# **Contents**

Preface to the 40th Anniversary Edition	ix
Preface to the Second Edition	X
Preface to the First Edition	xiii
Introduction	5
I • THREE BASIC RIGHTS	11
1 · Security and Subsistence	13
2 · Correlative Duties	35
3 · Liberty	65
II • THREE CHALLENGES TO	
SUBSISTENCE RIGHTS	89
4 • Realism and Responsibility	91
5 · Affluence and Responsibility	111
6 · Nationality and Responsibility	131
III• NEW CHALLENGES TO	
BASIC RIGHTS	
7 • Right-grounded Duties and the Institutional	
Turn (1996)	153
8 • Basic Rights and Climate Change (2020)	181
Notes	199
Bibliography	255
Index	257

## Introduction

The wisdom of a U.S. foreign policy that includes attention to "human rights" depends heavily upon which rights are in practice the focus of the attention. The major international documents on human rights include dozens of kinds of rights, often artificially divided into "civil and political" and "economic, social, and cultural" rights. 1 U.S. foreign policy probably could not, and almost certainly should not, concern itself with the performance of other governments in honoring every one of these internationally recognized human rights. The policy must in practice assign priority to some rights over others. It is not entirely clear so far either which rights are receiving priority or which rights ought to receive priority in U.S. foreign policy. The purpose of this book is to present the reasons why the most fundamental core of the so-called "economic rights," which I shall call subsistence rights, ought to be among those that receive priority. As background, a brief look at some divergent indications of what the priorities actually are now, may be useful.

The official position that is closest on the issue of subsistence rights to the one for which this book will present the reasons was enunciated as policy in 1977 by the then Secretary of State in a major address, "Human Rights Policy":

Let me define what we mean by "human rights."

First, there is the right to be free from governmental violation of the integrity of the person. Such violations include torture; cruel, inhuman, or degrading treatment or punishment; and arbitrary arrest or imprisonment. And they include denial of fair public trial, and invasion of the home.

Second, there is the right to the fulfillment of such vital needs as food, shelter, health care, and education. We recognize that the fulfillment of this right will depend, in part, upon the stage of a nation's economic development. But we also know that this right can be violated by a Government's action or inaction—for example, through corrupt official processes which divert resources to an elite at the expense of the needy, or through indifference to the plight of the poor.

### INTRODUCTION

Third, there is the right to enjoy civil and political liberties.

Our policy is to promote all these rights . . . I believe that, with work, all of these rights can become complementary and mutually reinforcing.<sup>2</sup>

The Secretary's list of "vital needs" that people have a right to have fulfilled extends even beyond what I shall include as subsistence rights.<sup>3</sup>

Below the level of the Secretary, however, the Department of State in 1979 suffers sharp contradictions. In particular, positions emanating from the Bureau of Legal Advisers are in opposition to policy as articulated by the Secretary and in opposition to the evolving position of the Bureau of Human Rights. The advice to the President emanating from the legal advisers at the State Department is to take the same position taken by U.S. diplomats at the United Nations when the single list of human rights in the Universal Declaration was, at U.S. urging, separated into two independently ratifiable treaties: sharply split the list of rights into civil and political rights, and economic, social, and cultural rights, and declare all the economic, social, and cultural rights, no matter how vital their fulfillment, as less genuine rights with less binding duties. It is the intellectual bankruptcy of the presuppositions of this position that this book is intended to show.

In contrast, the Bureau of Human Rights, in its annual reports on the status of rights under governments to which the U.S. government is either providing financial support in the form of grants or selling U.S. weapons and other militarily useful supplies and technologies, is gradually taking the central group of rights in the Vance trichotomy more seriously and treating these most fundamental economic and social rights more nearly equally with the most fundamental rights of other kinds. For example, the Report on Human Rights Practices in Countries Receiving U.S. Aid for 1978, in the case of each country, comments upon "Governmental Policies Relating to the Fulfillment of Such Vital Needs as Food, Shelter, Health Care and Education," and it gives in an appendix the positions of countries on the Physical Quality of Life Index (PQLI), which is one relatively straightforward way to quantify the extent to which a number of subsistence needs are being fulfilled.6

### INTRODUCTION

On the whole, the Department of State cannot be said to be taking rights to the fulfillment of basic economic needs very seriously. Issuing an official report that indicates, even if it does not stress, a particular government's failures to satisfy these rights is a very mild form of action, somewhat stronger than "quiet diplomacy" that criticizes violations. But "quiet diplomacy" can also be used to undercut the effects of public criticisms, and as long as major elements of the State Department deny that any economic rights are genuine, those who are criticized in public may be told in private not to worry about any serious actions being taken.

But should the Department of State, and U.S. foreign policy as finally shaped by State and others, take subsistence rights seriously and treat them as being as genuine as fundamental rights of other kinds are? This is the question I will try to answer. I will not be defending the thesis that all economic rights take priority over all other rights, a thesis as crude and implausible, I think, as its sometime rival, the thesis that all political rights take priority over all other rights. In fact, I am at least as interested in showing that although we face serious issues about priorities among rights, it is hopeless to construe the problem so broadly as a contest between the economic and the political, as I am to defend my own particular answer to the narrower problem that I think may be rationally resolvable. One of the strongest appeals I want to make is a general one in favor of slightly finer analyses that do not embrace, in one fell swoop, everything usually called economic rights and, in another, everything usually called political rights.

The common simple dichotomy between economic rights and political rights is misleading in several respects. Some rights seem to be neither economic nor political in any very strict sense. This includes not only the cultural and social rights that the partisans of political rights are inclined, in any case, to assign to the same limbo as economic rights, but also firmly entrenched rights like the right not to be tortured. Since it often needs to be asserted against governments, the right not to be tortured is frequently counted among the political rights. But most rights need to be asserted against governments, and this right can also be asserted against private individuals. Secretary Vance has enunciated official U.S. policy by means of the trichotomy quoted above. One

### INTRODUCTION

section deals with what he (and former Congressman Donald Fraser before him) called the integrity of the person. <sup>7</sup> This section includes the right not to be tortured and is quite properly distinguished from both vital (economic) needs and civil and political liberties.

Other frequently asserted rights, such as the right to form labor unions or the right to own private property, are both economic and political. Each can plausibly be taken to be a liberty, and each concerns the basic structure of the economic system.

But the main reason for advocating a modestly greater degree of analysis than either the usual dichotomy, which unfortunately is enshrined in the two separate International Covenants that inadvisedly, I believe, try to split the subject-matter of the Universal Declaration, or the State Department's trichotomy is simply that even after "the integrity of the person" is separated out, the two lists remaining include items that range from the absolutely vital to the highly desirable but, if necessary, deferrable.

What I will try to show, then, is that at least one small set of what are normally counted as economic rights belongs among the rights with the highest priority. There are, if this is correct, some economic rights over which no other rights have priority, although some other rights, including some that are normally counted as political and that the Vance trichotomy treats as concerned with the integrity of the person, have equally high priority. If not all political rights are of this highest priority, some economic rights have priority over some political rights. This, I take it, is controversial enough, at least within the wealthy nations of the North Atlantic, to be worth discussing.

This book may seem to have a certain imbalance in its relative emphasis, respectively, on positive argument for the thesis that certain economic rights—namely, subsistence rights—have the highest priority and on responses to objections to the thesis. Only one of several possible lines of positive argument is given, and much attention is devoted to answering critics. This is for the following reason, which is partly strategic and partly philosophical. Virtually any argument in favor of a right will depend at bottom on emphasizing that the interest to which the right is asserted is genuinely important, fundamental, vital, indispensable, etc. But no matter how high the positive arguments are piled, the critic

### INTRODUCTION

can always respond by conceding it all but simply adding the objection, in effect, that recognizing the right in question would place too great a burden on all the other people with the duties to honor the right. Thus, disputes are avoided by conceding the right in theory, and costs are avoided by denying the right in practice. The statement by Secretary Vance has laid the ground for such a move by following the acknowledgment of rights to the fulfillment of some vital needs with the proviso: "We recognize that the fulfillment of this right will depend, in part, upon the stage of a nation's economic development." Consequently, once some presumption has been established in favor of a right, the main task is to answer the objection that the duties involved would ask too much of others. So, I have concentrated here upon the task of responding to major variants of this potentially crippling objection.

Part I attempts to show that rights to three particular substances—subsistence, security, and liberty—are basic rights. The main conclusion is that subsistence rights are basic, but a valuable part of the case for taking subsistence to be the substance of a basic right is the demonstration that the same reasoning that justifies treating security and liberty as the substances of basic rights also supports treating subsistence as a basic right. The parallel with liberty is especially important, because the defenders of liberty usually neglect subsistence and the defenders of subsistence often neglect liberty, and each one-sided view provides its own special sustenance to the U.S. policies that support exploitative dictators who deny their subjects both liberty and subsistence. Part II then considers three of the difficulties that are most often urged against all assertions of economic rights, including—without sharply distinguishing—subsistence rights. These difficulties may be roughly summarized by the questions, what about the future poor? (chapter 4), what about me? (chapter 5), and what about the local poor? (chapter 6). Part III briefly illustrates a few of the simplest kinds of policy changes required by the recognition of subsistence rights.

## Index

absorptive capacity for wealth, Bosnia (former Yugoslavia), 174, 105-108 175-176 accidental deprivation, 47-51, 113 birth rate, 97-104, 226n-228n. See action/omission distinction, 37-40, also population control 211n Brothers Karamazov (Dostoevsky), 98 Brown, Peter G., 208n, 228n adequacy, institutional, 166 Brzezinski, Zbigniew, 200n, 218n, affluence, definition of, 119-120; and duty to aid, 104-130. See also 219n distribution of resources Bundy, McGeorge, 200n Bush (U.S. President George), agriculture and subsistence, 42–46, 61-64, 212n-213n 176 aid, duty to, 51-57, 76-78, 104, 113-120, 131, 139, 157-159, 229n, Cambodia, famine in, 226n-227n Carter, Jimmy, 199n, 219n; 234n alienation prohibition, 205n Administration of, 153, 175 Alston, Philip, 185–186, 192, 248n Center for Philosophy and Public Amuzegar, Jahangir, 65, 216n Policy, ix-xi Central Intelligence Agency, 158, anti-interventionary impulse, 175, 240n 164, 240-241n children and basic rights, 97-101, asocial theory, 167-168 assault, 20-21. See also physical 224n, 236n security Christiansen, Drew, 232n civil rights, 6 avoidance of rights deprivation, 51-55, 59-61, 75, 77-78, 120, climate change, 244-245n 150-152, 234n Clinton (U.S. President Bill), 176, Bangkok brothels, 168, 170, 171 clothing, right to, 23-25. See also basic rights, definition of, 18-20, subsistence rights 201n-203n, 218n; deprivation of, COMECON countries, 103 47-60, 75-78, 81-82, 93, 99-104; commodities and subsistence, 39-40. economic development and, 45-51, See also food 208n; enjoyment of, 13-22, 26-27, communities of principle, 135-139; 29-30, 39, 74-77, 81-82, 86, of sentiment, 135-139 203n-204n, 210n; interdependence comparative-advantage theory of of, 60-64, 66-67, 70-71, 74-78, government, 142–144 92-93; and quality of life, 91-96, compatriots, priority for, 131-139 102, 111; realities and responsibiliconcentric-circle conception of ties of, 91-110, 125-126; standard morality, 134-139, 146 threats to, 17, 26, 29-34, 39, 41, 75, conscription, 79, 133-134, 218n 120, 205n-210n; universality of, correlative duties (of avoidance, 94–97, 120 protection and aid), and basic

rights, 16, 35-46, 51-55, 76,

Beitz, Charles R., 209n, 245n

## **INDEX**

correlative duties (cont.)
111–120, 150–152, 218n; and
economic deprivation, 46–51;
interdependence of, 60–64;
tripartite analysis of, 54–55
Cranston, Maurice, 98–99, 210n
criminals, rights of, 219n–220n
cultural enrichment as right, 117. See
also preferences

default duties, 170-173, 176-177, 178 degradation and deprivation of rights, 114, 119–123, 232n demand as basis for rights, 13-14, 74, 82-83, 112. See also justified demand deprivation of rights, 47–60, 75–78, 81-82, 93, 99-101; and degradation, 119-123; and fairness, 120-130; inevitability of, 101-104; transnational duties to avoid, 150-152 Destexhe, Alain, 245n dictators and deprivation of rights, 76-78, 82-87, 109-110; U.S. support of, 158, 175, 241-246n Diokno, Jose W., 66, 216n disasters, 44-45, 90-101, 213n. See also famine distribution of resources to insure subsistence, 103-110, 122, 134, 227n-228n, 231n-233n division of moral labor, 61, 153, 166, 238n Dostoevsky, Fyodor, 98 duty to aid basic rights, 51-57, 76-78, 104, 113-122, 131, 139, 157-159; to avoid deprivation, 51-55, 59-61, 75,

duties; default duties, minimum duties economic assistance to insure basic

rights, 105-110

77-78, 120, 170; to exercise rights,

176-177, 243n. See also correlative

73–74; to protect rights, 35–64,

77–78, 113, 159–160, 172–173,

economic costs of basic rights, 38-40, 211n, 234n economic deprivation and basic rights, 46-60, 75-78, 81-82, 93, 99-104, 222n economic development and basic rights, 45-51, 208n; and liberty, 66-67, 215n-216n; regulation of development, 104-110 economic rights, 5-8, 23, 35, 210n. See also subsistence rights economic strategies and basic rights, 48 - 51effective participation, 71–78. See also participation Eide, Asbjorn, 241n emigration, right to, 79, 219n enjoyment of rights, 13, 22, 26-27, 29-30, 39, 74-77, 81-82, 86, 203n-205n, 211n Enloe, Cynthia, 236n essential deprivation, 47-51, 113 Ethnic Conflict and Political Development: An Analytic Study (Enloe), 236n

Fagen, Richard F., 48, 214n fairness, individual, 166, 169 fairness and deprivation, 114, 123-130, 230n-233n famine and subsistence, 44-45, 99-101, 213n, 225n Feinberg, Joel, 14, 18 financial aid to insure basic rights, 105-110 food, right to, 23-25; food supplies and subsistence, 46, 95-110, 140, 223n-224n. See also scarcity; famine; and population control Foreign Assistance Act, 158 foreign policy, U.S., and basic rights, xiii, 5-9 Frankel, Charles, 72, 154, 155, 239-240n Fraser, Donald (U.S. Representative), 8, 122, 175

## **INDEX**

government, comparative-advantage theory, 142–144; trustee/adversary theory, 139–142, 235n government role in fulfilling basic rights, 83–87, 109–110, 113–114, 139–144, 150–152, 174, 177, 179; guidelines for, 111–119. See also dictators

Hampshire, Stuart, 237n
Hardin, Garrett, 104, 221n–223n
Harkin, Tom (U.S. Senator), 158, 238–239n
health care, right to, 23–25
heroism and basic rights, 116–118, 125–126
Hohfeld, Wesley, 14, 161–162, 202n
Huk Rebellion: A Study of Peasant
Revolt in the Philippines, The
(Kerkvliet), 208n
Human Rights and Foreign Policy, 239n, 240n

Human Rights and U.S. Foreign Policy Principles and Applications, 208n, 238–239n Human Rights, U.S. Bureau of, 6 Hume, David, 146–152, 237n

immigration, right to, 79 India, famine in, 99-100, 225n inequality, degradation of, 116, 119-124, 231n, 233n information about rights, 76-77 inherent necessities, 26-27 institutional turn, 166, 173 integrity of the person, 5, 8, 122 interdependence of basic rights, 60-64, 66-67, 70-71, 74-78, 92-93 interdisciplinary collaboration, 161 Inter-Governmental Group on Indonesia, 229n International Bill of Human Rights, 199-200n International Convention on the Elimination of All Forms of Racial

Discrimination, 200n

International Covenant on Civil and Political Rights, 199n, 239–240n International Covenant on Economic, Social and Cultural Rights, 93, 199n, 221n, 239–240n International Monetary Fund, 214n intervention, military, 175–176, 177–178, 245n

justice, Rawlsian theory of, 96, 127–129, 206n, 216n, 220n, 232–234n, 242–243n justified demand as basis for right, 13–14, 74, 82–83

Kant, Immanuel, 146–152, 237 Kerkvliet, Benedict J., 28, 208n Kissinger, Henry, 158, 175, 200n, 240n Kurds, Iraqi, 176

land-use and subsistence, 43–44. See also agriculture
Langan, John, 210n, 215n
Latin America and economic development, 47–51
Legal Advisers, U.S. Bureau of, 6 legal claim rights, 14, 18–19
Leontief, Wassily, 106–108, 227n–228n liberty as basic right, 65–87,

liberty as basic right, 65–87, 215–216n, 218n, 220n; enjoyment of, 67–71; interdependence with other rights, 70–71, 74–78, 92–93, 205n–207n; and subsistence, 66–71

Locke, John, 147, 238n

MacLean, Douglas, xv, 210n, 235n Making Sense of Human Rights (Nickel), 164 malnutrition and subsistence rights, 42–46, 58, 97–98, 101, 207n, 224n–225n mayhem, 20. See also physical security mentally ill, rights of, 79–80, 218n

## **INDEX**

methodology of basic rights research, personal integrity, 5, 8, 122 40-42, 91-92, 169-170, 214n physical movement, freedom of, Mill, John Stuart, 207n, 212n 78-83, 85-87 minimum duty, 111-120, 230n Physical Quality of Life Index Moertopo, Ali, Lt. Gen., 208n (POLI), 6, 200n Moore, Barrington, 209n physical security, right to, 5, 9, 19-22, 26-27, 29-30, 121-123, moral rights, 13-18 morality, concentric-circle concep-205n-208n; positive and negative tion of, 134-139, 237n; and reason, aspects of, 35-40 147-148 Pogge, Thomas W., 156, 161-163, 165, 178, 242-243n movement, freedom of physical, 72-83, 85-87 political rights, 6-8 murder, 20. See also physical security political separatism, 138–139 politics and basic rights, 83-87, Nagel, Thomas, 99-100, 210n, 226n 109-110, 139-142. See also national boundaries, 137, 178–180, participation, right of 219n-220n, 235n-236n pollution, freedom from, 23-25 National Security Council, population control and basic 200n-201n rights, 44-46, 91-110, 213n, natural disasters, 44-45 226n-228n negative rights, 35-64, 153-155, 157, positive rights, 35-64, 153-155, 211n, 242–243n 211n, 242-243n. See also negative Nicaragua, basic rights in, 77-78, rights 218n practical philosophy, 169-170 Nickel, James W., 160-161, 163-164, preferences, sacrifice of, 114–120, 165, 238n, 241n, 242n Nietzsche, Friedrich, 18, 202n primordialism, 145-147, 236n North Atlantic theories of basic principles and basic rights, 135; and rights, xiii, 53, 65, 82, 91, 201n sentiments, 144-152, 237n priority for compatriots, 131-139, OECD countries, 103 234n-235n; principle of, 114-119, omission/action distinction, 37–40, 123, 129, 132, 230n, 232n, 235n; of 211n rights, 35-40 OPEC countries, 103 prisons, rights in, 5, 80–81, 219n, Optional Protocol to the Interna-220n tional Covenant on Civil and property laws and threat to rights, 24, Political Rights, 199n 124-126, 232n protection of rights, 37, 51-64, 84-85; economic cost of, 38-40, participation, liberty of, 71–78, 83–87, 216n, 220n 211n, 234n; by governments, patron-client relationship in peasant 76 - 78societies, 28-29 psychiatric terror, 79, 218n PDD (Presidential Decision punishment, 5 Directive), 244n peasant societies, guarantees of rights quality of life and basic rights, 6, in, 27-29, 42-46, 72-73, 208n, 91-96, 102, 111, 205n 217n "quiet diplomacy," 7

## **INDEX**

rape, 20-21 Rawls, John, 96, 127-129, 206n, 216n, 219n, 232n-234n realities and responsibilities of basic rights, 91-110, 125-126 reason and morality, 147-152 Report on Human Rights Practices in Countries Receiving U.S. Aid, 6 responsibility, theory of, 111-150, 230n Richardson, Henry S., 245n rights, civil, 6; economic, 6-8, 23, 35; enjoyment of, 13, 22, 26–27, 29–30, 39, 74–77, 81–82, 86, 203n–204n, 216n; of mentally ill, 79-80; to physical security, 5, 19-22, 26-27, 29-40, 121-123, 204n-207n; political, 6-8; social, 6-8; social guarantees of, 13, 16-18, 26-30, 53, 75-76, 120-126, 205n; standard threats to, 17, 26, 29-34, 39, 41, 75, 126, 205n–210n; structure of, 31–32, 209n; to subsistence, 5, 7, 9, 22-29, 35-41, 46-51, 66-67, 91-110; substance of, 15-16. See also basic rights, moral rights Roosevelt, Franklin Delano, 153, 238n Rousseau, Jean-Jacques, 147–152, 237n Rwanda, 168, 171-172, 174, 175-176, 180, 244n, 245n, 246n

sacrifices to fulfill basic rights, 114–120, 214n saints-and-heroes principle, 125–126 Scanlon, Thomas M., 208n scarcity and subsistence, 40–46, 57, 95–110, 234–235n Scott, James C., 28, 208n, 217n security, rights to physical, 19–22, 26–27, 29–30, 121–123, 210n; positive and negative aspects of, 35–40, 211n self-protection and basic rights, 83–84 sentiment and basic rights, 135; and principle, 144–152, 237n

Shah of Iran, 65-66 shared nationality, 133-134, 136 shelter, right to, 23-25 Sikkin, Kathryn, 238-239n social disasters, 44-45, 213n social guarantees against threats to rights, 13, 16-18, 26-30, 75-76, 205n; of subsistence, 38-40, 46, 53, 120-126 social rights, 6-8 Sohn, Louis B., 238n, 239n Somoza, Anastasio, 77, 218n South Africa, basic rights in, 78–79, 84, 218n, 220n sovereignty, conditional, 173-180 standard threats to rights, 17, 26, 29-34, 39, 41, 75, 120, 205n, 208n-210n starvation and subsistence, 58, 97-104, 224n-225n State Department, U.S., 6-9, 200n-201n statist theory, 167 strategic reasoning, 161, 165, 166, 241n structure of rights, 31-32 subnational communities, 137-139 subsistence duties, 53-60, 139. See also correlative duties subsistence rights, 5, 7, 9, 22-29, 203n, 210n; and economic deprivation, 46-51; and liberty, 66-67, 207n-208n; and population control, 91-110; positive and negative aspects of, 35-40; priority of, 35-37; reality and responsibility, 91-110, 221n; and scarcity, 40-46, 212n. See also basic rights substance of rights, 15-16, 74-76 systematic deprivation of rights, 47-48, 58-60, 229n

Theory of Justice, A (Rawls), 127–129, 206n, 216n, 233n, 234n threats to rights, 17, 26, 29–34, 39, 41, 45–46. See also standard threats torture, 5, 7–8, 20

## **INDEX**

trade-off thesis of rights, 65–67, 91–93, 215–216n transivity principle of rights, 32 transnational communities, 137–139; corporations, 212n, 214n; duties of governments, 141–142 *Treatise of Human Nature* (Hume), 146–150 trichotomy of rights, 5–9 tripartite typology of duties, 52, 157–160 trustee/adversary theory of government, 139–142, 235n

unanimity about basic rights, 72–74, 217n, 234n United Nations, 6, 178, 201n, 239–240n Universal Declaration of Human Rights, 6, 8, 199n, 239–240n universality of basic rights, 94–97, 120

Vance, Cyrus, (Secretary of State), 5–9, 122, 153, 154 violence and physical security, 20–22 vital interests principle, 127–128

Waldron, Jeremy, 156, 159, 160, 243n Walzer, Michael, 179, 207–208n, 245–246n Wicclair, Mark, 203n Wittgenstein, Ludwig, 201–202n World Bank, 229n