urgent as these agency interests, this kind of non-agency interest should then also be an appropriate ground for a human right against torture. By contrast, consider again the Callous Partner Case. While the non-agency interest of the second partner in avoiding the cold treatment is urgent, it does not seem as urgent as the relevant kind of agency interests that can ground human rights, especially if the second partner can avoid the cold treatment by leaving the marriage. If so, on the Pairwise Comparisons Approach, this kind of non-agency interest would not be an appropriate ground for a human right. If the Pairwise Comparisons Approach is a plausible way of specifying the kinds of non-agency interests that can ground human rights, then we have two ways of excluding the necessary elements of a good life from grounding human rights and blocking Griffin's Redundancy Objection.

³⁶ I would like to thank James Griffin, John Tasioulas, John Broome, Adam Etinson, Nick Ferreira, the late Geoffrey Marshall, Roger Crisp, Nick Bunnin, Joe Shaw, Wibke Gruetjen, an anonymous reviewer, and audiences at the Oxford Moral Philosophy Seminar for their helpful comments on earlier versions of this paper.