

## 2 The moral and legal status of the human embryo

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This paper is in three parts. Part I discusses some general matters concerning the attribution of moral status to the human embryo. Part II outlines the current situation regarding legal protection of the human embryo in the European Union. Part III sketches an approach to the moral status of the human embryo that lays claim to legal force within the European Union as a whole.

### **The moral status of the human embryo**

#### *General considerations*

The general moral status attributed to the human embryo depends, essentially, on two things:

- 1 which characteristics are deemed necessary or sufficient, on the one hand, for beings to be owed any duties of respect or concern for their interests or welfare, or rights in terms of their interests or welfare, on the other; and
- 2 beliefs about the ontological status of the human embryo – its nature, capacities, and powers.

Characteristics that have been deemed necessary/sufficient for duties of respect or concern to be owed (or rights to be held) include, e.g.,

- (a) being a natural event or system;
- (b) being a living organism;
- (c) being a sentient being (one capable of pain and pleasure);
- (d) being a human being (biologically defined);
- (e) being a rational being;



- (f) being (in Kant's terms) a rational being with a will (or an agent – a being with the capacity and disposition to pursue purposes of its own choosing as reasons for its acting).

Some of these characteristics (being a natural event or system, being a living organism, and being a human being [biologically defined]) are properties that the human embryo unquestionably has. On the other hand, it is extremely doubtful that the human embryo is sentient, and there is no evidence whatsoever that the human embryo is a reflective rational being, let alone an agent. Such properties are, however, features that the human embryo might develop.

Some of the properties in the above list include some of the other properties. For example, if being a living organism is held to be sufficient for moral status, then being a human being must also be held to be sufficient. It does not, however, follow that those who hold that being, e.g., a living organism confers *some* moral status, may not hold that being a human being, or a rational one, confers a *higher* moral status. The most interesting conflicts between positions occur when there is dispute about what is necessary for *some* moral status to be conferred and what is sufficient for *maximal* moral status to be conferred. The two extremes, are constituted, on the one hand, by the view that being a natural event or system is necessary and sufficient for *maximal* moral status to be conferred and, on the other hand, by the view that being an agent is necessary and sufficient for *any* moral status to be conferred.

One popular view (characteristic of Kantian and contractarian theories, as well as the Gewirthian theory I myself espouse, see, e.g., Gewirth 1978, 1996, Beyleveld 1991) is that beings cannot rationally be accorded maximal moral status (as possessors of inalienable claim rights) unless they are agents. An important question for such theories is whether status as an agent is necessary for a being to be accorded any moral protection, or whether such status is only necessary for maximal moral protection, some moral protection accruing from the possession of other characteristics. In this paper, I shall be addressing this question as it impinges on the moral status of the human embryo.

### *Moral status of the human embryo if agency is required for claim rights*

On the assumption that agency is necessary (as well as merely sufficient) for a being to have claim rights, it remains possible to argue that the human embryo is the possessor of rights (of a lesser or different kind) that generate duties of agents towards the human embryo.

In principle, the human embryo could be granted protection either directly or indirectly. There are essentially two considerations that might be appealed to in an attempt to justify granting human embryos protection directly.

- 1 It might be contended that human embryos are owed protection because they have some of the features necessary for full moral status. Correlative



to this is the idea that as the human embryo develops it gains greater protection through acquiring more and more of the features necessary for agency.

- 2 It might be contended that human embryos are owed protection because they are potential agents.

Indirectly, the human embryo might gain protection because not to do so threatens the claim rights of beings with full moral status (in line with which various arguments for vicarious protection might be constructed) or through the idea that agents might contract between themselves to grant the human embryo protections that it might not self-sufficiently be entitled to.

### Arguments for direct status

*The Principle of Proportionality:* This kind of argument is employed by Alan Gewirth, who argues that rational agents (those who avoid contradicting that they are agents) necessarily grant claim rights (generic rights) to the necessary conditions of agency and of successful agency in general to all agents. According to Gewirth, creatures who possess some, but not all the necessary features of agency are to be granted some but not all of the rights of agents in proportion to their closeness to being agents (Gewirth, 1978, pp.121-124 and pp.141-144).

This kind of argument requires the possession of specific properties necessary to be an agent to be sufficient for the possession of specific rights, the possession of all the properties necessary to be an agent being sufficient for the possession of the complete complement of rights protection.

While such an idea is not incoherent, it presents difficulties within the framework of the Gewirthian scheme simply because Gewirth's argument, if valid, proceeds by arguing that agents would contradict that they are agents if they do not consider themselves to have the generic rights, thus that they must (on pain of contradicting that they are agents) consider that they have the generic rights because they are agents, and, hence, must grant the generic rights to all agents. For it to be demonstrated, within such a framework, that agents must grant some generic rights to beings that are not full agents, it must be shown that agents must claim specific rights for themselves on the basis of having properties necessary but not sufficient for agency, and the argument is not structured that way. While this does not mean that an adequate argument is unavailable, it has not yet been presented.<sup>1</sup>

Even outside Gewirth's framework, this kind of argument presents problems when used to grant rights to the human embryo. In principle, the idea would be that the human embryo is a stage in the development of a human agent, and during its development acquires properties necessary to being an agent. So, e.g., the point at which twinning is no longer possible might be thought to be



significant, because the preclusion of twinning is necessary for individuation, which is necessary for individuated agency. However, although this might have some emotive appeal, its force in an argument is unclear simply because the fact that possession of property X is necessary for property Y and possession of property Y is sufficient for all R rights to be granted, it does not follow that possession of property X is sufficient for some R rights to be granted.

*The Principle of Potentiality:* The human embryo is not an agent, but it might be claimed that it is a potential agent, and that some rights protection is owed to it by virtue of this potential.

This idea is open to a logical objection. Judith Jarvis Thomson hints at this when she remarks that 'A newly fertilised ovum, a newly implanted clump of cells, is no more a person than an acorn is an oak tree' (Thomson 1977, p.112-113). And the point is better made by Stanley Benn who points out that '[a] potential president of the United States is not on that account Commander-in-Chief [of the U.S. Army and Navy]' (Benn 1973, p.102) which the actual president would be. The point is that a human embryo has wholly different properties from a human agent, from which it is alleged to follow that we need not (indeed cannot) treat it as though it were a human agent.

Nevertheless, it might be argued that for an agent to fail to grant rights to potential agents requires the agent (by the demands of universalisation) to concede that it would have been permissible for the agent himself or herself to have been damaged or destroyed at the embryo stage, and that to do this is something that the agent cannot rationally will. There are, however, at least two problems with this. First, such an argument requires it to be accepted that agents cannot rationally will that they were never agents, which is not self-evident. Secondly, the argument requires the agent to put himself or herself in the position of the potential agent and treat this position as his or her own. But there is a crucial difference between the positions of the potential agent and the actual agent, viz. that the potential agent cannot put itself in the position of the actual agent. For universalisation to work it is necessary for the positions of the potential and actual agent to be relevantly similar. But, since that is just what the argument is trying to show, it cannot assume this without begging the question at issue.

In addition there are problems concerning the concept of potentiality. Is every human embryo a potential agent? Not all human embryos are viable. Even if some embryos develop into fetuses and go to full-term and are born live, they might be so severely handicapped (even anencephalic) that they can never be agents. Thus, it might be argued, even if potentiality is something that is sufficient for some rights, it is not possible to determine when it applies.

However, when dealing, for example, with the question of the rights of certain nonhuman higher mammals, such as chimpanzees, it is possible to appeal



to a precautionary principle to grant rights to these creatures. Certain mammals, such as gorillas, chimpanzees, and dolphins have remarkable capacities. So much so that there can be genuine uncertainty whether or not they are agents. The precautionary principle specifies that because the consequences of treating agents as nonagents is morally dire, uncertain agents are to be treated (insofar as possible) as agents. While there can be no reasonable uncertainty about whether human embryos are or are not agents (they clearly are not) the precautionary principle can be applied to uncertainty about their status as *potential* agents, and this consideration, I suggest is capable of alleviating some of the difficulties associated with determination of potentiality.

There is the thought too, though whether it properly reflects proportionality or potentiality is not wholly clear, that being an embryo is a necessary stage for becoming an agent (at least in the case of biological human beings) and something might be made of the idea that being an embryo is thus a necessary condition of agency in being a necessary condition for becoming an agent.<sup>2</sup>

#### Arguments for indirect status

*The brutalisation argument:* It might be argued that to show disregard for the life or well-being of the human embryo shows a disregard for the life of human beings generally. By permitting harm to be caused to human embryos, we brutalise ourselves and make ourselves less sensitive to the rights of human agents. Not to be protective towards human embryos is to threaten the rights of human agents. The human embryo is, thus, to be granted rights vicariously as an expression of the rights of human agents.

One difficulty with such an argument is that it rests very much on empirical evidence that is, at best, lacking.

*The psychological damage argument:* Many human beings have strong protective feelings towards unborn children. There is an evolutionary explanation for this, as it is quite plausible that protective feelings for the young, including the unborn, confer an evolutionary advantage. This being so, to show a disregard for the well-being of the human embryo is to cause great distress, even psychological damage to those who have (natural, and, indeed generally beneficial emotional responses). Most importantly, to cause them this damage is to violate their rights. Again, the human embryo is to be granted rights vicariously.

Once again, however, this argument rests on empirical assumptions that need testing.<sup>3</sup>

*The property argument:* It might be argued that the human embryo is the property of its genetic parents (or, at least of its mother). As such, if the mother wishes her embryo to be protected, then the embryo is to be granted that protection.



The obvious difficulty with this argument rests in the idea that the embryo can be property (anyone's property). This is a complex issue that has not to my mind received satisfactory treatment anymore than has the question of whether human tissue can be the property of its possessor.<sup>4</sup> However, if the human embryo can be property then this argument has considerable force.

*The contractual argument:* Rights are of different kinds. The generic rights that Gewirth argues for are rights that agents must grant simply by virtue of being agents. They might, however, between themselves contract for protections not granted generically and might waive the benefits of rights-protection amongst themselves. In effect, they may use their right to freedom to extend or diminish the protection afforded by the generic rights (amongst consenting agents).

This suggests that, even if the human embryo need not be granted rights simply by virtue of being a human embryo, it might be granted rights (equivalent even to generic rights) by agents who wish to impose the correlative duties on themselves.

An obvious difficulty with this suggestion arises in connection with the imposition of duties (via these rights) on persons who are not party to the contract in question. This will happen more or less inevitably if granted at a societal level, simply because no societies exist in which there is absolute consensus. It may, however, be possible to deal with this in accordance with the same sorts of principles that are used to justify similar impositions in democratic polities.

### *Two suggestions*

Most of these arguments are, I think, inconclusive at best. I would, however, like to make two suggestions.

The first is that, whatever the problems of using potentiality to argue that the human embryo should not be destroyed, the fact of potentiality (or its uncertain possibility) does, I think, generate valid reasons for not damaging the embryo and then allowing it to become an agent. If and when the damaged embryo becomes an agent it will have whatever rights are accorded to agents. An intention to bring into existence a damaged agent is, I suggest, exactly on a par with an intention to damage an existing agent.

The second suggestion is that, while an appeal to the principle of proportionality may not be successful in conferring direct protection on the human embryo (or partial agents generally), it would seem to have undeniable force when used in the context of vicarious arguments. Thus, e.g., the more properties of agency that a creature possesses the more likely it is that ill-treatment of that creature will have a brutalisation effect or a psychological damage effect, and so on.



## **The legal status of the human embryo**

The legal status of the human embryo varies considerably from one European Union country to the next. I shall not attempt a detailed survey, but merely indicate the range of variation.<sup>5</sup>

- EU countries range from having no specific laws regulating the treatment of human embryos (leaving the use of human embryos, at one extreme, entirely to the policy of hospitals or various medical bodies), through regulation on the advice of national bioethics councils or professional bodies, to having comprehensive and specific legislation.
- Whereas some countries permit (or at least do not prohibit) research on surplus embryos created for in vitro fertilisation (IVF), others prohibit this (including Germany and Austria); while Sweden only permits such research for the purpose of improving IVF treatment.
- Some countries (including the UK) permit the creation of human embryos specifically for research, whereas others (e.g., Austria, France, Germany, Spain, and Sweden) do not.
- Time limits for the duration of human embryo culture (where permitted) are, however, generally set at 14 days.
- Not all countries permit the freezing of human embryos, and those that do impose different time limits for storage – e.g., 1 year in Austria and 5 years in Spain. Furthermore, in some countries limits set may not be extended, whereas in others (e.g., Sweden and the UK) they may be extended under varying conditions.
- Some countries legislate the disposal of embryos (e.g., France, Spain, and the UK), whereas others do not.
- Some countries specifically permit the creation of human embryo banks (e.g., the UK), whereas others (e.g., Sweden) do not.
- Some countries permit artificial division of human embryos (e.g., Denmark), whereas others (e.g., Germany and Spain) do not.
- Embryo cloning (by nuclear transfer), and the gestation of embryos in a nonhuman environment (including ectogenesis) are, however, generally not permitted.
- It is generally impermissible to attempt to implant embryos after they have been subjected to research procedures (although Denmark does not rule this out if it can be done without transmitting defects).

The reasons for this variation are no doubt complex, and merit study. Certainly, they cannot be accounted for wholly, or even mainly, by whether or not the country in question is mainly Catholic, Protestant, or Secular (although this factor would seem to account for differences in practices between, e.g., the Catholic and Free Universities of Belgium).

Whatever the reasons for it, this absence of consensus is significant from a moral point of view. The scope for EU citizens or scientists to evade prohibitions existing in one country by transferring to another country (or utilising its services) is considerable, and this serves to nullify the effect of legislation which may be driven by moral objections.

In the final section of this paper, I shall sketch an approach to the search for a moral consensus that lays claim to legal force within the EU countries and may thus be a foundation for harmonisation within the EU.

### **Sketch of an approach to a legal-moral consensus**

All countries in the EU are party to the European Convention on Human Rights (ECHR) (and other human rights Conventions). The rights enshrined in these Conventions reflect a consensus about morality that has legally binding force within the EU.<sup>6</sup> It is tempting, therefore, to say that, insofar as the variation in legislation concerning the human embryo reflects moral disagreement in the EU countries, these can be referred to the ECHR (in particular) for adjudication. However, the matter is not that simple. For one thing, the ECHR is thought by many to grant considerable derogatory powers to individual governments in relation to its provisions. For another, it does not explicitly declare how possible conflicts of rights are to be adjudicated. And finally, although the Convention prescribes that

[t]he enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status

it does not specify whether or not the subjects of these rights are human beings (biologically defined) or human beings more narrowly defined (as persons or agents). Unless these difficulties can be overcome, appeal to the ECHR will be of little practical value.

However, on the issue of derogatory powers, at least, there should be nothing to argue about, simply because Article 14 of the ECHR, in effect, specifies that the rights granted by the ECHR are held simply by virtue of being 'human', howsoever this is to be understood. If this is so, then the rights enshrined in the ECHR cannot be derogated from except for the sake of more important rights of similar status. As far as the issue of the interpretation of being human is concerned, it should be noted that 'may' implies 'can' as much as 'ought' does, and this means that rights cannot meaningfully be granted to those who do not have the power to exercise them. The rights enshrined in the ECHR (as civil and political rights) are, at least focally, rights that require the powers of



agency to exercise and are not possessed simply by being human (biologically defined).

This, however, does not deal with the second issue, which concerns how various rights and goals are to be weighed against each other. And it also does not deal with the question as to whether any of the rights that are focally directed at agents may be extended to protection of the human embryo (and other beings with some, but not all, of the necessary conditions of agency).

In order to tackle these problems, I suggest that it can be shown that anyone who recognises *any* human rights must, on pain of contradicting that this acceptance is an acceptance of human rights (in the sense applicable to civil and political rights as well as to social and economic rights), accept a particular moral principle, Alan Gewirth's 'Principle of Generic Consistency' (PGC)<sup>7</sup> as the principle for identifying, interpreting, and ordering human rights. The ECHR (and other human rights instruments) must, therefore, be interpreted in line with the PGC. If this argument is valid then law and morality within the EU must be referred to the PGC as the ultimate principle of validity (both moral and legal), *unless* adherence to the idea that there are human rights is given up.<sup>8</sup>

### *The principle of generic consistency*

The PGC states, 'Act in accordance with rights to the generic conditions of agency of your recipients as well as of yourself'.

According to this principle, all agents have inalienable rights to the generic conditions (or features) of agency (GF). GF fall into two main categories.

- (a) Things like life, freedom of action (in the sense of the capacity to guide one's actions by one's own maxims), sufficient mental equilibrium to give active expression to one's desires, and anything else that is necessary for the *possibility of even attempting to act*, interfering with which will have a systematic restrictive or adverse effect on the possibility of even attempting to act (e.g., clothing, health, shelter, food, and the necessary means to these).
- (b) Things like accurate information, interference with which will have a systematic adverse effect on one's ability *to succeed* in the pursuit of one's goals.

GF that fit category (a) are termed 'basic', whereas those that fit into (b) fall into two further categories:

- (i) Things, like having others be truthful and keeping their promises, that are needed to maintain the capacities for purpose-achievement that one already possesses – which are termed 'nonsubtractive'.



- (ii) Things, like educational provision in accordance with one's abilities, that are necessary to improve one's existing capacities for purpose achievement in accordance with one's potential – which are termed 'additive'.

The rights granted by the PGC are

- both negative and positive, negative rights being rights to non-interference with the objects of the rights, positive rights being rights to provision of or to assistance with securing the objects of the rights;
- claim-rights, these being correlative to duties on the part of other agents not to interfere with what the right-holder has a right to *against the will of the right-holder* (or to provide or assist the right-holder with what the right-holder has a right to *if the right-holder so wishes*);
- (as a structure) held equally and reciprocally by all agents: in holding rights against other agents, agents owe equal duties to these other agents.

The rights granted by the PGC cannot be overridden by *any* considerations except (in case of conflict) by more important rights within the structure of rights granted by the PGC, importance to be assessed by a criterion of degrees of necessity according to which rights to the basic GF are more important than rights to the nonsubtractive GF, which are more important than rights to the additive GF (because possession of the basic GF is necessary for possession of the nonsubtractive GF, but not vice versa, etc.).

*The argument for the PGC from the acceptance of human rights*

This argument runs as follows.

- (1) Anyone who grants that someone (*X*) has a right to have or do something (*p*) must grant that *X* has a right to the means (*m*) to having or to doing *p* (and this is true whatever *p* might be). (For *X* not to grant rights to *m* is, at least implicitly, for *X* to retract the grant of a right to have or to do *p*.)
- (2) Therefore, *if* there are conditions for the pursuit and achievement of rights, *whatever these rights might be* (generic conditions of rights [GCR]), then anyone who grants rights to anyone must grant these persons rights to the GCR.
- (3) If there are GF then they will also be GCR.
- (4) There are GF.
- (5) Therefore, there are GCR.
- (6) A rational person (one who observes canons of deductive and inductive logic and seeks efficient means to pursue his/her purposes) will attach more importance to the basic GCR than to the nonsubtractive GCR than to the additive GCR. Within each of these categories a rational person will attach more importance to those conditions, interference with which has a more proximate and extensive effect in interfering with the possibility of



action/successful action. The GCR are, in this sense, to be ordered in importance according to a criterion of degrees of necessity.

- (7) Therefore, anyone who grants that *X* has a right to have or do something (no matter what this might be) rationally must grant that *X* has rights to the GCR in accordance with the criterion of degrees of necessity.
- (8) Anyone who holds that there are human rights (rights held simply by virtue of being human) rationally must hold that all human beings have human rights to the GCR in accordance with the criterion of degrees of necessity.
- (9) At least insofar as human beings, as the recipients of rights, are capable of exercising rights (as the civil and political rights Conventions suppose), being human is to be interpreted, at least focally, as being an agent.
- (10) At least insofar as the grant of human rights has this restriction, the supreme principle of human rights rationally must be taken to be the PGC.

It is, of course, perfectly possible that a Convention on human rights as a Convention might grant rights that the PGC does not grant, grant rights that the PGC prohibits, or simply fail to grant rights that the PGC requires. Nevertheless, the argument to the PGC from the supposition of human rights entails that such a Convention must, as a Convention on human rights, be governed by the PGC, and this fact places severe constraints upon the interpretation of a Convention on human rights conceived as a Convention on human rights.

The general rules of interpretation are as follows.

- I. Where a Convention grants rights explicitly that the PGC does not grant then, *provided that the PGC does not prohibit the grant of such rights*, such a grant will be legitimate under the 'indirect' applications<sup>9</sup> of the PGC (provided that the Convention itself is authorised by the PGC).
- II. Where a Convention merely fails to grant rights explicitly that the PGC requires, the Convention is to be taken as granting these rights implicitly, on the same ground that requires the Convention to be regarded as operating with the PGC itself (even when it does not declare the PGC explicitly as its governing principle) – viz., that anyone who claims that there are human rights must, on pain of contradicting this claim, assent to and use the PGC as the principle determining these rights (and, similarly, must assent to the rights that derive directly from the PGC). To deny that the PGC is the governing principle of what is alleged to be a Convention on human rights, or to fail to use the PGC as the governing principle of such a Convention, is to contradict that the Convention is a Convention *on human rights*.
- III. Where a Convention grants rights explicitly that the PGC requires not to be granted, then – on a strict interpretation – such grant must be considered to be invalid, an error made by the drafters of the Convention. However, a strict interpretation need not always be given. What the PGC requires is, to



some extent, dependent on particular circumstances. This is because the PGC grants rights according to a criterion of degrees of necessity for action and successful action, which ranks particular rights in three levels (and also ranks rights within these levels hierarchically), and determines which rights are to be given precedence when rights come into conflict. However, whether or not the rights of individuals will come into conflict will depend on contingent circumstances attending social interaction. Thus, although the PGC is the absolute principle of human rights, the rights it grants are, with one exception,<sup>10</sup> not absolute, but depend upon contingent circumstances attending the interaction of individuals. Now, although the PGC does not, for the most part, grant rights absolutely, there are rights that will only be capable of being overridden by other rights in extreme situations. In most circumstances, these rights will pertain. Because they have this status, such rights might be articulated explicitly in a Convention even though there are circumstances in which the PGC would overrule them. As such, on a weaker interpretation, human rights conventions are not to be rejected because they enshrine rules that do not have absolute validity under the PGC. Provided that such rules for rights have validity under the PGC in most circumstances, they may be treated as 'rules of thumb' for rights. It is only where rights are granted that the PGC generally would not grant, that it becomes necessary to declare the rights to be invalid or, in extreme cases, to reject the Convention.

## **Conclusion**

In applying the PGC, many details remain to be worked out. However, one thing is certain: if the arguments I have just presented are valid, then as long as debate about the moral/legal status of the human embryo is to take place within the context of a recognition of human rights, this debate is to be referred to the kind of consideration indicated in the first part of this paper by reference to the PGC.

## **Notes**

- 1 For a general discussion of Gewirth's use of his Principle of Proportionality, see the criticism by James F. Hill (1984) and the reply by Gewirth in the same volume at pp.225–227.
- 2 Insofar as Gewirth appeals to potentiality to grant rights to the unborn, he appears to have something like this in mind (Gewirth, 1978, pp.143–144). Not to be confused with this consideration, it might also be contended that to deny protection to the human embryo is to threaten the human species.



However, this will not provide protection for specific embryos. Furthermore, whatever force it has rests on the idea that it would be morally wrong to bring it about that there will be no future agents, which is not self-evident.

For a discussion of various indirect arguments (albeit in the context of the issue of rights of non-human animals), see Peter Carruthers (1992).

A wide-ranging, but not to my mind very helpful discussion, is contained in the Report by the Nuffield Council on Bioethics (1995).

I am grateful to Lorna Leaston for providing me with a summary of the current regulatory position, from which this résumé is derived.

The UK, and some Scandinavian countries adhere to a doctrine of dualism according to which ratified international treaties do not automatically become part of domestic law, but only if and when incorporated by domestic statute (which the UK has not done in relation to the ECHR). I have argued elsewhere that this is an incoherent doctrine in relation to human rights treaties (See Beyleveld 1995). In any case, due to the European Communities Act 1972 and the practice of the European Court of Justice to declare anything illegal that violates the ECHR, it is obvious that the ECHR has been indirectly incorporated into UK law (See Browne-Wilkinson, 1992, pp.399-402).

Gewirth does not argue from the acceptance of human rights (which acceptance requires justification), but from an agent's claim to be an agent. Gewirth maintains that an agent contradicts that it is an agent if it does not accept the PGC or violates it in practice. I defend this argument in Beyleveld 1991.

For a presentation of this argument, Gewirth's own argument, and some other arguments for accepting the PGC, see Beyleveld 1996.

To apply the PGC directly is to deduce what the PGC requires from the PGC, together with the circumstances of the application. However, it may not always be possible to determine what the PGC requires in this way. This is because (a) the circumstances may be so complex that persons can reasonably disagree about what the PGC requires in these cases; or (b) the decision that needs to be made is optional in terms of the PGC (e.g., driving on the left-hand side of the road v. driving on the right-hand side), but is one that must be made because persons cannot be permitted to perform either option indiscriminately. The PGC handles these cases by prescribing (in its direct application) legitimate dispute-resolution procedures. Decisions made according to these procedures are indirect applications of the PGC. The conditions of legitimacy and the binding of these applications are discussed in detail in Beyleveld and Brownsword 1994.

This is the right of an innocent person not to be killed against his/her will.



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