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Comment on Kaushik Basu's "Human Rights as Instruments of Emancipation and Economic Development"

Conference on the Ethics of Globalization and Development

In the first of the two papers, "Human Rights as Instruments of Emancipation and Economic Development," Basu offers to policymakers a way to determine which legal rights are alienable in an economic transaction and which are not. I am sympathetic to the goals of his account, and I offer these comments here as ways to develop his account that I hope he would find amenable.

I want to begin by making a distinction between moral and legal rights. On one view of morality, individuals possess certain basic *moral* rights. Those who endorse this view mean by this claim that individuals have interests in certain things that are so basic or fundamental that any set of basic social and economic institutions, if it is to be at all morally acceptable, must guarantee individuals' enjoyment of those things.<sup>1</sup> But, at this level of generality, this view does not make any claims about how these interests are to be protected in society, only that they must be; and so, it may not be the case that, under existing social circumstances, the best way to guarantee individuals' basic moral right, say, to subsistence is to create and enforce a *legal* right to subsistence.<sup>2</sup>

There seems to me to be another plausible category of moral rights, namely those having to do with interests that, while very important to individuals, are not as fundamental as the interests (morally) protected by basic moral rights. These interests are ones that are so important for an individual's dignity and self-respect that there is a special justificatory demand that a set of basic institutions must meet if its rules fail to guarantee their protection. What I mean by this is that, for these rights, only certain kinds of reasons would justify a failure to guarantee them.<sup>3</sup> Again, though, guaranteeing these moral rights may not require the creation and enforcement of corresponding legal rights.

I think that these two kinds of moral rights, though only briefly sketched, are getting at the same thing as Basu's notion of an "inviolable preference" (Basu, 17). It seems to me, though, that talk of preferences may be misleading in that it suggests that what the institution of non-tradeable legal rights does is to protect only those people who actually have the protected inviolable preference. If, as Basu rightly suggests, we may appeal to considerations such as dignity, autonomy and agency in deciding which legal rights should be tradeable and which not, then what we're concerned with are not the preferences that some individuals actually have but rather the interests that they all have, whether they realize it or not. This difference is important, I think, because an individual may not herself have an inviolable preference—e.g., she doesn't really mind if she works

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<sup>1</sup> This is Henry Shue's view, I think, in *Basic Rights*, Princeton, 1980. These rights are, he says, "everyone's minimum reasonable demands upon the rest of humanity. They are the rational basis for justified demands the denial of which no self-respecting person can reasonably be expected to accept" (Shue, 19). And these are the minimal demands, Shue argues, because they are the rights to those things without which one cannot enjoy any other rights (Shue, 19).

<sup>2</sup> A legal right in either customary or conventional law.

<sup>3</sup> For example, that circumstances are such that we can only satisfy either some individuals' basic moral rights or those individuals' (or even others') less-basic moral rights would justify a failure to satisfy the latter, less-basic moral rights.

in a firm where sexual harassment is part of firm culture, so long as the money is good—but only because she already lacks a sense of her own dignity or self-worth. But, the thought goes, she really ought to mind, because working in such a firm would be an assault on her dignity as a person (i.e., she has an important interest in relating to her fellow employees on a footing of equality and mutual respect). What legal rights ought to do, then, is to protect the inviolable preferences individuals ought to have (whether they actually do or not) or, in other words, to protect those very important or fundamental interests that they do have.

And so, it seems to me that the reason why it is wrong, as Basu argues, to extract a price from individuals for possessing some inviolable preference is because an economic system, insofar as it allows people to find themselves in situations in which getting substantial economic benefits requires that they deny their own self-worth or dignity, is to that extent morally objectionable. This is in part why, I think, the example of the serf who agrees to kill himself in exchange for his family getting \$100 is so morally troubling (Basu, 11). In this example, I take it, the economic system is set up in a way that allows the serf and his family both to face abject and grinding poverty and to endure utter dependence on the landlord; and it is because of his and his family's place in this system that the serf could so easily find himself in this sort of situation (at the whim of the landlord) and think it an advantageous exchange.<sup>4</sup> And I think we'd find the example even more troubling if the serf also lacked the preference for not having to give up his life for some financial security for his family.<sup>5</sup>

These two categories of moral rights enables us to explain further why it might be justified for the policymaker to allow child labor in an economy when the only other option is to allow those children's families to suffer food deprivation. Individuals have a basic moral right to sufficient food but a less-basic moral right as children not to work. And so, allowing child labor may be morally justified, but only because the other option requires infringing on a basic moral right. Using these two categories, though, also opens up another avenue of moral evaluation, although one less important, I think, to the policymaker. It may be the case that, given the narrow scope of the policymaker's power, her choice is restricted to only those two options and so she may decide rightly to sacrifice the less-basic right of children not to work. But, since these children still have the fundamental interest in question, we still need to ask whether this policymaker's choice is one forced by the rules of the set of basic institutions. If it is forced by these rules, then those rules and the institutions that enforce them require special justification.<sup>6</sup> Now, from the perspective of the policymaker, those institutions may be properly regarded as social facts that she cannot change but rather must work with as best she can. This seems to be the perspective Basu takes towards globalization.<sup>7</sup> But the

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<sup>4</sup> It would still be objectionable even if the landlord did not offer him the deal, for it would still be the case that, if the landlord had offered, it would have been to his family's advantage for him to accept.

<sup>5</sup> That is, if the prevailing ideology had in fact convinced him that he was, as a serf, worth much less than the landlord and so that the landlord's offer was a perfectly fair exchange.

<sup>6</sup> And it is not clear to me that appealing simply to the benefits of this system for many other people would be enough.

<sup>7</sup> He says that the task of policymakers is to 'complement' the processes of globalization "with intelligently designed policies meant explicitly to combat these inequities [i.e., those created by globalization]" (Basu, 3).

policymaker's perspective need not be the only one to take towards globalization; by using these two categories of moral rights to build upon what Basu says about inviolable preferences, one can open up a wider-ranging moral evaluation of globalization.