

rules.”¹⁹ Whereas Bentham saw rights as a “child of law,” Hart’s view takes the form, in effect, of seeing some natural rights as *parents* of law: they motivate and inspire specific legislations. Although Hart does not make any reference whatever to human rights in his article, the reasoning about the role of natural rights as inspiration for legislation can be seen to apply to the concept of human rights as well.²⁰

There can, in fact, be little doubt that the idea of moral rights can serve, and has often served in practice, as the basis of new legislation. It has frequently been utilized in this way, and this is indeed an important *use* of human rights. That, for example, is precisely the way the diagnosis of inalienable rights was invoked in the U.S. Declaration of Independence and reflected subsequently in the Bill of Rights, a route that has been well-trodden in the legislative history of many countries in the world.²¹ Providing inspiration for legislation is certainly one way in which the ethical force of human rights has been constructively deployed.

However, to acknowledge that such a connection exists is not the same as taking the relevance of human rights to lie *exclusively* in determining what should “appropriately be made the subject of coercive legal rules.” It is important to see that the idea of human rights can be, and is, actually used in several other ways as well. Indeed, if human rights are seen as powerful moral claims, indeed as “moral rights” (to use Hart’s phrase), then surely we have reason for some catholicity in considering different avenues for promoting these claims. (This question will be pursued in Section VII.) The ways and means of advancing and implementing human rights need not, thus, be confined only to making new laws (even though sometimes legislation may indeed turn out to be the right way to proceed). For example, monitoring and other activist support, provided by such organizations as Human Rights Watch or

19. H. L. A. Hart, “Are There Any Natural Rights?” *The Philosophical Review* 64 (1955), reprinted in *Theories of Rights*, ed. Jeremy Waldron (Oxford: Oxford University Press, 1984), p. 79.

20. On this see Maurice Cranston, “Are There Any Human Rights?”

21. The framers of the Universal Declaration of Human Rights in 1948 hoped, in fact, that this declaration would serve as a template for bills of rights in different nations, with national courts taking a lead in their enforcement. See Mary Ann Glendon’s wonderful account of that remarkable history, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001).

Amnesty International or OXFAM or Médecins Sans Frontières, can themselves help to advance the effective reach of acknowledged human rights.²² In many contexts, legislation may not, in fact, be involved.

IV. RIGHTS, FREEDOMS AND SOCIAL INFLUENCE

Why are human rights important? Since declarations of human rights are ethical affirmations of the need to pay appropriate attention to the significance of freedoms incorporated in the formulation of human rights (as was discussed in the last section), an appropriate starting point must be the importance of freedoms of human beings to be so recognized. Note that while rights involve claims (specifically, claims on others who are in a position to make a difference), freedoms, in contrast, are primarily descriptive characteristics of the conditions of persons.²³

By starting from the importance of freedoms as the appropriate human condition on which to concentrate, rather than on utilities (as Bentham did), we get a motivating reason not only for celebrating our own rights and liberties, but also for our taking an interest in the significant freedoms of others, not just in their pleasures and desire-fulfillment (as under utilitarianism). Bentham's insistence on choosing utility as the basis of ethical evaluation can be contrasted with the reasons for focusing instead on freedoms. I have discussed elsewhere why those reasons are weighty and how the focus on freedoms can avoid some of the major pitfalls of concentrating only on utility in the form of pleasure or desire fulfillment. For example, the utilitarian calculus can suffer from valuational distortions resulting from the neglect of substantive deprivation of those who are chronically disadvantaged but who learn, by force of circumstances, to take pleasure in small mercies and

22. Since the Gilbert Murray Lecture given at Oxford in November 2002, in which this article originated, was arranged by OXFAM (Gilbert Murray was one of OXFAM's founders), it was also a suitable occasion to discuss this broader connection of human rights with a plurality of ways of pursuing them.

23. However, the ethical force of freedoms can help to generate claims on others. On different aspects of the "entanglements" between descriptive and evaluative concerns, see Hilary Putnam, *The Collapse of the Fact / Value Dichotomy and Other Essays* (Cambridge, Mass.: Harvard University Press, 2002). See also William Van Orman Quine, "Two Dogmas, Of Empiricism," in his *From a Logical Point of View* (Cambridge, Mass.: Harvard University Press, 1961), pp. 20–46, and Vivian Walsh, "Philosophy and Economics," in *The New Palgrave: A Dictionary of Economics*, ed. John Eatwell, Murray Milgate and Peter Newman (London: Macmillan, 1987), pp. 861–69.

get reconciled to cutting down their desires to “realistic proportions” (thereby appearing to be not particularly deprived in the special metric of pleasures or desire-fulfillment).²⁴

Before going into the difficult issue of duties related to rights, which will be examined in Section VI, some exploration of the connection between rights and freedoms is necessary, to which I devote the rest of this section as well as Section V. Freedoms can vary in importance and also in terms of the extent to which they can be influenced by social help. For a freedom to count as a part of the evaluative system of human rights, it clearly must be important enough to justify requiring that others should be ready to pay substantial attention to decide what they can reasonably do to advance it. It also has to satisfy a condition of plausibility that others could make a material difference through taking such an interest.

There have to be some “threshold conditions” of (i) importance and (ii) social influenceability for a freedom to figure within the interpersonal and interactive spectrum of human rights. Insofar as the idea of human rights demands public discussion and engagement, which I noted earlier and will further discuss in Section IX, the agreement that would be sought is not only on whether some specific freedom of a particular person has any ethical importance whatsoever (that condition can be easy to satisfy), but also whether its significance and its influenceability meet the threshold conditions for inclusion among the human rights on which the society should focus.

The threshold conditions may prevent, for a variety of reasons, particular freedoms from being an appropriate subject matter of human rights. To illustrate, it is not hard to argue that some importance should be attached to all four of the following freedoms:

- (1) a person’s freedom not to be assaulted;
- (2) her freedom to receive medical care for a serious health problem;
- (3) her freedom not to be called up regularly by her neighbors whom she detests;
- (4) her freedom to achieve tranquillity.

24. The evaluative framework of substantive freedoms can provide a more robust appreciation of a person’s inability to achieve what they have reason to value. On this see my “Well-being, Agency and Freedom: The Dewey Lectures 1984,” *Journal of Philosophy* 82 (1985): 169–220; *Inequality Reexamined*; and *Development as Freedom* (New York: Knopf, 1999).

However, even though all four may be important in one way or another, it is not altogether implausible to argue that the first (freedom not to be assaulted) is a good subject matter for a human right, and so is the second (freedom to receive necessary medical care),²⁵ but the third (freedom not to be called up by detested neighbors) is not, in general, important enough to cross the threshold of social significance to qualify as a human right. Also, the fourth, while quite possibly extremely important for the person, is too inward-looking—and too hard to be influenced by others—to be a good subject matter for human rights. The exclusion of a “right to tranquillity” relates not to any skepticism about the possible importance of tranquillity and the significance of a person’s being free to achieve it, but to the difficulty of guaranteeing it through social help.

There can be fruitful debates on the thresholds and their use, and in particular on whether a specific case of freedom meets the threshold conditions or not. As was briefly discussed in Sections II and III (and will be further examined in Section IX), such discussions are part of the discipline of human rights. The analyses of thresholds, related both to the seriousness and to the social influenceability of particular freedoms, cannot but have a significant place in the discipline of human rights.

V. PROCESSES, OPPORTUNITIES AND CAPABILITIES

I turn now to a closer scrutiny of the contents of freedom and its multiple features. I have argued elsewhere that “opportunity” and “process” are two aspects of freedom that require distinction, with the importance of each deserving specific acknowledgment.²⁶ An example can help to bring out the *separate* (though not necessarily independent) relevance of both *substantive opportunities* and *freedom of processes*.

Consider an adult person, let us call her Rima, who decides that she would like to go out in the evening. To take care of some considerations

25. However, in the second case (that is, the entitlement to necessary medical care), we shall have to discuss whether this type of a “welfare right,” or more generally, economic and social rights, can be seen as human rights, and this examination will be taken up in Section VIII.

26. See *Rationality and Freedom* (Cambridge, Mass.: Harvard University Press, 2002), particularly my Arrow Lectures (“Freedom and Social Choice”) included there: essays 20 through 22.

that are not central to the issues involved here (but which could make the discussion more complex), it is assumed that there are no particular safety risks involved in her going out, and that she has critically reflected on this decision and judged that going out would be the sensible, indeed the ideal, thing to do. Now consider the threat of a violation of this freedom if some authoritarian guardians of society decide that she must not go out in the evening (“it is most unseemly”), and if they force her, in one way or another, to stay indoors. To see that there are two distinct issues involved in this one violation, consider an alternative case in which the authoritarian bosses decide that she must—absolutely *must*—go out (“you are expelled for the evening: just obey”). There is clearly a violation of freedom here even though Rima is being forced to do exactly what she would have chosen to do anyway, and this is readily seen when we compare the two alternatives “choosing freely to go out” and “being forced to go out.” The latter involves an immediate violation of the *process aspect* of Rima’s freedom, since an action is being forced on her (even though it is an action she would have freely chosen also).

The opportunity aspect may also be affected, since a plausible accounting of opportunities can include having options and it can inter alia include valuing free choice. However, the violation of the opportunity aspect would be more substantial and manifest if she were not only forced to do something chosen by another, but in fact, forced to do something she herself would not otherwise choose to do. The comparison between “being forced to go out” (when she would have gone out anyway, if free) and, say, “being forced to polish the shoes of others at home” (not her favorite activity) brings out this contrast, which is primarily one of the opportunity aspect, rather than the process aspect. In being forced to stay home and polish the shoes of others, Rima loses freedom in two different ways, related respectively to (1) being forced with no freedom of choice, and (2) being obliged in particular to do something she would not choose to do.²⁷

Both processes and opportunities can figure in human rights. A denial of “due process” in being, say, imprisoned without a proper trial can be the subject matter of human rights (no matter what the outcome of the

27. More complex features of the opportunity aspect and the process aspect of freedoms are also discussed in my Arrow Lectures (“Freedom and Social Choice”) in *Rationality and Freedom*, essays 20 through 22.

fair trial might be), and so can be the denial of the opportunity of medical treatment, or the opportunity of living without the danger of being assaulted (going beyond the exact process through which these opportunities are made real).

For the opportunity aspect of freedom, the idea of “capability” (that is, the opportunity to achieve valuable combinations of human functionings: what a person is able to do or be) can typically provide a helpful approach.²⁸ It allows us to distinguish appropriately between (1) what she values *doing or being*, and (2) the *means* she has to achieve what she values. By shifting attention, in particular, towards the former, the capability-based approach resists an overconcentration on means (such as incomes and primary goods) that can be found in some theories of justice (for example, in the Rawlsian Difference Principle). The capability approach can capture the fact that two persons can have very different substantial opportunities even when they have exactly the same set of means: for example, a disabled person can do far less than an able-bodied person can, with exactly the same income and other “primary goods.” The disabled person cannot, thus, be judged to be equally advantaged—with the same substantive opportunities—as the person without any physical handicap but with the same set of means (such as income and wealth and other primary goods). The capability perspective concentrates on what actual opportunities a person has, not the means over which she has command. More particularly, the capability perspective allows us to take into account the parametric variability in the relation between the means, on the one hand, and the actual opportunities, on the other.²⁹

28. On the concept of capability, see my “Equality of What?” in *Tanner Lectures on Human Values*, vol. I, ed. Sterling M. McMurrin (Cambridge: Cambridge University Press, and Salt Lake City: University of Utah Press, 1980), pp. 197–220, and *Commodities and Capabilities* (Amsterdam: North-Holland, 1985), and also, jointly edited with Martha Nussbaum, *The Quality of Life* (Oxford: Clarendon Press, 1993). The approach is powerfully developed and applied by Martha Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000). See also the related theories of substantial opportunities developed by Richard Arneson, “Equality and Equality of Opportunity for Welfare,” *Philosophical Studies* 56 (1989): 77–112; G. A. Cohen, “On the Currency of Egalitarian Justice,” *Ethics* 99 (1989): 906–44; and John E. Roemer, *Theories of Distributive Justice* (Cambridge, Mass.: Harvard University Press, 1996), among others contributors.

29. The importance of this variability for a theory of justice is discussed in my “Justice: Means versus Freedoms,” *Philosophy & Public Affairs* 19 (1990): 111–21. Differences in the capability to function can arise even with the same set of personal means (such as primary

The capability perspective can also help in bringing out the need for transparent valuational scrutiny of individual advantages and adversities, since the different *functionings* have to be assessed and weighted in relation to each other, and the opportunities of having different *combinations* of functionings also have to be evaluated.³⁰ The richness of the capability perspective broadly interpreted, thus, includes its insistence on the need for open valuational scrutiny for making social judgments, and in this sense, it fits in well with the importance of public reasoning.³¹ This openness of transparent valuation contrasts with burying the evaluative exercise in some mechanical, and valuationally opaque, convention (for example, by taking market-evaluated income to be the invariable standard of individual advantage, thereby giving implicit normative priority to institutionally determined market prices).

goods) for a variety of reasons, such as (1) *personal heterogeneities* (related, for example, to disability, or proneness to illness), (2) *environmental diversities* (such as climatic conditions, or varying threats from epidemic diseases or from local crime), (3) *variations in non-personal resources* (such as the nature of public health care, or social cohesion), or (4) *different relative positions vis-à-vis others* (well illustrated by Adam Smith's discussion, in the *Wealth of Nations*, of the fact that the clothing and other resources one needs "to appear in public without shame" depends on what other people standardly wear and how they typically live in that society).

30. The need for an explicit valuational exercise is, thus, seen as an advantage, rather than a limitation of the capability approach. For arguments in different directions on this issue, see Charles R. Beitz, "Amartya Sen's Resources, Values and Development," *Economics and Philosophy* 2 (1986): 282–90; Bernard Williams, "The Standard of Living: Interests and Capabilities," in Amartya Sen et al., *The Standard of Living*, ed. Geoffrey Hawthorn (Cambridge: Cambridge University Press, 1987), pp. 94–102; Amartya Sen, *Inequality Reexamined*, and "Capability and Well-being," in *The Quality of Life*, ed. Nussbaum and Sen, pp. 31–53.

31. The capability approach can allow considerable difference in application. For a somewhat different perspective, see Martha Nussbaum, "Nature, Function, and Capability: Aristotle on Political Distribution," *Oxford Studies in Ancient Philosophy*, Supplementary Volume (1988), pp. 145–54, and *Women and Human Development: The Capabilities Approach*. Nussbaum has discussed the importance of identifying an overarching "list of capabilities," with given priorities, in a more Aristotelian way. My own reluctance to join the search for such a canonical list arises partly from my difficulty in seeing how the exact lists and weights would be chosen without appropriate specification of the context of their use (which could vary), but also from a disinclination to accept any substantive diminution of the domain of public reasoning. The framework of capabilities, as I see it, helps to clarify and illuminate the *subject matter* of public reasoning, which can involve epistemic issues (including claims of objective importance) as well as ethical and political ones. It does not—and cannot—displace the need for public reasoning.

There has, however, been some serious criticism of describing these substantive opportunities—to live one kind of a life or another—as “freedoms,” and it has been argued that this makes the idea of freedom too inclusive. For example, in her illuminating and sympathetic critique of my *Development as Freedom*, Susan Okin has presented arguments to suggest that I tend “to overextend the concept of freedom.”³² She argues: “It is hard to conceive of some human functionings, or the fulfillment of some needs and wants, such as good health and nourishment, as freedoms without stretching the term until it seems to refer to everything that is of central value to human beings” (p. 292).

There is indeed scope for argument on how broadly the concept of freedom should be used. But the particular example considered in Okin’s counterargument is, I think, based on a misinterpretation of the idea of freedom underlying the concept of capability. It has not been suggested at all that a functioning (for example, being in good health or being well-nourished) should be seen as freedom of any kind. Rather, freedom, in the form of capability, concentrates on the *opportunity* to achieve combinations of functionings (including, inter alia, the opportunity to be well-nourished or in good health, as in this particular case): the person is *free to use* this opportunity or not. A capability reflects the alternative combinations of functionings over which the person has freedom of effective choice.

It is, therefore, not being suggested at all that *being* well-nourished or in good health is to be seen as a freedom in itself.³³ Capability, as a kind of freedom, refers to the extent to which the person is *able to choose* particular combinations of functionings (including, inter alia, such things as being well-nourished), no matter what the person actually decides to choose. Mahatma Gandhi famously did not use that opportunity to be well-fed when he chose to fast, as a protest against the

32. Susan Okin, “Poverty, Well-being and Gender: What Counts, Who’s Heard?” *Philosophy & Public Affairs* 31 (2003): 280–316. On related issues see also Joshua Cohen, “Review of Sen’s *Inequality Reexamined*,” *Journal of Philosophy* 92 (1994): 275–88, esp. 278–80, and G. A. Cohen, “Review: Amartya Sen’s Unequal World,” *The New Left Review* (1995): 117–29, esp. 120–25.

33. I have discussed this issue in “Well-being, Agency and Freedom: The Dewey Lectures 1984.” It is also important to examine how the concept of “freedom” links with a broadly defined idea of “interest,” which underlies Joseph Raz’s reasoned diagnosis: “Rights ground requirement for action in the interest of other beings.” See *The Morality of Freedom* (Oxford: Clarendon Press, 1986), p. 180.

policies of the British Raj in India. In terms of the actual functioning of being well-nourished, the fasting Gandhi did not differ from a starving famine victim, but the freedoms and opportunities they respectively had were quite different. The *freedom to have* any particular thing can be distinguished from actually *having* that thing. What a person is free to have, not just what he or she actually has, is relevant, I have argued, to a theory of justice.³⁴ A similar point can be made about the relevance of substantive freedoms in a theory of human rights.

The fact that many of the terrible deprivations in the world seem to arise from a lack of freedom to avoid those deprivations (rather than from choice, including choosing to be “indolent”: a classic issue in the historical literature on poverty) is an important motivational reason to emphasize the role of freedom. This led Marx to argue passionately for the need to replace “the domination of circumstances and chance over individuals by the domination of individuals over chance and circumstances.”³⁵ The general idea of freedom, with its many distinct components, seems particularly relevant to normative social choice theory, in general, and to the theory of justice, in particular. The argument here is that it can also figure powerfully in the normative foundations of human rights.

To take a different type of example, consider the freedom of new immigrants to West Europe or North America to conserve the ancestral cultural customs and life-styles from their countries of origin. This complex subject cannot be adequately assessed without distinguishing between *doing* something and being *free* to do that thing. A strong argument can be constructed in favor of an immigrant’s having the freedom to retain at least parts of her ancestral life-style, but this must not be seen as an argument in favor of her pursuing her ancestral life-style whether she chooses to do this or not. The central issue, in this argument, is the *freedom* to choose how she should live, including the *opportunity* to

34. G. A. Cohen has presented arguments in favor of focusing on achieved functionings—related to his concept of “midfare”—rather than on capability; see his “On the Currency of Egalitarian Justice,” and “Equality of What? On Welfare, Resources and Capabilities,” in *The Quality of Life*, ed. Nussbaum and Sen, pp. 125–41. See also Richard Arneson, “Equality and Equality of Opportunity for Welfare,” *Philosophical Studies* 56 (1989): 77–112.

35. Karl Marx, *The German Ideology*, with Friedrich Engels, in *Karl Marx: Selected Writings*, ed. David McLellan (Oxford: Oxford University Press, 1977), p. 190.

pursue ancestral customs, and it cannot be turned into an argument for her specifically pursuing those customs in particular, irrespective of the alternatives she has and the choices she would make.³⁶ The importance of capability, reflecting opportunities, is central to this distinction.³⁷

I have been concentrating on what the capability perspective can do for a theory of justice or of human rights in the immediately preceding discussion, but I now to turn to what it *cannot* do. Although the idea of capability has considerable merit in the assessment of the opportunity aspect of freedom, it cannot possibly deal adequately with the process aspect of freedom, since capabilities are characteristics of individual advantages, and they fall short of telling us enough about the fairness or equity of the processes involved, or about the freedom of citizens to invoke and utilize procedures that are equitable.

Let me illustrate the contrast of perspectives with a somewhat harsh example. It is now fairly well established that given symmetric care, women tend to live longer than men. If one were concerned only with capabilities (and nothing else), and in particular with equality of the capability to live long, it would have been possible to construct an argument for giving men more medical attention than women to counteract the natural masculine handicap. But giving women less medical attention than men for the same health problems would clearly violate an important requirement of process equity, and it seems reasonable to argue, in cases of this kind, that demands of equity in process freedom could sensibly override a single-minded concentration on the opportunity aspect of freedom (and the requirements of capability equality in particular). While it is important to emphasize the relevance of the capability perspective in judging people's substantive opportunities (particu-

36. Though this is not the occasion to provide a critical assessment of "multiculturalism" as a social policy, it is perhaps worth noting here that there is a big difference between (1) valuing multiculturalism because of the way, and to the extent that, it enhances the freedoms of the people involved to choose to live as they would like (and have reason to like); and (2) valuing cultural diversity *per se*, which focuses on the descriptive characteristics of a societal pattern, rather than on the freedoms of the people involved.

37. Capability is also central to the relationship between multiculturalism and gender equity. The important question that Susan Okin asks in her joint book, *Is Multiculturalism Bad for Women?*, ed. J. Cohen, M. Howard and M. C. Nussbaum (Princeton, N.J.: Princeton University Press, 1999), turns, to a great extent, on possible tensions between multiculturalism and the freedom of individual persons (in this case, women) within a community to freely consider and choose how they would live.

larly in comparison with alternative approaches that focus on incomes, or primary goods, or resources), that point does not, in any way, go against seeing the simultaneous relevance also of the process aspect of freedom in a theory of human rights, or, for that matter, in a theory of justice.

Related to this issue, I should perhaps take the opportunity here to correct a misinterpretation of the place of the capability perspective in a theory of justice. A theory of justice, or more generally an adequate theory of normative collective choice, has to be alive both to the fairness of the processes involved and to the equity and efficiency of the substantive opportunities that people can enjoy.³⁸ In dealing with the latter, capability can indeed provide a very helpful perspective, in comparison with, say, the Rawlsian concentration on “primary goods.” But capability can hardly serve as the sole informational basis for the other considerations, related to processes, that must also be accommodated in normative collective choice theory.

Perhaps the point can be seen most easily by considering the different components of Rawls’s theory of justice. His “first principle” of justice involves the priority of liberty, and the first part of the “second principle” involves process fairness, through demanding that “positions and offices be open to all.” Even though the concerns that lead Rawls to these particular formulations can be dealt with in different ways, not only in the way that Rawls himself addresses them, the force and cogency of these Rawlsian concerns can neither be ignored nor be adequately addressed through relying only the informational base of capabilities.³⁹

In contrast, capability comes into its own in dealing with the *remainder* of the second principle, viz. “the Difference Principle” (with its con-

38. The plurality of concerns, involving processes as well as opportunities, which is inescapably involved in normative collective choice (including theories of justice), is discussed in my *Collective Choice and Social Welfare* (1970) and “Well-being, Agency and Freedom: The Dewey Lectures 1984,” *Journal of Philosophy* 82 (1985). Since I have seen it asserted that I propound a “capability-based theory of justice,” I should make it absolutely clear that this could be true only in the rather limited sense of naming something according to a *principal* part of it (comparable with, say, using England for Great Britain, or Holland for the Netherlands).

39. See my *Collective Choice and Social Welfare*, particularly chapters 5 through 9, and “Well-being, Agency and Freedom: The Dewey Lectures 1984.” The issues involved are more fully addressed in my forthcoming book *Freedom and Justice*, to be published by Harvard University Press.

centration on “primary goods”).⁴⁰ The territory that Rawls reserved for the accounting of primary goods, as used in his Difference Principle, would indeed be, I argue, better served by the capability perspective. That does not, however, obliterate in any way the relevance of the rest of the territory of justice, in which process considerations, including liberty and procedural equity, figure. The same plurality of informational base links with the multiplicity of considerations that can be invoked in a theory of human rights. Capabilities and the opportunity aspect of freedom, important as they are, have to be supplemented by considerations of fair processes and the lack of violation of the individual’s right to invoke and utilize them.

VI. DUTIES, REASONABLE CONSIDERATION AND IMPERFECT OBLIGATIONS

I turn now from rights to correlative duties. We can, again, proceed from the importance of freedoms and their different aspects. Since freedoms are important, people have reason to ask what they should do to help each other in defending or promoting their respective freedoms. Since violation, or non-realization, of the freedoms underlying significant rights are, in this evaluative system, bad things to happen, even others who are not themselves responsible for causing the violation have a good reason to consider what they should do to help.⁴¹ Nevertheless, the move from a *reason* for action to help another person, which is easy to see in a consequence-sensitive ethical system, to an actual *duty* to give

40. It was indeed in the context of identifying an inadequacy in the Rawlsian focus on primary goods in the Difference Principle, for judging distributional equity, that the use of the capability perspective was proposed in my 1979 Tanner Lectures, published as “Equality of What?” (1980). In judging distributional equity, the capability perspective also has, I believe, advantages over the concentration on what Ronald Dworkin calls “resources” in “What Is Equality? Part 2: Equality of Resources,” *Philosophy & Public Affairs* 10 (1981): 185–243. Dworkin has recently argued that on one interpretation, there is no substantial difference between my focus on capability and his focus on resources, while on another interpretation, he is just right and I am plain wrong (*Sovereign Virtue: The Theory and Practice of Equality* [Cambridge, Mass.: Harvard University Press, 2000]). I resist the temptation, which I must confess is fairly strong, to join that debate in this article.

41. The rationale and reach of a consequence-sensitive framework for this type of ethical reasoning have been investigated in my essays “Rights and Agency,” *Philosophy & Public Affairs* 11 (1982): 3–39, “Positional Objectivity,” *Philosophy & Public Affairs* 22 (1993): 126–45, and “Consequential Evaluation and Practical Reason,” *Journal of Philosophy* 97 (2000).