

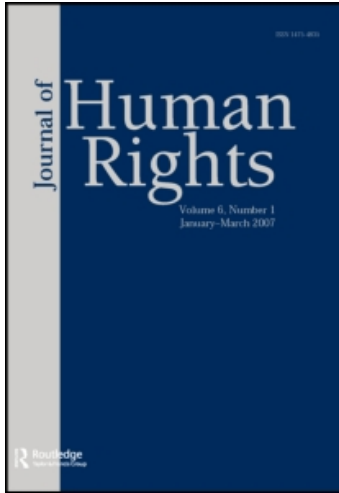
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Life: The Most Basic Right

AMITAI ETZIONI

Not all rights have been created equal. This essay contends that the right to life—broadly understood as a right to be free from deadly violence, maiming, torture, and starvation—is paramount and argues that the unique standing of the right to life has significant implications for public policy in general, and for foreign policy in particular. The right to life is much more narrowly crafted than the right to many entitlements that improve life (e.g., health, housing, and education) but are not required for us to remain alive.¹

The Implications of Moral and Political Scarcity

In numerous discussions of human rights, both scholars and activists treat these rights as if they could be lumped together because they have identical or at least very similar standing. A typical statement follows: “All human rights are universal, indivisible, and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis” (United Nations 1993).² Indeed, for such declaratory purposes there may not be an immediate reason to differentiate among various individual rights or to examine their relative standing vis-à-vis one another. However, often, in order to address specific constitutional, legal, and public policy questions, such ranking is required—if only because different rights come into conflict, and hence criteria must be found to determine which right will prevail under a given set of circumstances. Their relative normativity is one such criterion. Another major reason for the ranking of rights is that due to the scarcity of moral and political capital that are needed to promote and implement human rights, some rights will be underserved. Ranking them is one way to determine which rights we ought to promote more than others, if choose we must.

Scarcity is a term used by economists to denote the observation that wants exceed the availability of the resources needed to satisfy these wants. (Prices are one major way this discrepancy is bridged.) I suggest that those who seek to advance human rights face

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a similar situation. Human rights are not self-implementing; they need to be promoted through educational means, moral suasion, incentives, and the coercive powers of the state, all of which command resources. Given that the resources needed to promote human rights are limited and substantially short of that which full implementation requires, various rights must be ranked so that we may effectively allocate these resources. These include not merely economic assets but also moral and political capital. Moral capital is the capacity to persuade. Moral authorities, such as religious and public leaders, have a limited capacity to win the support of their followers for particular lines of action. Taking on particular moral issues inevitably means that there will be other issues with which they will be unable to engage. Political capital is the ability to garner the support of individual legislators, voters, and various factions or lobbies. It also falls chronically short of that which is needed by those who seek to promote human rights. It follows that not all rights can be fully served, and that hence one ought not avoid the question: Which right, if any, commands a higher standing than the others?

Examples of Ranking

An implicit ranking of rights is fairly common (Turner 1995; Teraya 2001). East Asian societies tend to claim that socioeconomic rights outrank civil and political rights, which they advance as one justification for their neglect of civil and political freedoms,³ at least while they are focusing on socioeconomic development. In contrast, Americans tend to question the status of socioeconomic rights much more than the standing of civil and political rights, while the German constitution and the United Nations Universal Declaration of Human Rights treat these two categories of rights as if they have similar standing.

Rankings can also be found among civil and political rights. For instance, Americans tend to rank the First Amendment as higher, or more absolute, than the others. This is evidenced when freedom of speech clashes with other rights or the common good. In those situations, American constitutional and legal traditions and political lore tend to favor allowing the First Amendment to trump these other considerations. Examples include the absence of state secret acts in the United States (which allows the freedom of the press to take precedent over national security);⁴ the ways American libel laws are written compared to the British ones, which rank freedom of the press higher than the violation of privacy under many circumstances (*New York Times Co. v. Sullivan* 1964); and the absence of hate speech clauses in federal and state constitutions of the United States, as compared to Brazil, for instance (Fischer 1998; *Constituição Federal* n.d.). More generally, even a cursory examination of the criminal codes of many nations reveals that they rank rights by exacting much higher penalties for violations of some rights than for violations of others. This is particularly true with regard to the right to life. Taking someone else's life—murder—is punished more severely in the criminal codes of all democratic nations than practically all other crimes, including the violation of property rights, discrimination, and harassment. Also, torture is considered a more egregious violation than the violation of most other rights.

The special status of life is reflected in the Ten Commandments. The Koran teaches that “if anyone saves a life, it shall be as though he had saved the lives of all mankind” (5:32). In the Jewish tradition, “He who saves one soul, it’s as if he saved the entire world” (Babylonian Talmud, Sanhedrin 4:8 [37a]). Jews are commanded to violate the Sabbath and even the holiest of Jewish holidays, Atonement Day, if this is required to save a life. The Catholic Church extends this right to the unborn.⁵ The primacy of the right to life is well recognized in the following comments on the Universal Declaration of Human Rights:

“The right to life, liberty and personal security, recognized in Article 3, sets the base for all following political rights and civil liberties, including freedom from slavery, torture and arbitrary arrest, as well as the rights to a fair trial, free speech and free movement and privacy” (United Nations 1998).⁶

Self Evident? Implicit Ranking

A critic may argue that the concept that the right to life trumps all others is so self-evident and widely accepted that it is a trivial claim. However, there are several ways to show that this is not the case. First of all, many lists of rights do not list the right to life first or show in any other way that it has a special status. I note that the order in a list is not necessarily a deliberate and explicit form of ranking. One can list an important item second or even last. However, it often reflects at least implicitly a sense of value. Probably the best known example of a list in which the respect for life does not command top billing is the Ten Commandments; although it is of course a list of duties and not rights.

Human Rights Watch, a highly regarded human rights advocacy group, was founded in 1978 as the Helsinki Watch in order to support Soviet bloc groups promoting human rights. The Helsinki Watch mission statement enumerates the rights it promotes, including protection from discrimination, loss of political freedom, and inhumane conduct during war, and justice for human rights violators. However, protecting the right to life is not even mentioned (Human Rights Watch n.d.).

Human Rights First is a group founded in 1978 to promote laws and policies that protect human rights. In its charter, the group lists freedom and equality of thought, expression, and religion as the primary rights to be protected. The right of security for individuals and protection against arbitrary power comes almost as an afterthought, after the charter asserts its methods for promoting its conception of human rights (Human Rights First n.d.).

In 2003, high-level delegates from each country of the EU produced the European Union Charter of Fundamental Rights. The Charter places human dignity first, followed by the right to life and freedom from the death penalty and the integrity of the person, which concerns the ethical boundaries of science.

The contrast between these documents and ones that do list the right to life first stands out when one examines the UN Universal Declaration of Human Rights. The first substantive right enumerated is unequivocally the right to life: “Everyone has the right to life, liberty and security of person” (United Nations 1948: para. 11). The third one is closely related: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” (para. 13). In between is sandwiched one that concerns freedom: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms” (para. 12).

Eckart Klein studied the Convention for the Protection of Human Rights and Fundamental Freedoms and found that the European Court of Human Rights characterized the right to life

not only as “one of the most fundamental provisions in the Convention,” but has elevated it to the “supreme value in the hierarchy of human rights.” . . . While the term “supreme value” remains reserved for the right to life, the prohibitions of torture has attained “the status of a peremptory norm or *jus cogens*” meaning that the norm “enjoys a higher rank in the international hierarchy than treaty law and even ordinary customary rules.” (Brockett 1978: 1)

Explicit Ranking

Several scholars have explicitly studied the ways rights are or ought to be ranked. However, far from agreeing that the right to life should rank supreme, they differ in terms of which right they rank as paramount.

R. J. Vincent defined the right to life as the right to sustenance and security and argued that it must always be protected first. He noted, though, that this is not necessarily always recognized. He writes:

[I]t is true that basic needs doctrine has a programmatic appeal that is not obvious in the lists of human rights. The idea of a hierarchy of basic needs, from physiological to psychological, with each level in the hierarchy requiring to be met before progress to the next level, seems to provide the starting-place for a detailed development strategy: first provide food and water, then security, and so on. . . . If the right to life becomes the need for food, then a society has some notion of what is to be done. (Vincent 1986: 87)

Charles Brockett (1978) has proposed a hierarchy of rights that is topped with the right to life, which he defines as freedom from murder. This right fits into what he calls physiological rights, which also include the right to be free of severe malnutrition, the right to food, water, and air, which life requires.

Safety rights—protection from physical or psychic injury, which includes freedom from torture as well as the right to basic health care—come next, while the last range of protected rights are “gratifications such as love, esteem, and self-actualization.” In my terms, he breaks the right to life into two, both of which he calls physiological rights. Brockett makes it clear that these physiological rights must be met before other rights can be sufficiently protected. He writes “The instrumental nature of security does set it apart from the other two dimensions and the other sets of needs. . . . [I]ts inclusion is redundant since its instrumental relation to the other needs means that it is already taken into account by those needs” (Brockett 1978: 10).

Others do rank rights, however, in different ways. Some single out a piece of the right to life and put it at the top of the list. Food and Agricultural Organization Director-General Dr. Jacques Diouf believes the most fundamental right is the right to food, as he expressed at the plenary session of the European Assembly in 2007 (FAO Newsroom 2007). Mohamad Mova Al ‘Afghani (2007) believes the right to water is the most essential human right.

Others lead with other rights. Privacy International (2007), an advocacy group for privacy rights, ranks the right to privacy as a fundamental right that underpins basic conceptions of human dignity and other human rights. Basil Fernando of the Asia Human Rights Commission believes that human dignity is the foundation of human rights “and the worst form of negation of it [is] poverty” (Matthew 1996: para 2). Margaret Somerville, a professor at McGill University, holds that “the most fundamental human right of every person is the right to be born from natural human origins that have not been tampered with by anyone else” (2007: 198). The organization “Creating a Sustainable Future” (n.d.) is based on the premise that a sustainable future is the most fundamental human right. Walter Williams (2005), a professor at George Mason University, asserts that property rights are the most important human rights, and he believes that false distinctions have been made between human rights and property rights.

In short, although ranking of rights is hardly a new step, that the right to life ought to top the hierarchy of human rights, the key thesis of this article, is far from agreed upon.

In More Popular Lingo

To the American mind, discussing the standing of the right to life brings to mind the very popular line “give me liberty or give me death.” This normative claim is often imbedded in the calls to soldiers and antiterrorist agents to fight for the freedom of their country or that of others, even if it entails endangering their lives. (The opposite claim, “better red than dead,” was considered a position embraced only by outliers such as pacifists and the extreme left.) Thus, at least in this context, liberty outranks life.

While it is much more legally permissible to deny people liberty (by incarcerating them) than to legally take their lives (the death penalty), and many civilized nations have banned the death penalty, the United States still allows it to stand. And there are a fair number of jurists who justify it. In 1976, the Supreme Court ruled in *Gregg v. Georgia* that the death penalty, meeting certain criteria of fairness, was a constitutionally acceptable form of punishment in the United States. Here a concept of public order (or the safety of others) takes priority over the right of life of the individual involved.

In Conclusion

One cannot but conclude that the thesis that the right to life trumps all others is far from self-evident, incorporated in all declarations and charters enumerating human rights, or agreed upon among scholars. Furthermore, one notes that like other rights, even the right to life is not completely absolute. Exceptions are incorporated, for instance, into American law and the normative precepts that constitute patriotism. One may suggest that one should place a heavy burden on those who seek to trump the right to life, as so frequently the call to sacrifice one’s life for this or that common good (or right) is found on closer examination to be with little foundation. Many would agree that this was the case when the call to arms was made in the context of invading Iraq in 2003. In other words, granting the right to life a special status—the most respected of them all, even if not an absolute one—serves as a normative hedge against spurious claims by governments that our rights are endangered or that the death penalty is called for. The default position, the right to life implies, is that such claims are not justified and that the burden of proof rests with those who make such claims. However, one cannot presume that claims that the right to life should be set aside can never clear this bar.

The High Level of Scarcity

Before I can point to the key implications of the ranking of rights and the particularly high ranking accorded to the right of life, one more step is needed: One must determine the level of scarcity of moral and political capital available to those who promote human rights. The more severe the scarcity, the more crucial ranking becomes, and the greater the damage caused in situations in which ranking is neglected or obscured, causing a poor allocation of moral and political capital. The tragic fact is that the moral and political capital needed for advancing human rights in general, and in particular on the international level, is in very short supply; scarcity is very high. This is evidenced by the observation that many rights are often violated both within a wide range of societies and in international relations. Even stopping genocides has been, so far, beyond the international community’s abilities (Power 2002), as so has stopping the bloodshed in numerous civil and international conflicts still smoldering across the world.⁷ This harsh reality is in sharp contrast to the vision that following economic development and toppling of the old regimes, rights will flourish in

one country after another. It especially flies in the face of the hope that such developments can be advanced relatively quickly by foreign powers and international bodies such as the United Nations Development Program, World Bank, International Monetary Fund, and international non-governmental organizations using means such as foreign aid, loans at favorable terms, trade, and forced regime change.⁸

The great difficulties in promoting rights and the scarcity of moral and political capital point to the importance of examining which rights should be promoted first and foremost.

The Morality of Scarcity

There seems to be a reluctance to rank rights during public policy formulation that arises out of concerns that such ranking will lead to neglect of those rights that are accorded a low rank. For instance, in a country like Afghanistan, the issue arises as to whether the United States and its allies can and should simultaneously promote women's rights, children's rights, and animal rights as well as seek to advance freedoms of speech, assembly, and religious expression. This issue came into sharp relief when the Afghan parliament enacted a law in 2009 that allowed Shia men to rape their wives if they did not provide sex at least once every two weeks. Some hold that the United States and its allies should lean heavily on the Afghan government to set aside this law, while others believe that the United States should invest what limited political capital it has in other matters—for instance, in pressuring the Afghan government to curb corruption. For those who may respond that both matters should be taken up, one must note that at the same time numerous other rights are regularly violated in Afghanistan (Jones 2006). In short, it is clear beyond a reasonable doubt that there is a high level of scarcity of moral and political capital available to promote human rights.

As I see it, a major implication of this high level of scarcity is that the ethic of triage, applied in medical emergencies and natural disasters, should be applied here. If one refuses to choose which rights to promote first and, instead, spreads widely whatever limited moral and political capital is available, the advance of all rights will be greatly hindered. This is especially the case in situations in which the observation of some rights is a prerequisite for the observation of others. These considerations point to the conclusion that, in situations in which scarcity of moral and political capital cannot be overcome, moral considerations command a triage of rights. Avoiding it because one considers such choices abhorrent results in doing less good than could be achieved.

Life is the Most Basic Right

I already tried to show earlier that the right to life is very often ranked higher than other rights. A major reason I suggest this ranking is morally appropriate, to recognize the paramount standing of the right to life (broadly understood to include freedom from torture, maiming, and starvation), is that all other rights are contingent on this one, while the right to life is not contingent on the others. It seems all too simple to state that dead people cannot exercise their rights, yet it bears repeating because the extensive implications of this observation are often ignored: When the right to life is violated because basic security is not provided, all other rights are undermined—but not vice versa. (This statement refers, of course, only to true threats to life, not to the politics of fear.)

The primacy of the right to life, and hence the duty to provide for security, refers to *basic* and not complete security. By “basic security” I mean conditions under which people can feel secure in their lives and in their homes and feel safe enough so they can freely

use public spaces, can go to work, can let their children go to school and can exercise their other rights, such as attending religious and political events—but not an environment in which they are risk-free. One reason for this difference is that a risk-free environment is not needed for the exercise of other rights—a major reason, we have seen, the right to life is granted its special standing. Second, reducing risk to very low levels tends to involve high violation of many other rights, especially privacy. And thirdly, a risk-free society is unattainable. None of these difficulties are faced when one seeks merely to establish basic security. It was restored in major American cities after violence reached high levels in the 1970s; in Moscow after violence reached high levels in the 1990s; and in several major Iraqi cities after 2004–2006.

The supreme standing of the right to life is also supported by the finding that when basic security is provided, the public support for nonsecurity (e.g., civil and political) rights increases, but not the other way around. This stands in contrast to the assumption that “regime change” (i.e., forced democratization, including the introduction of the institutional arrangements required for the implementation of civil and political rights) is essential to turning nations into peaceful members of the international community—that is, to further global and domestic security. Only democracies, this argument holds, do not wage war with other democracies.⁹ However, recent experience shows that democratization is not a guarantee for security,¹⁰ and that it is extremely difficult to forcefully democratize nations (Etzioni 2007: 44).

In a review of public opinion polls concerning attitudes towards civil liberties after 9/11, I found that shortly after the attacks, nearly 70 percent of Americans were strongly inclined to give up various constitutionally protected rights in order to prevent more attacks. However, as no new attacks occurred on the American homeland and the sense of security returned (a sense I measured by the return of passengers to air traffic), support for rights was restored. By 2004–2005, about 70 percent of Americans were more concerned with protecting rights than with enhancing security (Etzioni 2004: 38–39).

While I am unaware of an empirical study proving this point, it seems obvious that the criticism of policies introduced by the Bush Administration after 9/11, including harsh interrogation techniques, detention without trial or term in Guantanamo Bay, and massive increases in surveillance, rose as years passed without new attacks on the American homeland. They were relatively weak in the first Bush Administration and grew stronger during the second one. A case in point: the Patriot Act was passed by a wide margin in 2001 but faced considerable opposition and was reapproved with substantial changes only after considerable debate and opposition in 2006.

Another case in point is Russia. Although Russia has never met the standards of a liberal democracy, a good part of what it had achieved on that front after the Cold War was gradually lost as Russians began to experience very high levels of violent crime. Vladimir Putin, who has been moving the regime in an authoritarian direction, is widely regarded in Russia as not being strong enough on crime, rather than too strong, because many still feel that basic security is lacking.

In short, these observations support the thesis that as security is provided, the road is paved for the promotion of civil and political rights.

Implications for Public Policy

In the following lines I point to several implications of the preceding discussion for domestic and foreign policies. I cannot stress enough that these short lines do not provide an analysis of the various policies, let alone an evaluation of normative and prudential standings. I

merely try to illustrate one point: that the primacy of the right to life has significant policy implications.

On the domestic front, the preceding analysis favors the kind of policies introduced in New York City when it faced high levels of violent crime. These policies involved reactivating various communities to enforce their norms against those who violated them by treating minor transgressions as if they were serious offenses. This involved using shaming, informal social controls, and some policing to enforce norms against urinating in public, flashing, and playing boom boxes loudly. (The core idea behind these policies is often associated with the term “Broken Windows.” It was championed by George Kelling and James Q. Wilson in 1982 in the *Atlantic Monthly*.)¹¹ While this policy is not free from criticism (Harcourt 2001), it has been widely credited with achieving its expected results: restoring basic security and opening the door to greater promotion of other rights aside from the protection of life (Chesluk 2004). The same might be said about community policing; although it too is far from free from criticism.

With regard to foreign policy, one must take into account that it is implemented in an environment that is often particularly taxing, and hence ranking rights is particularly necessary in this realm. I already suggested that primacy of the right to life implies that basic security must be provided before democratization and a general promotion of human rights can take off, in direct opposition to the forced regime change hypothesis. (President Barack Obama articulated this position when he stated: “To those who cling to power through corruption and deceit and the silencing of dissent, know that you are on the wrong side of history, but that we will extend a hand if you are willing to unclench your fist” [Obama 2009: para. 25])

With regard to the promotion of various security goals, the primacy of life clearly indicates that de-proliferation and the prevention of the spread of weapons of mass destruction (WMDs) should trump all other considerations, as these are means through which the lives of very large numbers of people can be annihilated and through which they are currently threatened. This may seem obvious, but on numerous occasions this issue has not been given the first priority; for instance, in dealing with Russia, for years promotion of democracy and human rights was given priority over accelerating the implementation of the Cooperative Threat Reduction Initiative that seeks to enhance the safe-guarding of nuclear weapons and fissile materials (Etzioni 2007: 15–19).

Also, the primacy of life favors policies that seek to stop genocides, civil wars, pandemics, and mass starvation. One cannot rely on the primacy of life as the leading normative principle to guide and legitimate the foreign policy of a nation—or the policies of a group of nations or international institutions—if the life to be protected is only of the citizens of a given nation. Even a modicum of consistency, a major foundation of robust ethncal judgments, requires that all lives be respected. True, it is beyond the reach of current human capacity to stop all killing, maiming, torture, and starvation. However, it is not impossible to stop them when they occur on a large scale. (Those who may argue that the definition of “large” scale is a subjective concept, depending upon the eyes of the beholder, may note that the United Nations has developed a fairly clear set of definitions that allow one to determine whether or not a genocide is occurring [Etzioni 2007: 31].)

The high regard for life also indicates that as moral and political capital is available for the promotion of democracy and human rights by the people of one country on behalf of those living under some other regime—this promotion should be limited to nonlethal means. Military interventions for these goals are not in line with the stated principle.

One may ask whether the high priority accorded to security, broadly understood, implies that organizations devoted to other purposes—say, Doctors Without Borders—should seek

to change their charter or to turn over their resources to organizations dedicated to security. Arguably, in some abstract world, all organizations dedicated to the common good would follow the same overarching strategy. However, given that these organizations have different funding sources, political structures and even legal foundations, they cannot and should not all focus on security. However, these organizations best engage in triage within their own realm of service. For instance, Doctors Without Borders might focus more on saving lives than on, say, repairing cleft palates, or those who provide food might concentrate on curbing starvation before providing diet supplements to prevent malnutrition. Such ranking examples may at first seem heartless; their normativity stands out only when one recognizes that there are not enough resources to cover all the numerous purposes that deserve to be promoted, and hence avoiding triage results in consequences that offend values the promoters of human rights, at least, hold dear.

Notes

1. One may say that I am referring to a right to security; however, such wording removes the normative criteria that justify the right. We are entitled to security because we have a right to life.
2. Other sources articulating this view of human rights are The United Nations Population Fund (n.d.), Sarmiento (1995), and Winston (1998).
3. Civil and political rights, also known as “first-generation rights,” have a direct relationship with the state and include such rights as the right to justice and the rights to information and expression (O’Byrne 2003, 11).
4. “Secrecy in government is fundamentally anti-democratic, perpetuating bureaucratic errors. Open debate and discussion of public issues are vital to our national health.” (Justice Brennan’s concurrence in *New York Times v. United States* 1971).
5. For the articulation of this standard by the United States Conference of Catholic Bishops, see their website (United States Conference of Catholic Bishops n.d.).
6. For additional discussion see Rhona Smith (2003) and Ramcharan (1985).
7. According to B’s Independent Pro-Peace Initiative (BIPPI), as of February 2008, there were 31 ongoing conflicts worldwide.
8. For an argument discounting these views, see Easterly (2006) and the World Bank report “Assessing Aid—What Works, What Doesn’t, and Why” (1998).
9. For more readings that support the “Democracies don’t fight Democracies” premise, see Rummel (1999), Mintz and Geva (1993), and Polachek (2002). A strong argument against the “Democracies Don’t Fight Democracies” premise can be found in Schwartz and Skinner (1999). Also see Zakaria (2003) and Kaplan (2000).
10. “There is much evidence from many parts of the world that . . . in fact, such ‘reforms’ as the installation . . . of ‘multi-party democracy’ actually exacerbate or even create ethnic, religious, or tribal differences, which then create unrest” (Rengger 1997, 63).
11. See also Kelling (1996).

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